



FINAL AGENDA

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

REGULAR MEETING  
APRIL 16, 2007  
6:30 P.M.

CALL TO ORDER:

ROLL CALL:

VISITOR COMMENT PERIOD:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

Minutes from the Regular Meeting of April 2, 2007

07074 Social Service Funding Committee Recommendations

07075 Approval of the City of Beaverton 2007 Action Plan Submission to Washington County

PUBLIC HEARING:

07064 Harmony Investments Ballot Measure 37 Claim for Compensation M37 2006-0003 (*Rescheduled from 04/02/07 Council Meeting*)

WORK SESSION:

07076 Ordinance to Adopt Procedures for Reviewing Candidate Statements in City Voters' Pamphlet

ORDINANCES:

Second Reading:

07073 An Ordinance Amending Beaverton Code Section 8.02.015(A) and Repealing a Portion of Beaverton Code Section 8.02.015(E) and Declaring an Emergency. (Ordinance No. 4434)

#### 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.

## DRAFT

BEAVERTON CITY COUNCIL  
REGULAR MEETING  
APRIL 2, 2007

### CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, April 2, 2007, at 6:35 p.m.

### ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Betty Bode, Bruce S. Dalrymple, Dennis Doyle and Cathy Stanton. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Public Works Director Gary Brentano, Library Director Ed House, Human Resources Director Nancy Bates, Police Chief David Bishop, Transportation Engineer Jabra Khasho, Development Services Manager Steven Sparks and City Recorder Sue Nelson.

### PROCLAMATIONS:

Mayor Drake proclaimed April 8-14, 2007, as Arbor Week and noted Beaverton was a Tree City USA. He asked staff for information on the City's tree planting event scheduled for the end of the week.

Public Works Director Gary Brentano said the tree planting was scheduled for Saturday, April 14, at Schiffler Park, at 9:00 a.m. He said the planting would replace trees that had to be removed because they were a hazard to a neighboring lot. He said the event was taking place in cooperation with Friends of Trees and interested citizens could volunteer to help plant the trees. He said the event would be held at the north end of the park, adjacent to the parking lot.

### PRESENTATIONS:

07060 Washington County Consolidated Communications Agency Briefing

Mayor Drake introduced Paul Pedersen, Executive Director, Washington County Communications Agency (WCCCA). He said Pederson had been with WCCCA for one and one-half years. He said the City was a member of WCCCA and he invited Pederson to give Council an update on the agency's activities.

Pederson said WCCCA was a 190 Agency that was owned by all the public safety providers in Washington County for whom WCCCA provided dispatch services. He said WCCCA was the second largest dispatch center in Oregon. He said the WCCCA Board consisted of a representative from each of the member agencies and it meets quarterly. He said for daily oversight, WCCCA has a CEO Board that is chaired by Mayor Drake. He said the budget for the upcoming fiscal year was over \$11 million; 20% of that was from the 911 Excise Tax on phone utility bills and 80% from member's user fees. He said next year the user fees for the City of Beaverton would be \$747,000 for dispatching and \$44,000 for the radio network.

Pederson said last year WCCCA dispatched 513,000 police incidents (24% were Beaverton calls); 48,000 Fire/EMS calls; and answered 93,000 911 calls and 94,000 non-emergency calls. He said WCCCA owned and operated the County's radio system. He said all four counties in this region have the same radio system and that provides good intercommunication throughout the region during times of major disasters. He said the system was expanding with the addition of radio channels and six new radio sites (currently there were four); two of the new sites were in Beaverton and that would improve radio and in-car mobile data communications.

Coun. Stanton asked if the additional channels and radio sites would help overcome the Nextel issue of breaks in service.

Pedersen replied no. He said the Nextel problem would be solved by moving some existing channels to a different place on the radio band. He said Nextel would finance those improvements but that would not affect coverage.

Coun. Arnold asked if WCCCA had to coordinate with the National Emergency Management System.

Pedersen said WCCCA was part of the Urban Area Security Initiative (UASI). He said there were five counties in UASI. He said he chairs the Communications Working Group of UASI and works closely with his counterparts in the six other communication centers in the region to coordinate systems and maintain the level of operability that has been built over the years. He said UASI receives grant funds from the Department of Homeland Security.

Council thanked him for the presentation.

#### VISITOR COMMENT PERIOD:

There were none.

#### COUNCIL ITEMS:

Coun. Stanton referred to the memorandum responding to her Council questions and noted Questions 3 and 4 relate to the Weisman Ballot Measure 37 Claim, not the Williams Claim.

Coun. Doyle asked if Councilors had received the Economic Interest Statements from the State this week. The Councilors indicated they had received them.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

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

Minutes of the Regular Meetings of February 26 and March 19, 2007

- 07061 Special Purpose Grant Budget Adjustment Resolution for 2007 Oregon Office for Community Dispute Resolution Carry Forward Funds Grant (CFFG) (Resolution No. 3894)

Question called on the motion. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0) Coun. Stanton abstained from voting on the minutes of February 26, 2007, as she did not attend that meeting.

PUBLIC HEARINGS:

- 07062 Appeal Hearing on Traffic Commission Issue No. TC 609 Regarding a Traffic Signal at SW Brockman Street and Sorrento Road

Mayor Drake opened the public hearing.

Traffic Engineer Jabra Khasho reviewed the staff report (in the record). He noted a letter dated March 28, 2007, was received from Krystal Pease, Chair, South Beaverton Neighborhood Association Committee (NAC), stating that the NAC Board voted unanimously to support installation of the traffic signal.

Mayor Drake reviewed the procedure to be followed for the hearing. He asked for Council questions.

Coun. Stanton said the NAC letter stated that the vote was based on the traffic light being an actuation only from Sorrento and that there would be a two-to-three second delay prior to actuation. She said that was not reflected in the Traffic Commission minutes. She asked what information the NAC received, that the Commission did not receive, that said this would be an actuated signal with a delay.

Khasho said the NAC received the same information the Commission received.

Coun. Stanton said she would look at the report again.

Coun. Doyle asked how long it had been since the intersection met at least three warrants.

Khasho said in 1996 this intersection was reviewed for signal warrants and it met warrants then but the Traffic Commission decision was to not support installation of a signal and instead use the funds for the extension of 125th Avenue.

Coun. Arnold asked how the intersection would be affected if 125th Avenue was extended.

Khasho replied that if 125th Avenue was extended, the Brockman Street/ Sorrento Road intersection would probably not meet the warrants for a traffic signal.

Coun. Doyle said the staff report said that during peak hours the traffic volume at that intersection would drop between 100 to 200 trips; he asked what the peak hours were.

Khasho said the modeling showed the peak hour traffic.

Coun. Stanton said there was nothing in the staff report that Council received that addressed a Sorrento Road signal with a two to three second delay.

Khasho said this was common practice for all signals in the City of Beaverton; all signals were actuated signals (the signal would not turn to green unless a vehicle was detected). He said typically when there were several right turns at an intersection the signal would delay two to five seconds before turning green.

Coun. Stanton said she was having a problem differentiating between "typical or usual practice" versus a given certainty, as stated in the NAC/Pease letter that stated that the actuated signal was the basis for the NAC vote. She asked if the information Pease had was different from what the Commission received. She said in the Traffic Commission minutes, former Traffic Engineer Randy Wooley stated the actuation would only be determined after studies were done because they wanted to signalize the light at Sorrento Road with Brockman Street, Greenway Drive and 125th Avenue, so that traffic flow would be as smooth as possible. She said that actuation was not a guarantee at the Commission meeting.

Mayor Drake said Pease was in the audience and Coun. Stanton could ask her questions when she testified.

Coun. Stanton said the information was not seamless to her at this time.

Coun. Doyle referred to the January 4, 2007, Traffic Commission Minutes (page 19 of staff report): "Mr. Wooley answered that staff can program traffic signals to detect that a car is present and then, during a short delay, cancel the call to stop traffic if the car turns and no longer needs the signal." He said that could be where people were reading more into the signalization issue.

Coun. Stanton said the word "can" did not mean it would be done.

Coun. Bode asked in terms of long-range planning, if this signal would be removed once the 125th Avenue Extension was constructed.

Khasho said that was not guaranteed. He said typically when signals are installed; citizens get used to them and do not want them removed. He said if it did not meet warrants it could be removed.

Coun. Bode asked if it was reasonable to assume that if 125th Avenue was extended, and this intersection did not meet the warrants, that the signal would be removed. She asked if this was part of the long-term transportation plan for this neighborhood.

Khasho explained that the installation and possible removal of the signal was not part of any plan. He said currently there was a possibility that the signal would be removed if 125th Avenue was extended and the intersection did not meet warrants.

Mayor Drake said that if the 125th Avenue Extension was built, the Transportation Division would probably measure traffic at the intersection to determine if the signal was needed. He said removal of a signal would have to go back through the Traffic Commission's formal process.

Coun. Stanton referred to Wooley's comments in the Traffic Commission minutes that "staff had not invested time in detailed signal design because they do not know if the Commission intended to approve the recommendation." She said the Commission also requested additional information on timing of the signals to ensure safe traffic flow eastbound onto Brockman/Sorrento from Brockman/Greenway. She asked if staff had investigated this since the Commission hearing.

Khasho said staff looked at the coordination plan between Sorrento/Brockman and Brockman/Greenway/125th Avenue. He said the plan showed this would work if both signals were coordinated. He said Wooley had indicated the final design of the signal in the report and it was noted in the Commission minutes.

Coun. Stanton said she was talking about the traffic flow. She asked if work had been done regarding signal timing to see if traffic flow could move off of Sorrento Road onto Brockman/Greenway, given the fact that they were so close together and there were lines of cars in the a.m. and p.m. peak hours.

Khasho repeated they had looked at the coordination of the two intersections and it appeared they would function properly.

Coun. Stanton said she did not believe this could be done.

Mayor Drake said the Traffic Commission Chair was in the audience and Coun. Stanton could direct her questions to him when he testified.

Mayor Drake asked the City Attorney to explain the difference between a public hearing "on the record" versus "de novo."

City Attorney Alan Rappleyea said a hearing "on the record" meant that the only evidence that could be considered was the evidence that was already submitted into the record at the Traffic Commission hearing. He stressed no new factual evidence could be submitted at the Council hearing. He said arguments on the interpretation of the evidence in the record were allowed.

Mayor Drake noted that regarding site visits, all the Councilors were familiar with this intersection.

Mayor Drake asked if any Councilors had received ex parte contacts.

Coun. Arnold said she attended the Traffic Commission hearing.

Coun. Stanton said she attended a Town Hall meeting at the Library that Traffic Commissioner Ramona Crocker also attended. She said she and Crocker discussed this issue; Crocker told her how she voted and why.

Mayor Drake asked if any Councilor felt they had a bias and could not be objective about voting on the traffic signal at this intersection.

No one declared any bias.

Mayor Drake asked if any member in the audience objected to any Councilor or the Mayor participating on this issue, with the understanding that the Mayor would only vote in the event of a tie.

No one declared any objections.

#### APPELLANT:

Doug Heatherington, Beaverton, said he appealed the Traffic Commission's decision because he did not believe the decision to install the signal was supported by facts. He said the fact that the traffic at the intersection met the traffic signal warrants was a reason to consider installing a signal; it was not the basis for making a decision. He said funding availability provides the option to install a signal, it should not be the reason a decision is made to install one. He said the statement that the signal would provide safety and more predictable movement, would suggest that the intersection was not safe. He said that was not the case. He said in the last six years of data provided by the Traffic Engineer, there was one accident at the intersection that may have been prevented by a traffic signal. He said he did not hear any evidence of close calls or that pedestrians had been struck or injured at the intersection. He said safety would be adversely affected by the signal; for Wooley had indicated that a signal could increase rear-end accidents.

Heatherington said information on the City's Web page indicated that injury accidents were mostly likely to occur at signaled intersections. He said that the driveway for one property owner would be adversely affected by the signal and he did not believe there would be adequate coordination between the lights at 125th Avenue and Sorrento Road. He said the signal would increase the wait time at this intersection and since he uses this intersection a great deal he did not want to have to stop unnecessarily. He said he did not see a logical justification for spending \$225,000. He concluded that pollution was a global issue and stopping the cars at the intersection would create more pollution.

Coun. Bode thanked Heatherington for his letter and his honesty. She said she often used that intersection. She asked what could change his mind and if there was any benefit to the signal. She noted traffic was continuing to increase and the 125th Avenue Extension would not be constructed soon. She said she heard his issue but she wondered if there was another way to manage the increased traffic.

Heatherington said the reason there was a lot of traffic on these side streets was because Beaverton did not have enough through streets. He said Brockman was a through street and putting in lights at all the intersections on the through streets would impede traffic flow.

Mayor Drake said he and his son often ride bikes in that area. He said early in the year last fall they were at the Sorrento Road/Brockman Street intersection and they had waited eight to ten minutes to cross. He said it scared him to think of his son on his own trying to cross that intersection where traffic was going faster than 35 mph. He said a signal would help people cross and would help visibility.

Heatherington said in terms of pedestrian safety, people do not like to go the extra block to 125th Avenue but that was available. He said there were probably concerns with each intersection on Brockman Street all the way up to Hiteon Drive. He said it was much more dangerous by Hiteon School. He said it was a balancing act.

Coun. Stanton asked the location of Hiteon Drive.

Heatherington said Hiteon Drive was off of Davies Road, between Scholls Ferry and Brockman Streets.

Jodi Heatherington said she was a cautious driver and she did not have trouble using that intersection. She said she attended the Commission hearing and did not agree with what Wooley had said. She said when asked about the number of left and right turns at the intersection, Wooley had responded he was not sure but he thought it was 50-50. She said many more drivers turn right at that intersection, not left. She said most of the people at the hearing wanted a signal that would only operate when needed. She said Wooley said that was not recommended as it would be confusing. She said she did not think it would be confusing for there were signals at schools and fire stations that only operate when needed. She said it was more confusing to have a signal showing a red light when there were no vehicles in sight. She said she did not believe anyone at the Commission hearing testified that they wanted the signal there all the time. She said if traffic was stopped at Brockman, the traffic heading north on 125th Avenue would come onto Brockman and that would interfere with traffic going south on Sorrento Road. She said when Wooley responded that the lights would be co-ordinated she did not think he understood the question being asked. She said as she listened at the hearing she did not think people understood what each other was saying.

Coun. Doyle said that according to the Commission minutes, when asked about the frequency of left and right turns, Wooley said "the southbound Sorrento traffic has about a 50-50 morning peak hour split." He said Wooley was referring to peak hour traffic and he assumed there was some fact to that.

Heatherington said that was the route they use to go to downtown Beaverton.

Scott Knees, Beaverton, said his testimony would include his personal opinion and his view point as a Traffic Commissioner. He said he was recommending that the Council deny the appeal. He said the Traffic Commission waited patiently for ten

years for the 125th Avenue Extension to solve these issues. He said the Commission decided it could no longer wait for the Extension because it was not eminent. He said it was his opinion that in order to have orderly and predictable traffic movement at this intersection, a turn signal was required. He said this was pertinent because of the proximity to the high school. He said in the morning peak hours there were many inexperienced teenage drivers going through this intersection and clearly indicating who has the right-of-way was an important safety concern for the City. He said the Commission was always confident of the Traffic Engineer's expertise in designing intersections and signals to cover all of the nuances of the site. He said that was mentioned during the Commission's deliberation and it complemented Wooley's comment that until the Commission decided to install a signal, staff would not spend a great deal of time figuring out the design to coordinate the signals.

Knees said the Commission would rely on the traffic engineers to make the signal function correctly. He said he did not think a part-time traffic light was a good idea and he had no idea how it would function. He said when he sees a traffic light with no lights he would assume it was a power failure and it should act as a four-way stop. He said he was not certain that those who testified had a specific configuration of how such a light would work and one person suggested turning the signal off. He said he wanted to be sure the City would not do that. He said the Erickson Avenue and Cedar Hills Boulevard intersections (two T-intersections) were similarly configured and they would be used as a model for this intersection. He said based on these reasons he would recommend Council deny the appeal.

Mayor Drake noted there was less queuing space between Cedar Hills Boulevard and Ericson Avenue, than there would be at this intersection.

Krystal Pease, Beaverton, said she was representing herself and the South Beaverton NAC. She said from her personal perspective she had two teenagers who attend Southridge High School and who have friends who live on the other side of Brockman Street. She said they used Sorrento frequently and on a daily basis she sees kids running across that street as fast as they can to avoid getting hit. She said she had witnessed near misses at that intersection at least once a week for the last year and that worried her. She said she felt something needed to be done at that corner for the risk was backed up traffic. She said on 130th Avenue traffic backed up almost to the high school during morning peak hours. She said if traffic on Brockman Street backed up to 130th or 135th Avenues, the traffic backup down the side streets would be more intense, so it would very important that the signal lights be timed properly.

Pease, said the South Beaverton NAC discussed this issue and everyone who attended the meeting was in favor of the light to different degrees. She said the most important concern for everyone at the meeting was that the light be actuated and Wooley assured them that it would be an actuated light; and it would have a pause before actuation, so that drivers turning off of Sorrento Road would have the opportunity to turn without actuating a light onto Brockman Street. She said Wooley explained that a flashing light was not used by the City because the City had found those to be ineffective. She said as a group they agreed to support adding the signal as long as the light was actuated and would only be turned on if there was a vehicle

on Sorrento Road that had been waiting to make a turn. She said the second issue was the safety factors of that intersection. She said no one was aware of actual accidents at the intersection, everyone had seen near misses on a regular basis, both with vehicles and pedestrians crossing the street. She said several people who have to cross Brockman Street to catch the bus, said they often missed their bus because it was so difficult to cross the road. She said a crosswalk on that road would be helpful even if a signal was not installed. She said this was why the NAC determined the actuated signal was most appropriate for this area and there was concern that the signal would have to be timed with the signal on 125th Avenue or there would be problems. She said there was some concern that that could not be done but they were assured that City staff were experts with these mathematical equations and it could be done.

Coun. Stanton noted that Pease's letter referred to a unanimous decision of the NAC. She asked how many people attended the meeting.

Pease responded there were ten members there and several people representing neighbors.

Mayor Drake asked if anyone else wished to testify. There were none.

#### REBUTTAL:

Heatherington said he would not rebut his wife's statement. He said there was concern with pedestrians and bicyclists crossing Brockman Street. He said previously he was asked if there were any circumstances under which he thought a signal light would be appropriate. He said he could imagine a light with a pedestrian button that would change the light from flashing yellow on Brockman Street and flashing red on Sorrento Road to allow a pedestrian to cross. He said he didn't think cars had a significant problem at that intersection. He noted the City has experimented with using new flashing lights and he thought that was good. He asked that more options be considered for the type of signal lights being used in the community.

Mayor Drake asked the City Attorney for the Council's options.

Rappleyea said the Council's options were to approve or deny the appeal, or send the issue back to the Traffic Commission with direction on how Council would like the Commission to proceed.

Coun. Stanton asked if they could continue the hearing to receive information on how the signals would be queued.

Rappleyea explained this appeal was on the record and no new evidence could be submitted. He said if the Council wanted new evidence, the issue would have to be remanded to the Traffic Commission.

Mayor Drake said he thought the idea of a pedestrian-activated signal was interesting. He asked if that was discussed by the Commission.

Khasho replied that was not discussed at the hearing.

Coun. Stanton said she remembered years ago that there was a light near Whitman School that was not activated by traffic but only by pedestrians. She asked for assurance that a signal light at Brockman Street/Sorrento Road would be activated by either a pedestrian or a vehicle there for six seconds.

Khasho confirmed the signal would be fully actuated.

There being no further testimony, Mayor Drake closed the public hearing.

Coun. Dalrymple said he was certain the City's engineers could accommodate the coordination of the intersections. He said he would leave it up to the engineering staff to set the time limits and actuation on the signals. He said he agreed with the comments regarding the proximity to the high school and that adds another safety concern for this intersection. He said he would support the Traffic Commission's and NAC's recommendation. He said the 125th Avenue Extension was not currently funded for construction and it was not known when that would happen. He said because of that, the Extension was a moot point and not part of the decision process for this hearing. He said this would also meet Council Goals 3 and 5.

Coun. Dalrymple MOVED, SECONDED by Coun. Doyle, that Council deny the appeal and support the Traffic Commission's decision on Traffic Commission Issue No. TC 609, a Traffic Signal at SW Brockman Street and Sorrento Road, and instruct staff to prepare a final written order.

Coun. Bode said she did not see any action being taken on the 125<sup>th</sup> Avenue Extension in the foreseeable future. She said traffic would not ease off and having predictable traffic movements was important, especially with the schools in that area. She said they could not count the accidents that were predicted but she saw this as a pro-active action for safety to protect drivers, pedestrians and bicyclists. She said she was going to vote to deny the appeal. She thanked the appellant for his thoughtfulness and for his willingness to pay for an appeal to bring this before the Council for a community conversation.

Coun. Doyle said he supported the motion. He said based on national standards and the Traffic Engineer's advise, this intersection had needed a signal for ten years. He said this was a safety issue and he would not vote against safety. He agreed with Coun. Bode that this was a pro-active action.

Coun. Stanton said she would support the appellant. She said she did not believe in crisis management and this was crisis management. She said it had been 34 years since the 125th Avenue Extension was put on the plans and she could not support spending \$225,000 as a temporary measure. She said no one from the Sorrento neighborhood testified at this hearing; and only one person testified at the Commission hearing. She said this signal was to allow people from outside the area access to Sorrento Road and Hart Road to reach Hall Boulevard. She said four accidents in six years was not a big safety issue. She said she would not support the motion because if people used Hall Boulevard to Greenway/Brockman Road, or used Murray Boulevard, then the Sorrento neighborhood would not be impacted.

She said she did not feel comfortable installing a signal in the middle of a neighborhood to make it easier for cut-through traffic.

Coun. Arnold said she would not support the motion. She said she would have liked to have seen information about how much it would cost to build the 125<sup>th</sup> Avenue Extension and what the trade-offs would be to get the Extension built. She said she agreed with Coun. Stanton that "we keep doing band-aids because we do not know where we can go in the end." She said she was concerned about safety. She said if she knew the Extension would not be built in ten years, she would probably support this; if it was going to be built in five years, she would not support it. She said the cost trade-off has not been clearly made. She said she attended the Traffic Commission hearing and stayed through the testimony. She said during the testimony she saw a great deal of ambivalence from everyone; she said the 4:3 decision was ambivalent. She said that if the Extension was built, the signal would not be needed; and she did not favor spending \$225,000 to build the project. She said because of these reasons she would support the appellant.

Mayor Drake said he did not vote but this was difficult. He said the appellant made a good argument. He said he utilizes that intersection a great deal and he does see a need for the signal for drivers and pedestrians. He said he thought installing the signal was the right thing to do. He explained that the Council had a work session over a year ago on the 125th Avenue Extension and the latest cost estimate, including sound walls, was \$11 million, which was a lot of money. He said when the Extension is constructed, the Traffic Commission could remove the signal.

Question called on the motion. AYES: Coun. Bode, Dalrymple and Doyle. NAYS: Coun. Stanton and Arnold. MOTION CARRIED. (3:2)

Coun. Stanton said she would have brought this matter up for Council consideration; however, Heatherington filed his appeal first. She said because of that she favored reimbursing Heatherington for the appeal fee.

Coun. Stanton MOVED, SECONDED by Coun. Bode, that Council reimburse Heatherington for the appeal fee. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

Coun. Bode said this signal was not a band-aid. She said they would continue to look for funding to construct the 125th Avenue Extension. She said budget planning would begin in May and they would look at funding again.

RECESS:

Mayor Drake called for a brief recess at 7:55 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 8:05 p.m.

## PUBLIC HEARINGS: BALLOT MEASURE 37 CLAIMS

Mayor Drake opened the public hearings. He explained that the next three hearings involved Ballot Measure 37 (M37) Claims. He noted that a request was received to continue the hearing on the Harmony Investment Claim to April 16 and Council would make a motion to do so. He said staff would now read the rules of procedure for the Williams and Wiesmann M37 Claim Hearings.

Development Services Manager Steven Sparks read the rules of procedure defining the process to be followed for these hearings, including the various disclosure statements (in the record).

Sparks asked if any Councilor had a potential or actual conflict of interest.

No one declared a conflict of interest.

Sparks asked if any Councilor had an ex-parté contact to declare.

Coun. Arnold said she spoke with Larry Wiesmann, and his neighbor Paul and Paul's wife, during the break. She said they asked her what Clean Water Services (CWS) was and she explained what she knew of CWS. She said Wiesmann told her he'd been trying to develop this property.

Sparks asked if any Councilor wished to declare any site visits.

No one declared any site visits.

Sparks asked if any member of the audience wished to challenge the right of the Council or Mayor to consider these matters or challenge the right of any Councilor or the Mayor to participate in the hearings, or wish to request a continuance of either of the two hearings to a later date.

Valerie Vernon, Beaverton, noted that in the previous hearing the Mayor referred to a citizen in the audience "who was sitting behind Mr. Williams." She asked Mayor Drake what his association was with Mr. Williams.

Mayor Drake explained Mr. Williams had served on the City's Board of Design Review for several years. He said he did not have a personal association with Williams. He said he did not feel this would bias him in any manner.

Coun. Stanton said she also knew Williams from the Board of Design Review. She said she has never spoken to Williams about this claim.

### 07063 Williams Ballot Measure 37 Claim for Compensation M37 2006-0002

Sparks said that on the Williams M37 Claim, staff was recommending that the City deny the claim for compensation and waive the regulations. He said Williams acquired the property on March 14, 1986. He said at that time the property was zoned by the County as single-family R-6. He said in the County, R-6 means six units to the acre, whereas the City's zoning is based on minimum square feet and in

this case the City zone was R-7. He said in 2005-2006 Williams submitted an application for a land use process and the Planning Commission denied the land use. He said prior to staff preparing a final order for denial, Williams withdrew the application. He said the Commission was denying the application with prejudice which meant Williams would not be able to submit an application for a year on this property. He said withdrawing the application before the final order was acted upon, provided Williams the opportunity to submit another application. He said another application was not submitted and instead the M37 Claim was filed.

Sparks said that today the City received a letter from the Willow Heights Homeowners Association dated March 31, 2007 (copies were given to the Council). He said that letter would be added to the staff report as Exhibit 5.

Coun. Doyle asked Sparks if he had a chance to go through the concerns listed in the Willow Heights' letter.

Sparks said he has not had the opportunity to review the letter.

Coun. Stanton said that Point 3. of the Willow Heights letter stated that Williams had jointly filed seven applications with Mr. Costuic.

Sparks said Williams had submitted a number of applications over the time frame listed in the letter. He said when Williams first submitted an application, the Code requirements for Trees and Significant Groves was being reviewed for amendment. He said the Code that was in affect when Williams submitted his application had a substantial impact on the Williams property. Williams had submitted a number of applications for land division, tree plans, etc.; he with withdrew the applications at least once. He said Williams participated in the Code amendment process and once the Code was adopted and became effective, he resubmitted a slightly modified application.

Coun. Stanton said it did not appear that this claim was dealing with the May 31, 2006 application. She asked if the claim was for an earlier application.

Sparks said that was possible; however he would defer that question to Mr. Wyman.

Mayor Drake asked if this claim was dealing with what was in affect at the time that the Williams purchased the property versus the rules that are now in place.

Sparks said M37 allows a property owner to go back in time. He said regardless of current rules and regardless of what actions the City may or may not have taken, a property owner can elect to file a claim and request to have the clock wound back. He said in this case, Williams did go through a land use application. He said of the claims that have come to Council, this is the first that is supported by a land use action.

Coun. Doyle referred to page 37 of the record (Attorney Wyman's letter) that stated that the City's Code may require an appraisal to support a M37 Claim but the measure itself does not. He asked if it was correct that the City could not force submission of an appraisal.

Sparks said M37 states that the jurisdictions can establish any process they desire, but the claimant is under no obligation to follow any procedure that a local jurisdiction may establish.

Rappleyea said there has been no legal interpretation of that language. He said most jurisdictions did not take that issue to court because of attorney fees. He said all the claimant had to prove was a diminution of one dollar and then the claimant could receive a vast sum in attorney fees. He said as long as there was some evidence of diminution of value; no one had been willing to push that point.

Coun. Doyle noted that in the letter Wyman indicated a willingness to discuss the basis of the comps that they had submitted previously. He asked if that discussion had occurred.

Sparks replied it had not.

Coun. Arnold asked if the evidence to prove diminution would state what the claimant thought the decreased value was.

Rappleyea said that was correct. He said this case was better than previous claims because there was an actual application that was denied. He said this might enable them to develop some concrete evidence of diminution of value. He repeated that all they would have to prove was diminution of one dollar and they would win the claim, get their attorney fees and set precedence.

Coun. Arnold summarized that if a claimant said they were losing \$6 million and the City denied the claim, then the court found that the loss was \$50, the City would have to pay the \$50 loss and all of the claimant's attorney fees.

Rappleyea said that was correct.

Sparks clarified that M37 gave property owners a two-year window to file a simple claim that stated what they believed was the decreased value of their property. He said after December 4, 2006, the claim has to be linked to an enforcement of regulations on property so that there was a demonstration that diminution of value has occurred. He said this claim was filed before December 4.

#### CLAIMANT:

Ty K. Wyman, Dunn Carney Allen Higgins & Tongue, LLP, attorney representing Williams, Portland, said the information submitted to Council was complete. He asked if Council had any questions for him.

There were no questions from Council.

#### OPPOSITION:

Keith Shaud, Beaverton, submitted a testimony card that he was against the M37 Claim. He did not wish to testify orally.

Valerie Vernon, Beaverton, President Willow Heights Homeowners Association (HOA), said that Williams originally submitted a joint application with another gentleman to develop both properties. She said Williams was never denied an application for his property alone. She said this claim was for the Williams property only; not both properties. She said in the staff report some of the technical issues of the claim were not in order and the claim was not complete. She noted on page 7 of the staff report, it was stated that the claimant had not submitted any evidence that stated how the Development Code had reduced the value of his property. She said the Willow Heights HOA was responsible for the tree preserve that backs up to the Williams property. She said the HOA collects dues to maintain and insure the tree preserve. She said the HOA was responsible for the preserve from a previous City decision. She said they felt that by not denying the claim, the City would be turning its back on the HOA and those people who live next to the tree preserve. She said the tree preserve was established to protect the trees on the Williams property. She said by going back to the 1986 Code, Williams would be able to remove his trees and that would put the Willow Heights tree preserve in danger through the construction. She said the HOA trees were 120 feet tall; the roots could be cut during construction and then could die. The HOA would have to remove the trees and replant them at its own expense. She said another reason for the previous denial was the Fire Code; one of properties could not be accessed by the fire engines. She asked if the Fire Code would go back to 1986 also.

Rappleyea explained the Fire Code was excluded from M37 for that was a safety issue.

Vernon said she was disappointed when she read in the staff report that the City did not have money to settle the claim. She said as a taxpayer she wanted the property protected and she did not want to waste money on a lawsuit. She said they were waiting for a decision that would protect the best interests of everyone. She said since there was no proof that the property was devalued, that would make the Council's decision easier.

Coun. Stanton said the money issue was not for a lawsuit. She said the Williams claim was for \$962,000 and the City did not have that kind of money to give to individual property owners so that they do not develop their property. She said that was the only money discussed in the staff report.

Vernon said she was proposing that the Council deny the claim because it was not complete and no evidence was submitted to prove the loss in value of the property.

Coun. Bode noted that the Williams were saying that if they do not get to develop their property as they wished, the loss would be almost \$1 million. She asked the City Attorney to review how they arrived at the \$1 million figure.

Rappleyea said the \$1 million loss estimate was based on the reduction of lots that would be available for the subdivision. He said the Council would not have to accept that; the City could do its own estimate and possibly arrive at a smaller figure. He said the claimant would not have to accept that and they could then sue the City. He said this was fraught with peril for the authors of M37 have stated publicly that the purpose of M37 was to waive land use regulations, not to pay for land use

regulations. He said while the City Code has procedures for M37 claims, M37 was very specific that property owners do not have to follow those procedures. He said it was a difficult measure for all local governments.

Mayor Drake said when 60% of the voters approved Measure 37; he thought it was the wrong way to vote. He said he served on the state-wide steering committee opposing M37. He said M37 was now the law and the City must interpret the law. He said Washington County was one of the first counties to implement an ordinance and he felt the ordinance that was adopted was reasonable. He said regardless of his personal opinion, the City has to uphold Williams' right to file a M37 claim. He said he, the Council and staff were equally troubled by the claims that have come through. He added the City had only a few claims in comparison to the claims filed at Washington County. He said he did not fault Williams for he was within his right as a property owner; but he felt the law had gone too far and there should be some balance. He said Vernon was asking the right questions and they were reasonable; however, the door was opened when voters approved M37. He said until the Legislature puts a reasonable framework on the measure, interpretations are up in the air and the jurisdictions were wrestling as best as they could without adequate guidance. He stressed that the framers of M37 set it up to be very vague to open the door wide in relation to property rights. He said when anyone buys property; there is no guarantee that there will be no changes. He said he heard her points and frustration but he was trying to explain the box that local jurisdictions have been placed in with little room to work because of cost.

Coun. Arnold added that M37 protects what people can do on their own property but it does not protect the surrounding property owners. She said that was the bias of the M37; it was deliberately designed as such. She reiterated it was approved by the voters and now it was the law.

Coun. Doyle said this was the first clear demonstration in the community of the complete unfairness of M37. He said it does not take into account the surrounding neighborhoods that were developed at a certain standard set by Code. He said this clearly demonstrates the major flaw of M37. He said this was his huge frustration with this law. He said it does not give the City a chance to work for reasonable development.

Coun. Bode thanked Vernon for coming.

Barbara Rose, Beaverton, said she felt discouraged and abandoned. She said the original applications submitted by Williams and his partner would have built foundations and graded within five feet of the tree preserve; that would tear out the roots of the trees. She said she felt angry and asked where the neighbors' rights would be considered. She said she was hearing that there was an override and it was going back to the issue of money and who has it.

Coun. Bode said it was not about money. She said M37 superseded a HOA; it gave the property owner rights to do as he wishes on his property. She said M37 was state-wide.

Rose asked about the rights of the surrounding property owners who will be infringed upon should all the restrictions be lifted.

Coun. Bode said that was why this was a nasty argument. She said there was not a lot of community in a M37 Claim.

Coun. Stanton asked Rose if she would be willing to pay an extra tax assessment of \$0.50/\$1000 of assessed evaluation to create a pool to payoff M37 Claims rather than waive the regulations. She said it would come down to this.

Rose said she knows the Williams and she hoped he would seriously think about how close he encroaches on their development.

Coun. Bode noted the HOA could speak with Williams in a neighbor-to-neighbor association. She thanked Rose for her comments.

#### REBUTTAL:

Wyman said as he watched these hearings, he wished they could bring the Legislature to watch the struggle. He agreed this was a difficult process. He said this was the law. He said they submitted what the law required them to submit and whether or not it was complete would have to be decided by the Legislature or the Oregon Supreme Court. He reminded everyone that this was part of the process, not the conclusion. He noted a preliminary plat would have to be proposed and it would go through the public hearing process.

Mayor Drake closed the public hearing.

Coun. Stanton MOVED, SECONDED by Coun. Bode, that the Council deny the claim for compensation and grant the limited waiver of the Development Code as identified in the staff report for Agenda Bill 07063, Williams Ballot Measure 37 Claim for Compensation M37 2006-0002.

Coun. Stanton said she also felt discouraged and abandoned with mandates from Metro and the State. She said she had to uphold the laws and that required denial of the claim and granting the limited waiver of the Development Code. She said the only hope she could offer was that in a development application the conditions of approval and site requirements do not change; the Code has to be maintained.

Sparks said he wanted to clarify that a development proposal would need to be reviewed by the City and the City's existing process would apply. He said a land division application would be necessary to subdivide the property. He said the site development requirements have been waived back to the 1986 requirements. He said the current public safety standards would still apply. He noted Wyman had said he presumed a public hearing would be required. He said the City did not know what type of process would occur until the development proposal was submitted. He said it would be a public process, whether it was a Type 2 where people are notified and can submit written testimony or a public hearing where written and oral testimony would be accepted.

Question called on the motion: Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

07064 Harmony Investments Ballot Measure 37 Claim for Compensation M37 2006-0003 Rescheduled to 4/16.

Coun. Stanton MOVED, SECONDED by Coun. Doyle, that Agenda Bill 07064, Harmony Investments Measure 37 Claim M37 2006-0003 Public Hearing be continued to April 16, 2007. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

07065 Wiesmann Ballot Measure 37 Claim for Compensation M37 2006-0012

Mayor Drake said staff had read the public hearing rules of procedure and called for disclosure statements for both M37 Claims earlier in the evening. He confirmed with the City Attorney that it was not necessary to repeat the process.

Sparks reviewed the staff recommendation to deny the claim for compensation and not waive any provision of the Development Code. He said the claims covered by M37 had a sunset clause of December 4, 2006. He said Wiesmann filed his claim on December 5, 2006. He said Wiesmann had not demonstrated how the City had enforced any regulation on the development of his property. He said Wiesmann went through a pre-application conference but that was not a development proposal. He said that was the basis for staff's recommendation. He said the Wiesmann Claim covered Clean Water Services (CWS) buffer requirements along water courses. He said in a prior claim considered by Council, CWS was on record stating that its regulations implemented the Federal Clean Water Act; therefore, CWS regulations were exempt from M37. He said staff had communicated with CWS and CWS agreed to indemnify the City in this matter.

Sparks said there was one correction in the staff report; page 3, Section C, fifth line should read "...public, including the prevention of pollution of the waters of the Tualatin River Basin."

Mayor Drake opened the public hearing.

CLAIMANT:

Larry Wiesmann, Beaverton, said the City zoned this property R-1 and his goal was to put in seven row houses. He said there was sufficient room for seven units, provided he could use most of the property. He said CWS wanted a 50-foot setback from the creek which was about 7500 square feet. He said that would impinge on the depth of the units he wanted to build. He said he did not want the City to have to pay the \$560,000. He said he valued the lots at \$70,000 each, plus the expenses already incurred on this project. He said from a civilian standpoint, he thought the City employed CWS to handle surface water. He said he knew the City felt that it could not infringe on CWS, however this was a City regulation not a CWS regulation. He asked what State statute covered CWS and its jurisdiction.

Rappleyea explained that CWS fulfills the obligations of the Federal Clean Water Act. He said the City has an agreement with CWS under regulations enacted by CWS. He said the regulations were enacted by CWS and it has independent enforcement authority. He said the City enforces the regulations as a matter of convenience for if the City did not enforce the regulations CWS could independently enforce them under the State statutes governing special districts.

Wiesmann asked if the City gave CWS the overall control for surface water.

Rappleyea said that was correct. The City had agreements with CWS to fulfill the responsibilities of the Clean Water Act and Metro requirements for Title IV.

Wiesmann asked if the agreements contained provisions for exceptions.

Rappleyea said it would be more appropriate to have this conversation once the City has received an application. He said an exception might be possible. He added in the past CWS had tried to make development applications work for applicants; particularly for impacts in the buffer zone or in dealing with impervious surfaces.

Mayor Drake summarized that Wiesmann missed the December 4, 2006, general filing deadline for M37 claims. He said any claim filed from December 5 on required a specific application. He said this appeared to be a late filing to obtain a blanket answer for a general claim. He said if Wiesmann was to submit an application, he might be able to work with CWS to develop the property as he planned (or close to what he planned), without having to do a M37 claim.

Rappleyea said that a development application was needed in order to have a firm understanding of the regulations applied to the property and to file a M37 Claim. He reiterated this was complicated because CWS implements Federal regulations that are not covered by M37. He said in the past CWS had been reasonable in considering exceptions to the process to allow development to occur.

Wiesmann said he thought obtaining an exception would be of mutual benefit and he would guarantee there would be no water contamination from the development.

Mayor Drake said Sparks and Brentano could work with Wiesmann on any reasonable development application. He said if Wiesmann later decided to file a M37 Claim, that would be his business. He said staff would be happy to help him.

Coun. Arnold clarified that this claim was filed after the deadline for general claims. She asked if the City had any jurisdiction to state that it did not agree with CWS.

Rappleyea said the City had an intergovernmental agreement with CWS and if the City were to take such a position with CWS it could come up for legal challenge. He said the City had to be careful how it worked with its partners.

Coun. Bode asked where the Council was in the current process for this hearing.

Mayor Drake said it appeared that Wiesmann understood the City's position and that staff would continue to work with him if he wished to proceed.

Paul Renslow, Beaverton, said he was interested in listening to both M37 claims; he made general comments regarding M37 that did not pertain to this hearing.

There was no further testimony and no rebuttal by the claimant.

Mayor Drake closed the public hearing.

Coun. Stanton MOVED, SECONDED by Coun. Doyle, that Council deny the Wiesmann Ballot Measure 37 Claim for Compensation M37 2006-0012, Agenda Bill 07065, and not waive any provision of the Development Code as identified in the attached staff report that was modified by staff at this hearing to include an additional reason for denial which was that the Code provisions cover CWS regulations that implement Federal regulations and, therefore, the City does not have the authority to waive those regulations. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

#### ORDINANCES:

Second Reading:

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

07059 An Ordinance Granting a Non-Exclusive Cable Franchise to Verizon Northwest Inc. (Ordinance No. 4433)

Coun. Doyle MOVED, SECONDED by Coun. Arnold, that the ordinance embodied in Agenda Bill 07059, now pass. Roll call vote. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

#### ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:30 p.m.

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Sue Nelson, City Recorder

#### APPROVAL:

Approved this    day    ,2007,

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Rob Drake, Mayor

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

**SUBJECT:** Social Service Funding Committee  
Recommendations

**FOR AGENDA OF:** 04-16-07 **BILL NO:** 07074

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

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

**DATE SUBMITTED:** 04-02-07

**PROCEEDING:** CONSENT AGENDA

**CLEARANCES:** None

**EXHIBITS:** 1 Recommendations  
2. Grant Recipient Program  
Descriptions

**BUDGET IMPACT**

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$249,345.70*	BUDGETED \$249,345.70*	REQUIRED \$

\*From 2007-08 Budget. Funding will come from two sources: \$157,435 State Revenue Sharing, \$91,910.70 Community Development Block Grant (CDBG) funds. Agencies receiving CDBG funds will enter into a HUD contract administered by the City of Beaverton. Agencies will need to comply with CDBG requirements. City funds are contingent on the adoption of the City of Beaverton 2007-2008 budget.

**HISTORICAL PERSPECTIVE:**

The Social Services Funding Program was established to assist social service providers in meeting needs of Beaverton residents. Non-profit organizations desiring funds submit an application to the City for consideration. A committee is formed each year that consists of one Council member to serve as the Chair, appointed by consensus of the Council, and five citizen members, appointed individually by the Mayor and each of the City Councilors. This year's committee was chaired by City Councilor Betty Bode. The committee is responsible for reviewing applications, conducting interviews, and submitting their recommendations to City Council for approval. During the 2007-2008 process, 34 applications were received with requests of almost \$500,000 which is double the amount of money allocated for grant awards. This year's process was especially challenging.

**INFORMATION FOR CONSIDERATION:**

See Exhibit 1.

**RECOMMENDED ACTION:**

Approve the Social Services Funding Committee recommendations.

**04-16-2007  
Agenda Bill  
Exhibit 1**

2007-2008 REQUEST	AGENCY/PROGRAM NAME	2007-2008 FUNDING RECOMMENDATIONS
14,200	Ano's Art for Creative Minds Academy	0
6,000	Beaverton Literacy Council	2,000
17,357	Beaverton Loaves and Fishes	5,000
6,000	Beaverton Rotary Foundation	6,000
17,965	Beaverton Together	5,000
25,000	Boys and Girls Aid Society	20,000
20,000	Care to Share	11,000
15,000	Community Action Org - Child Care Resource & Referral	0
15,000	Community Action Org - Transitional Housing	5,000
5,000	Community Alliance of Tenants	4,000
20,000	CASA (Court Appointed Special Advocate) of Washington County	17,500
20,000	Domestic Violence Resource Center	15,000.70
15,000	Good Neighbor Center	12,000
22,800	Lifeworks Northwest - New Parent Network	15,000
24,000	Love INC (In the Name of Christ) - Beaverton Furniture Warehouse	0
24,000	Monytek Human Services	0
8,000	Open Door Counseling	8,000
5,000	Oregon Korean Community Center	1,000
25,000	Oregon Somali Family Education Center	20,000
10,000	PROPS (Preparing Released Offenders Pursuing Success)	0
6,000	Rebuilding Together	5,000
17,138	Ride Connection	0
6,000	RSVP (Retired and Senior Volunteer Program) of Washington County	0
9,000	Sexual Assault Resource Center	7,000
15,000	SMART (Start Making a Reader Today)	0
10,000	St. Andrew Legal Clinic	7,000
3,000	St. Matthew - Emergency Food	3,000
4,735	Store to Door	4,735
20,000	Sunshine Pantry	15,000
5,000	Tualatin Hills Park Foundation	2,000
10,000	Tualatin Valley Housing Partners - Families for Independent Living	5,000
20,800	Tualatin Valley Housing Partners - Resident Services	5,000
18,000	Westside Service Center	21,110
31,000	Youth Contact	28,000
	<b>TOTAL 2007-2008 GRANTS</b>	<b>249,345.70</b>

\*Agencies receiving CDBG funds.

\*\* Agency receiving split CDBG (\$4,410) and Revenue-sharing (\$590) funds

**04-16-2007  
Agenda Bill  
Exhibit 2**

**Program Description of Grant Recipients**

**Beaverton Literacy Council:** provides volunteer tutors to teach English as a second language and citizenship classes.

**Beaverton Loaves and Fishes/Hispanic Community Initiative:** provides nutritious meals to growing number of low-income Hispanic seniors living in Beaverton.

**Beaverton Rotary Foundation/Dental Check-Dental Aid:** provides dental screening to children at Vose Elementary School in Beaverton. Qualified children will receive dental treatment at OHSU Dental School or at a local volunteer dental office.

**Beaverton Together/After-School Youth Enhancement Program at Five Oaks Middle School:** provides a safe structured after-school program that provides academic and recreation support for middle school students and additional resources for parent training and/or support.

**Boys and Girls Aid Society:** serves runaway, homeless, and at-risk Beaverton youth at the Safe Place Shelter in Hillsboro which provides short-term shelter, supportive services, and a critical link to community services that will assist youth in increasing their stability.

**Care to Share:** provides emergency food, rent and utility assistance to Beaverton residents.

**Community Action Organization/Transitional Housing:** provides assistance for people at-risk of becoming homeless. Services include case management, tenant education, landlord outreach and rental assistance.

**Community Alliance of Tenants/Renter Stability Education Program:** works to increase the housing stability of low-income renters through education services, community workshops and informational brochures.

**Court Appointed Special Advocates (CASA) for Children:** recruits, trains, and supervises community volunteers to advocate for kids who have found their way into the juvenile court system through no fault of their own. Most cases are children who have been neglected, abused and removed from their homes.

**Domestic Violence Resource Center/Monika's House:** provides a safe, confidential shelter and 24-hour crisis information line to victims of domestic violence. This is the only domestic violence shelter for women in Washington County.

**Good Neighbor Center/Homeless Shelter:** the only homeless shelter in East Washington County. The shelter operates 24 hours a day, 365 days a year and

provides housing, meals, clothing, and case management. They work with residents on a self-sufficiency program to help them overcome the causes of homelessness.

**LifeWorks Northwest/New Parent Network:** provides support services for at-risk first time parents, preventing possible child abuse and neglect and increasing the child's readiness to enter school.

**Open Door Counseling/Comprehensive Housing Counseling Program:** provides counseling, homeless services, home buying classes and foreclosure prevention for families and individuals who are at-risk for becoming homeless.

**Oregon Korean Community Center:** provides bilingual social services to Korean seniors.

**Oregon Somali Family Education Center:** provides services to young Somali school-aged children and their families in areas of tutoring, parent education and support, sports and recreation, ESL classes embedded with skill building and health education.

**Rebuilding Together Washington County:** provides home repair and rehabilitation to low-income homeowners in Washington County; particularly the disabled and elderly.

**St. Andrew Legal Clinic of Washington County:** provides legal services to low-income people with family law needs.

**St. Matthew – Emergency Food:** provide 5-7 days of nutritional food and basic household products to low-income residents in need and referred by Care to Share.

**Sexual Assault Resource Center:** provides free and confidential services to survivors of sexual assault which include support, counseling, and advocacy to inform them of their rights and guide them through the criminal justice system.

**Store to Door:** provides shopping and delivery of groceries to seniors and people with disabilities.

**Sunshine Pantry:** provides food, clothing, sundries and household items to low-income, disabled, unemployed and in-need persons.

**Tualatin Hills Park Foundation/Rec-Mobile Program:** provides free recreational activities to low-moderate income Beaverton residents by bringing the Rec-Mobile to Beaverton schools on holidays and school breaks.

**Tualatin Valley Housing Partners – Families for Independent Living:** provides assistance to development disabled citizens to find housing, but mainly focusing on socialization, developing computer skills, solving interpersonal problems and developing independence.

**Tualatin Valley Housing Partners – Resident Services:** provides services to low-income residents of Spencer House and Fircrest Manor Apartment complexes.

**Westside Service Center:** provides a clean, safe and sober environment where individuals struggling to free themselves from the addiction of drugs and alcohol can find support in their efforts. Westside Service Center provides support of the 12-step recovery program.

**Youth Contact:** provides alcohol and drug treatment, mental health treatment, juvenile delinquency intervention and divorce transition services to Beaverton youth.

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

**SUBJECT:** Approval of the City of Beaverton  
2007 Action Plan Submission to  
Washington County

**FOR AGENDA OF:** 04-16-07 **BILL NO:** 07075

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

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

**DATE SUBMITTED:** 03-26-06

**CLEARANCES:** Econ Dev *[Signature]*  
Finance *[Signature]*  
City Attorney *[Signature]*

**PROCEEDING:** Consent Agenda

**EXHIBITS:** City of Beaverton 2007 Action Plan

**BUDGET IMPACT**

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

The U.S. Department of Housing and Urban Development (HUD) requires that an annual update to the Consolidated Plan be submitted by local jurisdictions to meet HUD's statutory requirements for the Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Programs that the City administers. Since Washington County has been designated by HUD as the lead Participating Jurisdiction under the Program Year (PY) 2006-2008 HOME Consortium Cooperation Agreement, Washington County takes the lead in the preparation of the joint annual update referred to as the Action Plan.

As part of the PY 2007 Action Plan process, public hearings were held on April 4, 2007 in Beaverton and on April 12, 2007 in Hillsboro. The purpose of the public hearings was to inform the residents of Washington County and the City of Beaverton about updates to the Consolidated Plan, the available resources for the coming year, and the proposed allocation of those resources. Oral testimony on the draft Annual Plan was received at these public hearings, while written testimony was accepted during the public comment period from March 14, 2007 through April 12, 2007. Summaries of oral and written testimonies are incorporated into the PY 2007 Action Plan.

**INFORMATION FOR CONSIDERATION:**

The City's PY 2007 Action Plan continues to address the priority needs established in the 2005-2010 Consolidated Plan (for Washington County and the entitlement cities of Beaverton and Hillsboro). HUD has allocated \$612,738 of CDBG funds to the City of Beaverton for PY 2007. This is approximately a five percent (5.0%) increase from last year's allocation. The following CDBG activities are proposed in the Action Plan for PY 2007:

- \$78,279.70 to continue the Downtown Storefront Improvement Program, which provides matching grants to downtown businesses to improve their business' external appearance and to attract further investment from the business community in our historic downtown district.

- \$91,910.70 (or 15 percent of our annual CDBG allocation – the maximum allowed by HUD regulations) to fund a wide range of public service projects that benefit the low- and moderate-income citizens of Beaverton. The Social Service Funding Committee reviewed and selected projects for funding and passed along those recommendations to the City Council for approval on tonight's Consent Agenda.
- \$75,000 for Adapt-a-Home program, which helps low-to-moderate income seniors and disabled residents of Beaverton with accessibility improvements; this accessibility improvements program will provide small grants to both homeowners and renters for ramps, bathroom fixtures and other modifications to increase the permanent supply of accessible housing in the City and help residents with impaired mobility continue to live independently in their homes.
- \$75,000 for Mend-a-Home program, which provides emergency repair funds to low-to-moderate income households that live in manufactured housing and or mobile homes.
- \$40,000 to repair the First & Main property purchased by the City in 2006. This property includes 10 rental units the City intends to keep affordable to low income households, as well as an office space which will be rented out to a nonprofit organization serving Beaverton residents. The repairs include replacing an exterior staircase, replacing sheathing, structural support for roofing and re-roofing one building and associated smaller repairs to promote health and safety of the tenants.
- \$130,000 to the Beaverton Senior Housing project to support the development of a mixed use mixed income project to be located at SW Farmington and SW Main. This project will provide homeownership opportunities as well as commercial and retail development opportunities.
- \$122,547.60 (or 20 percent of our annual CDBG allocation – the maximum allowed by HUD regulations) to fund general planning and administration of the program (including staff costs). General planning and administrative activities include housing planning, public hearings, fair housing, budgeting, preparing HUD-required documents and reports, program monitoring, and financial oversight of CDBG-funded activities.

At this time, the City is not allocating new CDBG funds to the Housing Rehab program, since staff expects sufficient program income from loan repayments and carryover funding in PY 2007-2008.

There are no unallocated CDBG funds to carry over to the next Program Year

In addition, the City of Beaverton administers a share (\$298,556 for PY 2006) of Washington County HOME Consortium funds. The two Beaverton projects for PY 2006 are:

- \$98,556 to the Beaverton Senior Housing project to support the development of a mixed use mixed income project to be located at SW Farmington and SW Main. This project will provide homeownership opportunities as well as commercial and retail development opportunities.
- \$200,000 to Tualatin Valley Housing Partners (TVHP) for the Merlo Station affordable housing development for low-to-moderate income residents near the Merlo Station light rail stop and Tualatin Hills Nature Park in Beaverton. (This is in addition to an award of funds from prior years of \$500,000, for a total HOME award from the City of \$700,000).

There are no unallocated HOME funds to carry over to the next Program Year.

**RECOMMENDED ACTION:**

Council approve the City of Beaverton Program Year 2007 Action Plan submission to Washington County.

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**CONSOLIDATED PLAN**  
**Housing and Community Development**

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**PROGRAM YEAR 2007/2008**  
**ANNUAL ACTION PLAN**

**City of Beaverton, Oregon**

**July 1, 2007–June 30, 2008**

*CITY OF BEAVERTON, MAYOR'S OFFICE*  
**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**  
4755 SW Griffith Drive, PO Box 4755, Beaverton, OR 97076-4755  
Telephone (503) 526-2488 • Fax (503) 526-2479  
<http://www.beavertonoregon.gov/departments/economicdev/cdbg/>

March 14, 2007

## COMMUNITY DEVELOPMENT ACTIVITIES

The City of Beaverton Community Development Block Grant (CDBG) program was established in 1994 when the City's population reached the federal threshold (50,000) for entitlement communities. The City has operated as a CDBG Entitlement Grantee since 1994. As a CDBG Entitlement Grantee under the U.S. Department of Housing and Urban Development (HUD), the City ensures that all CDBG funded projects comply with the national objectives and other regulations governing the program (see 24 CFR 570). The City also participates in the Washington County HOME Consortium, and directs a proportional share of HOME funding to projects benefiting City of Beaverton residents.

The five-year *2005-2010 Consolidated Plan for Housing and Community Development* outlines housing and community development needs within Washington County and the City of Beaverton, and incorporates stakeholder and citizen comments gathered in an extensive public participation process while preparing the *Plan*. The City's Program Year (PY) *2007/2008 Annual Action Plan* specifies the City's plans for CDBG and HOME funds in the coming program year, and is meant to respond to the priority needs of the community identified in the *2005-2010 Consolidated Plan*.

## EXECUTIVE SUMMARY

In PY 2007/2008, the City of Beaverton plans to continue funding Public Services to increase community services to low/mod households, Housing-related programs to increase the stock of affordable housing and to increase the number of accessible housing units, and the Storefront Program to mitigate blight.

Objective	Projects	2007/2008 CDBG Funding	Additional Funding From Prior Years	Project Outcomes/Indicators
Suitable Living Environment	Public Services	\$90,000	0	Persons Assisted
	Storefront Program	\$70,000	\$146,265	Businesses rehabilitated
Decent Affordable Housing	Mend-a-Home Repair Program	\$75,000	0	Rehab Single Unit Residential
	Accessibility Rehab Program	\$75,000	\$73,870	Rehab Single Unit Residential
	Affordable Housing – First & Main	\$40,000	\$176,000	Acquisition and Rehab
	Affordable Housing – Beaverton Senior Housing	\$130,000	0	Acquisition/New Construction

One of the CDBG funded projects is eligible for Low Income Housing Tax Credits and is likely to pursue as a part of that project's financing plan. None of the funded CDBG projects will pursue project based section 8 from the Public Housing Authority, although the housing projects are eligible to accept Section 8 vouchers from tenants. None of the funded CDBG projects anticipates an award of Competitive McKinney-Vento funds as part of their financing plan.

**Table 3A  
Summary of Specific Annual Objectives**

Obj #	Specific Objectives	Sources of Funds	Performance Indicators	Expected Number	Actual Number	Outcome /Objective*
	<b>Rental Housing Objectives</b>					
DH2	First & Main Acquisition & Rehab	CDBG	# of Housing Units Rehabbed	10		Affordability of Decent Housing
DH2	Beaverton Senior Housing - Ownership	CDBG	# of Housing Units Built	74		Affordability of Decent Housing
	<b>Owner Housing Objectives</b>					
DH2	Housing Rehab Program and Adapt-a-Home Accessibility Rehab Program	CDBG	# of Housing Units Rehabbed	24		Affordability of Decent Housing
DH2	Mend-a-Home Emergency Repair Rehab Program	CDBG	# of Housing Units Rehabbed	24		Affordability of Decent Housing
	<b>Public Services Objectives</b>					
SL-1	Public Services	CDBG	# of persons assisted	400		Availability/Accessibility of Suitable Living Environment
	<b>Other Objectives</b>					
SO-3	Slum/Blight – Storefront Improvements	CDBG	# of businesses improved/rehabbed	3		Sustainability of Suitable Living Environment

**Outcome/Objective Codes**

	<b>Availability/Accessibility</b>	<b>Affordability</b>	<b>Sustainability</b>
Decent Housing	DH-1	DH-2	DH-3
Suitable Living Environment	SL-1	SL-2	SL-3
Economic Opportunity	EO-1	EO-2	EO-3

### ESTIMATED RESOURCES

The City estimates that it will manage and or direct approximately \$900,000 of HUD CPD funds in PY 2007/2008. The source of these resources is a direct allocation of approximately \$600,000 in CDBG Entitlement Grant funds to the City of Beaverton and a proportional share of Washington County HOME Consortium allocation of \$300,000.

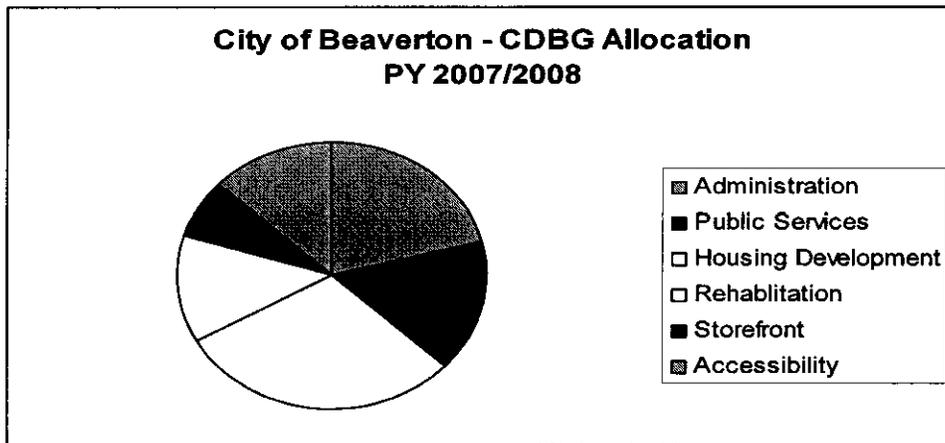
### ALLOCATION OF RESOURCES

Below is a summary table of federal resources and non-federal resources expected to be available to address priority needs and specific objectives for the PY 2007/2008 CDBG and HOME programs in the City of Beaverton.

#### Beaverton PY 2007/2008 CDBG Activities

Proposed Activities	Priority	Est. CDBG	Est. Non-Federal	Est. Total
Planning/Administration	N/A	\$ 120,000	\$ 0	\$ 120,000
Public Services	High	\$ 90,000	\$ 157,435	\$ 247,435
Housing - First & Main Rehab	High	\$ 40,000	\$ 0	\$ 40,000
Housing – Beaverton Senior Housing	High	\$ 130,000	\$ 22,319,156	\$ 22,449,156
Downtown Storefront Improvement Program	Medium	\$ 70,000	\$ 50,000	\$ 90,000
Adapt-a-Home	High	\$ 75,000	\$ 0	\$ 75,000
Mend-a-Home	High	\$ 75,000	\$ 0	\$ 75,000
<b>Total</b>		<b>\$ 600,000</b>	<b>\$ 22,526,591</b>	<b>\$ 23,126,591</b>

(a) - state revenue sharing



## Beaverton 2007/2008 HOME Activities

The City of Beaverton designates the projects for a portion of HOME funding from the Washington County Consortium; for more information on City-selected projects, see the Washington County HOME Consortium section of the annual Action Plan. Beaverton's share of the Consortium's HOME allocation is estimated to total \$300,000 in PY 2007/2008.

Proposed Activities	Priority	Est. HOME	Est. Non-Federal	Est. Total
TVHP/Merlo Station II	High	\$ 200,000	See description under Washington County's section	See description under Washington County's section
Beaverton Senior Project	High	\$ 100,000	See description under Washington County's section	See description under Washington County's section
TOTAL		\$ 300,000		

## PROPOSED PROJECTS

### *Planning/Administration*

No more than 20% of the City's annual CDBG allocation may be used for general planning and administration of CDBG-assisted activities. This category includes: strategic planning, public hearings, fair housing, budgeting, preparing HUD-required documentation and reporting, professional services related to projects, program compliance and monitoring. This activity may also include support for HOME-funded projects chosen by the City.

### *Public Services*

It is the intent of the City to fund a variety of services that benefit residents of the City of Beaverton; nearly all of the beneficiaries of these programs will be low/moderate income individuals and households. The City will continue to dedicate 15% of the CDBG entitlement allocation for public service projects. The City of Beaverton funded a wide range of public service activities in recent years including: recreation services, youth counseling services, fair housing and housing related services, senior services, homeless services, domestic violence assistance, and assistance for persons with disabilities. In PY 2007/2008, the City allocated \$247,435 to fund public service programs that benefit residents of the City of Beaverton (\$90,000 in CDBG funding and \$157,435 in State Revenue Sharing funds). Applications are currently being reviewed, and a funding decision is anticipated by the end of March 2007. The new CDBG funds dedicated to this project amount to 15% of the PY 2007/2008 allocation. The following is a complete list of public service applications received by the City of Beaverton for PY 2007/2008 awards. CDBG funds will likely fund several of these proposed programs:

<b>Agency</b>	<b>Program</b>	<b>Program Description</b>	<b>Service Location</b>
Ano's Art for Creative Minds	Ano's Art Academy	Art education, self-confidence and responsible citizenry.	10220 SW Parkway Portland
Beaverton Furniture Warehouse	Love in the Name of Christ of Greater Beaverton (LOVE INC)	Provide access to household furnishings and other basic needs to low/mod income households	15280 NW Central Avenue, Suites 223/224, Portland
Beaverton Loaves and Fishes	Minority Community Initiative	Provide home delivered meals to homebound seniors, group meals to seniors, and nutritional assessments and counseling to seniors	5550 SW Hall, Beaverton
Beaverton Literacy Council	Beaverton Literacy	Teach English, citizenship and family literacy	12350 SW 5th, Beaverton
Beaverton Rotary Foundation	Dental Check	Dental screenings, sealants, and needed dental work at OHSU	Beaverton public schools
Beaverton Together	Youth Enhancement Program	After school program at Beaverton middle schools	Beaverton middle schools
Care to Share	Care to Share	Provide emergency food boxes, utility, and rental assistance	10200 SW Eastridge, Beaverton
CASA for Children	CASA of Washington County	Advocacy for children under the custody of the state due to parental abuse	City-wide
Central Beaverton Expansion	Ride Connection	Outreach and coordination of transportation services to elderly and disable individuals.	3030 SW Moody Avenue, Suite 230, Portland
Community Action	Transitional Housing	Provides transitional housing services	1001 SW Baseline Road, Hillsboro
Community Action	Childcare Resource and Referral	Provide a data base of childcare sites in the greater metropolitan area	1001 SW Baseline Road, Hillsboro
Community Alliance of Tenants	Renter Stability Education Program	Renters' education	Citywide
Domestic Violence Resource Center	Monika's House	Provide safe shelter and a crisis line to women and children	233 E. Main St, Hillsboro
Emergency Food Service to Low Income people	St. Matthews Lutheran Church	Delivery of emergency food boxes, maintain food pantry, provide outreach and overall program coordination.	10390 SW Canyon Road Beaverton
Financial Protection Services	Monytek Human Services, Inc.	Money management for elderly, disabled, low/mod income individuals and households.	3801 SW Hall Boulevard, Beaverton
Good Neighbor Center	Good Neighbor Center	Homeless shelter	11130 SW Greenburg Rd, Tigard
Lifeworks NW	New Parent Network	Provide skills training and education to pregnant teens/young parents under 21	12350 SW 5th Street, Beaverton
Lutheran Family Services NW – RSVP WACO)	RSVP of Washington County	Emergency preparedness, assurance programs and other support for seniors	14175 NW Cornell Road, Beaverton

PROPS	Americans United for the Success of African Americans	Continuing education, housing assistance and life skill training to promote self-sufficiency.	19735 SW Farmington Road, Beaverton
Open Door Counseling Center	Comprehensive Housing Counseling	Provide education and counseling regarding buying and keeping a home	34420 SW TV Highway, Hillsboro
Oregon Korean Community Center	Community Center	Provide interpretation/translations of social programs to Koreans who speak limited English and provide information and referral services.	12555 SW 4 <sup>th</sup> Street, Beaverton
Rebuilding Together	Rebuilding Together - Washington County	Provide small, urgent repairs year-round, and major home rehabilitation in April	12555 SW 4th Street, Beaverton
Safe Place Youth Shelter	Boys & Girls Society of Oregon	Emergency shelter for runaway, homeless and at-risk youth.	454 SE Washington Street, Hillsboro
Sexual Assault Resource Center	Drop-in Center/Advocacy Program	Advocacy to victims of sexual assault through a crisis line, counseling, and a drop-in center	9450 SW Barnes, Portland
SMART Reading program	SMART Inc.	Start early reading programs at eight Beaverton schools involving 500 K-3 <sup>rd</sup> graders.	219 NW 12 <sup>th</sup> Avenue, Suite 203, Portland
Somali Family Education Center	Family Education Program	Education and other services to Somali families in Beaverton	405 SE 66 <sup>th</sup> Ct., Hillsboro
St. Andrew Legal Clinic (SALC)	SALC Washington County	Legal representation and referrals to other attorneys and social service agencies	232 NE Lincoln, Hillsboro
Store to Door	Store to Door	Deliver groceries, prescriptions, and household goods to elderly and disabled persons.	City-wide
Sunshine Pantry	Sunshine Pantry	Food, clothing, sundries and house wares to people in need	6170 SW Cherry Hill Dr, Beaverton
Tualatin Hills Park Foundation	Family Assistance Program	Provide tuition assistance to low-income children to pay for sports and recreation programs and camps.	THPRD sites city-wide
Tualatin Valley Housing Partners	Resident Services Program	On-site services to low income, elderly and disabled tenants	13765 SW Allen Blvd and 5920 SW 141 <sup>st</sup> Ave., Beaverton
Tualatin Valley Housing Partners/FFIL	Community Coordination of Independent Living	Services and service coordination to serve low income developmentally disabled adults	6160 SW Main Ave., Beaverton
Westside Service Center	Recovery Club of Beaverton	Provide AA, NA, CODA recovery meetings, sober activities, and employment, recovery and living referrals	4550 SW Stott Street, Beaverton
Youth Contact	Youth Contact	Provide alcohol and drug prevention service, divorce transition services, and youth and family counseling	Beaverton high schools

## **Housing - First & Main**

In Spring 2006, the City closed on the acquisition of a small residential complex at SW First and Main in downtown Beaverton. In PY 2006/2007, the City allocated up to \$176,000 for repairs & renovation of the property (and other related costs, including relocation, as necessary). In PY 2007-2008, the City allocated an additional \$40,000 towards emergency repairs, architectural and engineering studies and roof repair work. This project will preserve ten units of housing affordable housing for households at very low incomes (below 50%). The new CDBG funds dedicated to this project amount to 7% of the PY 2007/2008 allocation.

## **Housing – Beaverton Senior Housing**

The Beaverton Senior Housing project represents the new construction of a mixed use mixed income project in the historic downtown redevelopment district. The project is composed of 74 housing units and 4000 sq ft of commercial space. This project will provide at least two units affordable to households with incomes at or below 60% MFI. The remainder of the units will be sold at market. The unit mix is anticipated to be one and two bedroom floor plans in the 58 unit senior housing component and two bedroom lofts in the 16-unit live/work housing component. The commercial space will be master leased to a nonprofit health clinic. In PY 2007-2008, the City allocated an additional \$130,000 towards this project. The new CDBG funds dedicated to this project amount to 28.3% of the PY 2007/2008 allocation. In addition, the City of Beaverton is using a portion of its allocation of 2007 HOME to fund this project.

## **Downtown Storefront Improvement Program**

The City will allocate \$70,000 in PY 2007/2008 CDBG funds to downtown storefront improvement grants to help local businesses improve their appearance and attract further investment downtown. This is an eligible CDBG expense under the National Objective of slum and blight prevention/eradication; in 2005, the City conducted a study demonstrating that the target area had enough deteriorated/deteriorating buildings to qualify under the "area blight" provisions of 24 CFR 570.208(b).

We expect to assist up to three new businesses downtown using PY 2007/2008 funding. The project offers matching grants of up to \$20,000 to local businesses in pre-defined areas of downtown for storefront improvements to enhance that visual appeal of the business, along with design assistance from an architect hired by the City. The storefront program also includes a contract with an architect that provides design and entitlement process coordination at no charge to the business owners. It is open to tenants (with the owner's consent) as well as building owners. Adult-oriented businesses are not eligible – no business that excludes minors may receive a grant; other exclusions include: national franchises, church and government owned buildings,

and primarily residential buildings. The new CDBG funds dedicated to this project amount to 7% of the PY 2007/2008 allocation.

#### *Accessibility Rehabilitation Project*

The City will continue to fund at \$75,000 the Accessibility Rehabilitation Program established last year to carry out accessibility-related home improvements for low income seniors and people with disabilities. According to the 2000 Census, nearly 4,000 people in Beaverton live with some kind of physical disability, and discussions with local service providers and Oregon Legal Services confirm that there is a serious shortage of affordable housing in the City of Beaverton that's accessible.

The City has contracted with Unlimited Choices, Inc. to bring their highly-regarded Adapt-a-Home program to Beaverton. Adapt-a-Home has demonstrated a very effective model of working with homeowners and with landlords to increase the permanent supply of accessible housing. At an average of \$3,500 per unit, we expect Adapt-a-Home to serve more than 24 households in the coming year. The new CDBG funds dedicated to this project amount to 12.5% of the PY 2007/2008 allocation.

#### *Housing Rehabilitation Program*

While no new money will be allocated to the program in PY 2007/2008, prior years' funds and program income will allow the City's Housing Rehabilitation program to continue to assist low-to-moderate income homeowners in Beaverton with necessary repairs to address health and safety issues. Helping residents maintain their homes is an important strategy for maintaining affordable housing and neighborhood livability. We anticipate that about \$150,000 in CDBG will be available in PY 2007-2008. The City will continue to work with the Portland Development Commission (PDC) to administer the day-to-day operations of the City's Housing Rehabilitation program.

The City entered a contract to work with Unlimited Choices Inc. in 2006 and plans to continue and expand that relationship. UCI coordinates an accessibility program in Beaverton – Adapt-a-Home that provides accessibility improvements to households with disabled members. In PY 2007/2008 we will add Mend-a-Home that provides emergency repairs to mobile homes. Mobile home owners receive grants under the program, while those in single-family houses and condos receive low-interest or deferred payment loans. The CDBG funds dedicated to this project amount to 12.5% of the PY 2007/2008 allocation.

In addition to financing the costs of necessary repairs, funds will be used to address lead-based paint hazards, to increase the inventory of lead-safe housing available to low- and moderate-income families and to protect children under the age of six residing in that housing. The City of Beaverton also participates in a coordinated regional effort to reduce lead-based paint hazards in both single- and multi-family units under the Portland Lead Hazard Control Program (PLHCP) supported by Portland Development Commission regionally.

## **GEOGRAPHIC DISTRIBUTION**

The City does not prioritize the geographic distribution of CDBG resources in specific areas, beyond a general intent to support downtown redevelopment/ revitalization where appropriate. Beaverton's historic downtown Regional Center does encompass an area of low-income concentration (Census Tracts 311, 312 and 313).

The First & Main project and the Beaverton Senior Project are on the western end of Beaverton's historic downtown both at SW First Street and Main Avenue.

Public service projects as well as the Housing Rehabilitation and Accessibility Rehabilitation Programs are open to qualified residents citywide.

The historic downtown Storefront Program will be available to local businesses within an area bounded by Canyon Road, Lombard Avenue, Second Street, and Stott Avenue.

## **MEETING UNDERSERVED NEEDS**

### **Address Obstacles to Meeting Underserved Needs**

#### *Public Services:*

The City of Beaverton allocates the maximum of 15% of its total allocation to public services in an attempt to meet underserved needs in the community in areas such as homelessness, abused women, and at-risk, neglected children. The City also provides additional resources for public service agencies through the City's use of State Revenue Sharing funds.

#### *Accessibility Rehabilitation Program:*

Affordable housing accessible to people with physical disabilities is in short supply in Beaverton, according to many of the City's community partners. The Accessibility Rehab Program will enable people with impaired mobility to remain in their current living space, and will increase the permanent stock of accessible housing in the City.

### **Activities to aid homeless and persons with special needs**

*Shelters/Transitional Housing needs:* The City has a long history of supporting shelter and transitional housing projects that serve our community and its residents.

*Prevent homelessness, especially for the very low incomes:* The City's Housing Rehab Program provides small grants to mobile home owners for repairs; these residents would often be at risk of homelessness without City assistance.

*Transition to permanent housing:* The City does not propose any activity specifically to address this, beyond support for the two shelters, and for the various initiatives of Tualatin Valley Housing Partners, which does place households leaving homelessness.

*End chronic homelessness:* the City expects to begin work with Washington County on the development of a Ten-Year Plan within the next year.

*Special Needs Identified in the 2005-2010 Consolidated Plan:* The City continues to serve seniors and people with disabilities through the Accessibility Rehab Program, which provides grants and assistance with accessibility-related home improvements to help people with limited mobility live independently.

## **Foster and Maintain Affordable Housing**

### *First and Main:*

The First & Main project preserves ten much-needed housing units affordable to low income renters in downtown Beaverton. In addition, an office space at the project is used by Community Action organization to serve area residents. This organization provides access to energy assistance and weatherization services that serve low/mod households in the City of Beaverton and eastern Washington County.

### *Housing Rehabilitation Program and Accessibility Programs:*

Both the Housing Rehabilitation and Accessibility Programs help maintain low to moderate income residents in their current housing situations, and help to maintain and improve the existing stock of affordable housing City-wide.

### *Beaverton Senior Project*

The Beaverton Senior Project adds two to three units of affordable homeownership in the historic downtown redevelopment area. The project is designed to serve the residents in this cultural diverse section of our community. The project is to be built on a city-owned lot currently vacant or used as a City parking lot.

## **Remove Barriers to Affordable Housing**

The City engaged in a thorough review of policies bearing on affordable housing in 2004, and adopted several significant changes to the City's Comprehensive Plan, including expediting proposed affordable housing projects in the City's planning and development process, and reviewing City parking requirements. The City is currently considering several additional policies to encourage affordable housing, including tax abatements and SDC/fee relief for projects meeting certain affordability standards.

The City also partners with a number of housing-related organizations and initiatives, including Open Door Counseling Center, the Community Housing Fund, and the Hispanic Homeownership working group, to promote affordable housing in a variety of ways.

## **Evaluate and Reduce Lead-Based Paint Hazards**

The City of Beaverton works closely with the Portland Development Commission (PDC) to enhance coordination of risk assessments, paint testing, and unit clearances for owner-occupied housing rehab projects, and participates in the Portland Regional Lead Based Paint Task Force to address lead hazards in homes throughout the Portland metropolitan region.

### **Reduce Number of Poverty Level Families**

Through the City's CDBG and long range planning process, under the State of Oregon periodic review statute, the City attempts to address low-income housing needs and reduce poverty.

### **Develop Institutional Structure**

During the Consolidated and Annual Plan process for CDBG fund allocation, the City conducts public hearings in cooperation with Washington County. City staff also interview interested Community Development Corporations (CDCs) regarding housing needs, and meet with the Community Development Department and Engineering Department staff to discuss infrastructure needs in the low-income areas of Beaverton. In addition to the above measures (that develop the institutional structure for the City of Beaverton's CDBG Program), the City has a public services application process for non-profit agencies to request grant funding from the City. Such funding consists of both CDBG funds and State Revenue Sharing funds. There is a Public Services selection committee that reviews applications, interviews applicants, and makes funding recommendations to the City Council. The City Council reviews and approves both the funding of the public service agencies and all other CDBG proposed activities. City staff also participates actively in local planning and coordination efforts such as the Housing Advocacy Group and the Housing and Supportive Services Network.

### **Enhance Coordination Between Public and Private Housing and Social Services**

The City works with an array of partners to carry out the CDBG annual work plan. The City actively coordinates with nonprofit organizations including social service providers, Community Development Corporations (CDCs) and Community Housing Development Organizations (CHDOs) throughout the year on housing issues such as housing trends and availability of properties in Beaverton. The City's Economic Development program works with private developers, CDCs, CHDOs and the Public Housing Authority to explore housing and economic development strategies for the City as a whole and the historic downtown redevelopment area. Throughout the year, the City works closely with a variety of social service agencies to better serve Beaverton's low-income residents. The City actively encourages close cooperation between housing providers and social service agencies, primarily through participation the Housing and Supportive Services Network and their Continuum of Care application process.

### **Foster Public Housing Improvements and Resident Initiatives**

The City of Beaverton does not administer or finance any public housing programs or initiatives. The Washington County Public Housing Authority is responsible for all public housing improvements and resident initiatives for all public housing located within the City of Beaverton and for all households using resources administered by the Public Housing Authority. Public housing improvements and resident initiatives fall within the Washington County Public Housing Authority's planning authority.

## MONITORING STANDARDS AND PROCEDURES

The City of Beaverton regularly monitors activities undertaken with HUD funds in accordance with all applicable statutory and regulatory requirements including, but not limited to, OMB Circulars A-133 (Audits of State, Local, and Other Nonprofit Institutions), A-122 (Cost Principles for Non-Profit Organizations) and A-110 (Grants and Agreements with Institutions, Hospitals and Other Nonprofit Organizations).

City staff promotes a cooperative and pro-active relationship with subrecipient partners for early identification of problems or potential problems. The technical assistance and monitoring that we provide – including orientation training, on-going technical assistance, routine site visits, and quarterly reporting – ensures that HUD-funded projects benefit intended populations, and helps prevent fraud, waste, and mismanagement.

### *AMENDMENTS*

The City of Beaverton does not propose any amendments at this time to the 2005-2010 Consolidated Plan.

**CITY OF BEAVERTON  
LISTING OF PROPOSED PROJECTS**

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**      **City of Beaverton**

**Priority Need**  
N/A

**Project Title**  
**Planning and Administration**

**Description**

The City of Beaverton will allocate up to twenty (20) percent of the CDBG allocation towards general planning and administration. This amount is estimated at \$120,000 in this program year. The City will use these funds to staff and secure consulting services and related costs to carry out the program activities of this program. Program activities will include: HUD reporting, HUD compliance, file management, community outreach, marketing, technical assistance, application processes, contracting, Davis Bacon monitoring, Environmental Reviews, coordination with other agencies, and strategic planning. In addition, general coordination of activities of the City role in the Washington County HOME Consortium and the related Intergovernmental Agreement between the City and the County will be managed under this activity.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area**  
N/A

Objective Number N/A	Project ID 0701
HUD Matrix Code 21A General Program Admin	CDBG Citation 570.205//570.206
Type of Recipient Local Government	CDBG National Objective 570. 208 (d)(4)
Start Date (mm/dd/yyyy) 07/01/2007	Completion Date (mm/dd/yyyy) 06/30/2008
Performance Indicator N/A	Annual Units 1 ORGANIZATION
Local ID	Units Upon Completion 1 ORGANIZATION

**Funding Sources:**

CDBG	\$ 120,000
ESG	
HOME	
HOPWA	
Total Formula	\$ 120,000
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	
Total	\$ 120,000

The primary purpose of the project is to help:  the Homeless  Persons with HIV/AIDS  Persons with Disabilities  Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**      **City of Beaverton**

**Priority Need**  
**Public Services**

**Project Title**  
**Public Services Grants**

**Description**

The City of Beaverton provides a competitively awarded Public Services Grant to social service organizations that provide services to residents of the City of Beaverton. The City matches the use of CDBG funding with a share of its annual allocation of State Revenue Bonds. In PY 2007/2008, the City will allocate 90,000 in CDBG funds (up to 15 percent of the allocation) to fund eligible projects.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area**

The Public Services grants program is offered to eligible households city-wide.

Objective Number SL-3	Project ID <b>0707</b>
HUD Matrix Code 05 Public Services	CDBG Citation 570.201(e)
Type of Recipient Private Nonprofit Organizations	CDBG National Objective 570.208(a)
Start Date (mm/dd/yyyy) 07/01/2007	Completion Date (mm/dd/yyyy) 06/30/2008
Performance Indicator # of Persons Served	Annual Units 400 Beaverton Residents Served
Local ID	Units Upon Completion 400 Beaverton Residents Served

**Funding Sources:**

CDBG	\$ 90,000
ESG	
HOME	
HOPWA	
Total Formula	\$ 90,000
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	\$ 157,435
Total	\$ 247,435

The primary purpose of the project is to help:  the Homeless  Persons with HIV/AIDS  Persons with Disabilities  Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**      City of Beaverton

**Priority Need**  
**Housing – Multifamily Rehabilitation**

**Project Title**  
**First and Main**

**Description**

The City of Beaverton acquired a three-building complex located on two contiguous tax lots in 2006. The project preserved ten units of affordable housing in the central business district of historic downtown Beaverton. The project is located southwest of the intersection of SW First Street and SW Main Avenue. The two Washington County tax lots are 1S116AD02600/2700. The land area of the project site is about .23 acres. The project is composed of a single family house, a second single family house divided into three apartments and a two story building with six apartments and a commercial office space. The residential units are all rented to low/mod income individuals and households. The commercial office space is leased to a not-for-profit organization. The building is managed by Tualatin valley Housing Partners, Inc., a designated Community Housing Development Organization. The City set aside \$40,000 in CDBG resources for repairs needed at this project.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area**

The project is located southwest of the intersection of SW First Street and SW Main Avenue.

Objective Number DH-2 – Decent Housing	Project ID <b>0703</b>
HUD Matrix Code 14B – Rehab Multi Unit Residential	CDBG Citation 570.202
Type of Recipient Local Government	CDBG National Objective 570.208(a)(3)
Start Date (mm/dd/yyyy) 04/24/2006	Completion Date (mm/dd/yyyy) 06/30/2008
Performance Indicator # of Housing Units	Annual Units 10
Local ID	Units Upon Completion 10

**Funding Sources:**

CDBG	\$40,000
ESG	
HOME	
HOPWA	
Total Formula	\$40,000
Prior Year Funds	\$176,000
Assisted Housing	
PHA	
Other Funding	
<b>Total</b>	<b>\$216,000</b>

The primary purpose of the project is to help:     the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**     City of Beaverton

**Priority Need**  
Housing

**Project Title**  
Beaverton Senior Housing

**Description**

The Beaverton Senior Housing project represents the new construction of 74 housing units in a mixed-use, mixed-income project with commercial space and 74 housing units for homeownership. The site is an assembly of six tax lots located between SW Angel and SW Farmington Road, SW First and SW Main in the historic central business district. The total site is approximately 1.0 acre. This project will provide at least two units affordable to households with incomes at or below 60% MFI. The remainder of the units will be sold at market. The unit mix is anticipated to be one and two bedroom floor plans in the 58 unit senior housing component and two bedroom lofts in the 16-unit live/work housing component. The City of Beaverton is using \$130,000 of its CDBG allocation to fund elements of this project – e.g. land acquisition and professional services.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area**

The property is located at SW Angel, SW Farmington Road, SW First and SW Main in Beaverton, Oregon, identified as Washington County Tax Lot Number 1S116AD01300, 1400, 1500, 1600, 1700, & 1800.

Objective Number DH-2	Project ID 0704
HUD Matrix Code 101/Acquisition of Real Property	CDBG Citation 570.201 (a)
Type of Recipient unknown	CDBG National Objective 570.208(a)
Start Date (mm/dd/yyyy) 07/01/2007	Completion Date (mm/dd/yyyy) 06/30/2009
Performance Indicator # of Housing Units	Annual Units 74
Local ID	Units Upon Completion 74

**Funding Sources:**

CDBG	\$ 130,000
ESG	
HOME	\$ 100,000
HOPWA	
Total Formula	\$ 230,000
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	\$ 22,319,156
<b>Total</b>	<b>\$ 22,549,156</b>

The primary purpose of the project is to help:  the Homeless  Persons with HIV/AIDS  Persons with Disabilities  Public Housing Needs

Note \*: This award of funds is from the Washington County HOME Consortium

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**      **City of Beaverton**

**Priority Need**  
**CDBG Rehabilitation – Accessibility**

**Project Title**  
**Adapt – a – Home (Unlimited Choices Inc)**

**Description**

Unlimited Choices Inc. will provide Adapt-a-Home services to individuals in eligible low/mod income households that need improved accessibility to enhance the quality of their life and to increase their ability to use their existing housing. The Adapt-a-Home program will combine installation of one or more accessibility feature (e.g. ramps and landings, low profile thresholds and door modifications, garb bars and handrails plus other bathroom features) to assist disabled persons safely and efficiently access their home. The Adapt-a-Home program is offered citywide on a first come first serve basis.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area**

The Adapt-a-Home program is offered to eligible households city-wide.

Objective Number DH-1	Project ID 0705
HUD Matrix Code 14A –Rehab Single Unit Residential	CDBG Citation 570.202
Type of Recipient Private Nonprofit Organization	CDBG National Objective 570.208(a)(3)
Start Date (mm/dd/yyyy) 07/01/2007	Completion Date (mm/dd/yyyy) 06/30/2009
Performance Indicator # of Housing Units REHABBED	Annual Units 24
Local ID	Units Upon Completion 24

**Funding Sources:**

CDBG	\$ 75,000
ESG	
HOME	
HOPWA	
Total Formula	\$ 75,000
Prior Year Funds	\$ 73,870
Assisted Housing	
PHA	
Other Funding	
Total	\$ 148,870

The primary purpose of the project is to help:     the Homeless     Persons with HIV/AIDS     Persons with Disabilities     Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

**Jurisdiction's Name**      **City of Beaverton**

**Priority Need**  
**CDBG Rehabilitation – Emergency Repair**

**Project Title**  
**Mend – a – Home (Unlimited Choices Inc)**

**Description**

The City of Beaverton will enter a subrecipient contract with Unlimited Choices Inc. (UCI) in the amount of \$75,000 to carry out services under the Mend-a-Home program. UCI's the Mend-a-Home program provides services to individuals in eligible low/mod income households living in manufactured housing and mobile homes that need emergency repairs that improve the health and safety of the housing stock.

The Mend-a-Home program corrects a defect or dangerous condition that threatens the life and safety of the occupants, is causing major structural damage to the property, or, if left untreated, is likely to cause major structural damage to the property within a year.

Emergency repairs that may qualify include structural, plumbing, mechanical or electrical systems showing obvious signs of deterioration and requiring emergency repair; roof system, if leaking, missing shingles or severely deteriorated, and/or exterior porch, deck and/or stair repair.

The Mend-a-Home program is offered citywide on a first come first serve basis.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area**

The Mend-a-Home program is offered to eligible households city-wide.

Objective Number DH-1	Project ID 0706
HUD Matrix Code 14A –Rehab Single Unit Residential	CDBG Citation 570.202
Type of Recipient Private Nonprofit Organization	CDBG National Objective 570 208(a)(3)
Start Date (mm/dd/yyyy) 07/01/2007	Completion Date (mm/dd/yyyy) 06/30/2008
Performance Indicator # of Housing Units Repaired	Annual Units 24
Local ID	Units Upon Completion 24

**Funding Sources:**

CDBG	\$ 75,000
ESG	
HOME	
HOPWA	
Total Formula	\$ 75,000
Prior Year Funds	\$ 0
Assisted Housing	
PHA	
Other Funding	
Total	\$ 75,000

The primary purpose of the project is to help:  the Homeless  Persons with HIV/AIDS  Persons with Disabilities  Public Housing Needs

**Table 3C  
Consolidated Plan Listing of Projects**

Jurisdiction's Name      City of Beaverton

**Priority Need**  
Economic Development

**Project Title**  
Storefront Program

**Description**

The Storefront Program helps local businesses improve the appearance of their place of business, enhancing the general business environment downtown, and encourages further investment in Beaverton's commercial core. The project includes eligible businesses located in the area bounded by SW Canyon Road, Stott Avenue, Second Street and Lombard Avenue.

Work eligible for reimbursement under the grant includes most aspects of street-facing façade rehabilitation, including storefronts, exterior lighting, canopies and awnings, painting and masonry, and architectural/ dimensional signage. The Storefront Program will match every dollar a participating business spends on these kinds of improvements, up to a \$20,000 maximum grant.

The City plans to assist at least three businesses with this allocation of \$40,000 in additional CDBG funding.

**Objective category:**     Suitable Living Environment     Decent Housing     Economic Opportunity  
**Outcome category:**     Availability/Accessibility     Affordability     Sustainability

**Location/Target Area**

The project includes eligible businesses located in the area bounded by SW Canyon Road, Stott Avenue, Second Street and Lombard Avenue.

Objective Number EL - 3	Project ID 0702
HUD Matrix Code 14E	CDBG Citation 570.202
Type of Recipient Local Government	CDBG National Objective 570.208(b)(1) Area Blight
Start Date (mm/dd/yyyy) 07/01/2007	Completion Date (mm/dd/yyyy) 06/30/2009
Performance Indicator # of Businesses	Annual Units 1.5
Local ID	Units Upon Completion 3

**Funding Sources:**

CDBG	\$ 70,000
ESG	
HOME	
HOPWA	
Total Formula	\$ 70,000
Prior Year Funds	\$ 146,265
Assisted Housing	
PHA	
Other Funding	
Total	\$216,265

The primary purpose of the project is to help:  the Homeless  Persons with HIV/AIDS  Persons with Disabilities  Public Housing Needs

## FUNDING SOURCES

Entitlement Grant (includes reallocated funds)	
CDBG	\$ 600,000
ESG	\$ 0
HOME*	\$ 0
HOPWA	\$ 0
Total	\$ 600,000
Prior Years' Program Income NOT previously programmed or reported	
CDBG	\$ 0
ESG	\$ 0
HOME*	\$ 0
HOPWA	\$ 0
<b>Total</b>	<b>\$ 0</b>
Reprogrammed Prior Years' Funds	
CDBG	\$ 0
ESG	\$ 0
HOME*	\$ 0
HOPWA	\$ 0
<b>Total</b>	<b>\$ 0</b>
Total Estimated Program Income	
	\$ 0
Section 108 Loan Guarantee Fund	
	\$ 0
<b>TOTAL FUNDING SOURCES</b>	<b>\$ 600,000</b>
Other Funds	
	\$ 0
<i>Submitted Proposed Projects Totals</i>	<b>\$ 600,000</b>
Un-Submitted Proposed Projects Totals	
	\$ 0

\* City-selected HOME projects appear under the Washington County HOME Consortium in the Action Plan.

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# APPENDICES

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Appendix A  
CITIZEN PARTICIPATION

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**NOTICE OF PUBLIC HEARING AND COMMENT PERIOD  
ON WASHINGTON COUNTY'S  
CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT  
(CAPER)  
FOR PROGRAM YEAR 2005/2006**

Washington County and the City of Beaverton have prepared their 2005 CAPER report as required by federal regulations. The report details project accomplishments as well as expenditures throughout the period July 1, 2005 through June 30, 2006 for the Community Development Block Grant (CDBG) Program, the Emergency Shelter Grant (ESG), the American Dream Downpayment Initiative (ADDI) and the HOME Investment Partnerships (HOME) Program. The purpose of the report is to measure to what extent the jurisdictions are meeting priority needs, goals and strategies as outlined in the 2005-2010 Consolidated Plan.

The report is presented in two volumes. Volume One contains the narrative describing the CDBG, ESG, ADDI and HOME activities according to HUD's prescribed format. Volume Two contains reports generated from HUD's Integrated Disbursement and Information System. Both are available for review and comment. Volume One can be downloaded from the County's web site at [www.co.washington.or.us/cdbg](http://www.co.washington.or.us/cdbg) (click on Planning, click on Annual Performance Report).

However, due to the size of Volume Two, the document is only available by calling the Office of Community Development at 503-846-8814.

The report is due to HUD on September 28<sup>th</sup>. A 15-day public comment period on the report begins on Thursday, September 7<sup>th</sup> and runs through 5:00 p.m., Thursday, September 21<sup>st</sup>. A public hearing on September 21<sup>st</sup> will be held to receive comments on the CAPER. The hearing will also be an opportunity to accept public comment on housing and community development needs in the County. The hearing will take place in the County's Public Services Building at 155 North First Avenue, Room 105, in Hillsboro. The public hearing starts at 7:00 p.m.

Comments on the CAPER may be directed to:  
Peggy A. Linden, Program Manager  
Washington County Office of Community Development  
328 W. Main Street, Suite 100  
**Hillsboro, OR 97123**  
Phone: 503-846-8814  
Fax: 503-846-2882  
or by  
**E-mail: [jennie\\_proctor@co.washington.or.us](mailto:jennie_proctor@co.washington.or.us)**

The meeting room is accessible to persons with mobility impairments. Please notify the Office of Community Development at least 7 days before a hearing if special equipment or interpreting service is needed. If you have a disability or are hearing impaired and need assistance, please make arrangements in advance by calling 503-846-8814 or TTY 503-846-4598.

PUBLIC HEARING MINUTES

September 21, 2006

155 N. First Avenue, Room 105

Hillsboro, OR

7:00 p.m.

Community members present: None

Rick Lorenz opened the public hearing at 7:40 p.m. Jennie Proctor gave a brief overview of the purpose of the public hearing. She informed the members that the Consolidated Annual Performance Report (CAPER) is an annual report submitted to HUD that outlines the accomplishments of the prior year. It is a way of showing measurable progress in meeting the goals stated in the Consolidated Plan. Jennie referred everyone to page 65 of the handout, which shows a visual representation of the CDBG and HOME projects. Figure one shows the homeless activities. The five CDBG projects which served the homeless population and used ESG funds, which was about \$88,000 this past year, and served over 13,000 people are: 1. Open Door Counseling Center, 2. Community Action's Hillsboro Family Shelter, 3. Good Neighbor Center, 4. HopeSpring, and 5. Family Bridge. Figure two represents the housing activities which combine CDBG, HOME, (both County and City), and Housing Rehab that reached a lot of individual households. Figure three shows the Infrastructure projects. The two that are shown are completed but there are a number of projects still underway that will be completed in the coming year. Figure four shows the seven public facility projects, and figure five represents the public service county and city projects that were funded by a variety of non-profits throughout the county serving approximately 32,000 people.

Jennie wrapped up by commenting on the significant accomplishments in the HOME program over the past three years. She gave thanks to Ben Sturtz and Andree Tremoulet. The program is going very well and is proving to be very successful.

Ben reported that the HOME Program has completed over 247 housing units, totaling 2.2 million dollars. They include PLUSS Apartments, Bonita Villa, Oleson Woods, Greenburg Oaks, and the Lace Leaf Apartments.

Amy Scheckla-Cox asked if Ben would be able to bring pictures of these completed projects to share at the next PAB meeting. Ben said he should have those available at the November meeting. Richard Hager asked what the process is on informing the public of the CAPER public hearing, as well as what is the distribution of the notice. Jennie answered that our office sends out a public notice which reaches approximately 275 households, non-profit organizations, interested citizens, etc., as well as being published in the newspaper and on-line.

Jennifer Polley from the City of Beaverton reported that they get their CDBG funds directly from HUD, which was \$673,000 last year. She commented that they do not have to spend all of the money in a fiscal year. From July 1, 2005 through June 30, 2006, it funded administration of the program, seven public services projects, which benefited 422 people, and a storefront improvement project. There are no completed storefront projects thus far, but two are under construction and there are several in the pipeline. She said next year at this time there should be a lot to report. The Housing Rehab program funded 14 mobile home upgrades last year with a total of almost \$90,000. The Accessibility Rehab program contracted with

Unlimited Choices, which benefited 28 houses last year with a total of almost \$90,000. The City's big purchase was a 10-unit apartment complex. It was purchased with the goal of maintaining affordable housing in Downtown Beaverton. They are working with Tualatin Valley Housing Partners to manage the property.

Chairperson Rick Lorenz opened the floor for public testimony. There were no citizens present so the public hearing on the CAPER was closed and the regular PAB meeting began at 8:14 p.m.

NOTICE OF PUBLIC COMMENT PERIOD AND HEARINGS ON DRAFT PROGRAM YEAR 2007  
ACTION PLAN

**Washington County and City of Beaverton**

The Consolidated Plan is a combined plan and application to the U.S. Department of Housing and Urban Development (HUD) for federal funds available to counties and cities under the Community Development Block Grant (CDBG), HOME Investment Partnerships, Emergency Shelter Grant (ESG), and American Dream Downpayment Initiative (ADDI) formula programs. Washington County and the City of Beaverton each receive an annual CDBG entitlement grant. In addition, Washington County annually receives HOME, ESG, and ADDI program funds on behalf of the entire county. Action Plans are annual components of the Consolidated Plan that specifically describe how Washington County and the City of Beaverton will spend scarce federal resources over a one-year period for activities serving low- and moderate-income persons, the homeless, and persons with special needs.

The Draft Action Plan for program year 2007 is available for public review and comment from Wednesday, **March 14** through Thursday, **April 12, 2007**, at all County library branches, and Beaverton City Hall (Mayor's Office) during regular business hours. Copies of the draft plan document can be obtained from the Washington County Office of Community Development by calling **503-846-8814**. In addition, you may download a version of the plan via the County's website: [www.co.washington.or.us/CDBG](http://www.co.washington.or.us/CDBG) Click on Planning, 2007 Action Plan.

Two public hearings will be held on the draft PY 2007 Action Plan:

**Wednesday, April 4, 2007 1:00 p.m.**

**Beaverton Library  
Conference Room  
12375 SW Fifth Street  
Beaverton, OR**

**Thursday, April 12, 2007 4:00 p.m.**

**Washington County Public Services Building  
Cafeteria  
155 N First Avenue  
Hillsboro, OR**

Both meeting rooms are accessible to persons with mobility impairments. Please notify the Office of Community Development at least 7 days before a hearing if special equipment or interpreting service is needed. If you have a disability or are hearing impaired and need assistance, please make arrangements in advance by calling 503-846-8814 or TTY 503-846-4598.

You may comment on the draft Action Plan at either of the public hearings, or by writing to

**Peggy A. Linden, Program Manager  
Washington County Office of Community Development  
328 W. Main Street, MS7  
Hillsboro, OR 97123  
Phone: 503-846-8814  
Fax: 503-846-2882  
or  
E-mail: [cdbg@co.washington.or.us](mailto:cdbg@co.washington.or.us)**

## Appendix B

### MAPS

The following maps were provided by the City of Beaverton on behalf of the Consortium. They depict the geographic distribution of entitlement funds throughout Washington County for program year 2007-2008.

Figure 1  
Washington County Consortium  
Homeless Activities  
PY 2007/2008

**Legend**

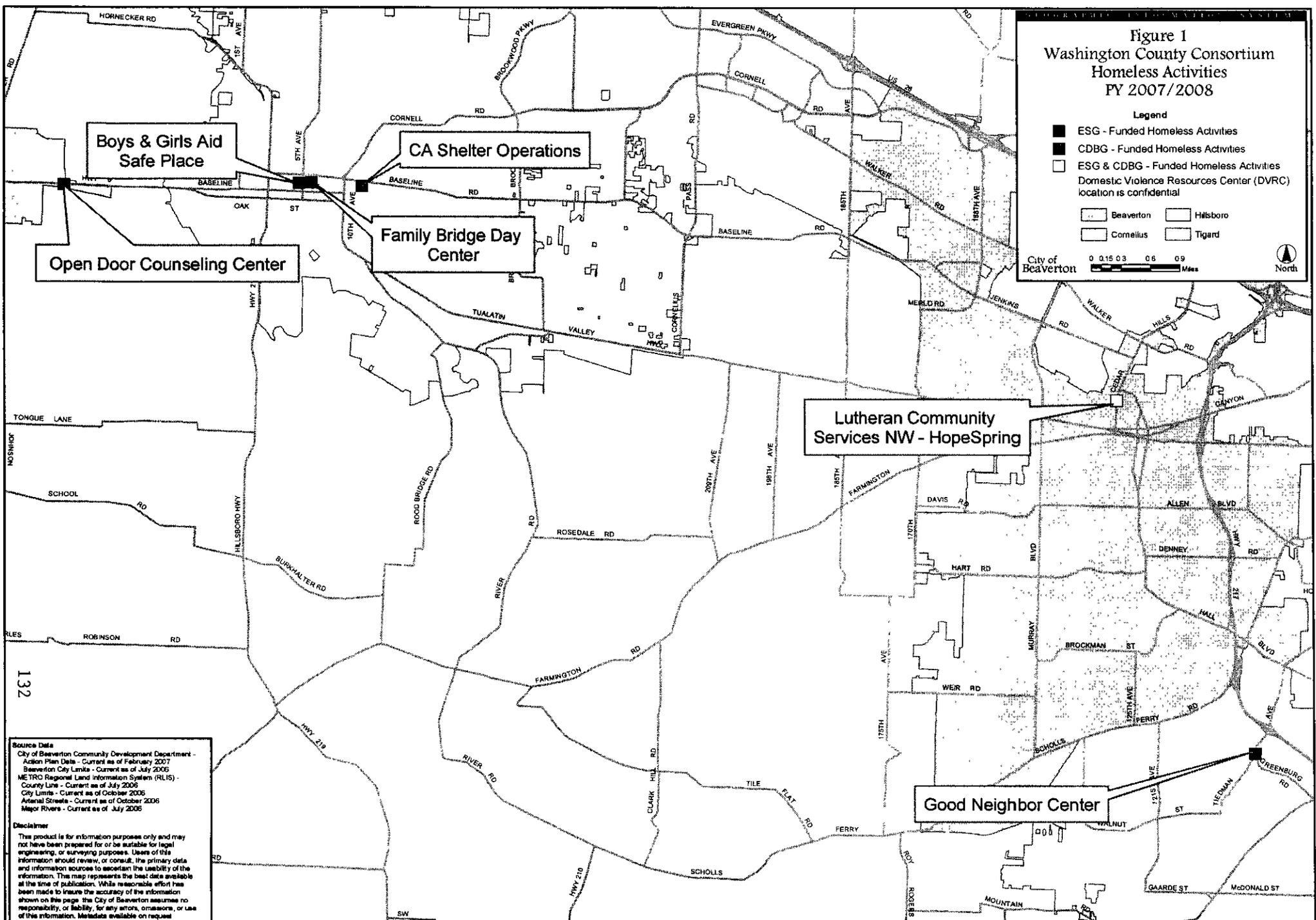
- ESG - Funded Homeless Activities
- CDBG - Funded Homeless Activities
- ESG & CDBG - Funded Homeless Activities
- Domestic Violence Resources Center (DVRC) location is confidential

Beaverton	Hillsboro
Cornelius	Tigard

City of Beaverton

0 0.15 0.3 0.6 0.9 Miles

North



**Source Data**  
 City of Beaverton Community Development Department - Action Plan Data - Current as of February 2007  
 Beaverton City Limits - Current as of July 2005  
 METRC Regional Land Information System (RLIS) - County Line - Current as of July 2005  
 City Limits - Current as of October 2005  
 Arterial Streets - Current as of October 2005  
 Major Rivers - Current as of July 2005

**Disclaimer**  
 This product is for information purposes only and may not have been prepared for or be suitable for legal engineering, or surveying purposes. Users of this information should review, or consult, the primary data and information sources to ascertain the usability of the information. This map represents the best data available at the time of publication. While reasonable effort has been made to insure the accuracy of the information shown on this page the City of Beaverton assumes no responsibility, or liability, for any errors, omissions, or use of this information. Metadata available on request.

**Figure 2**  
**Washington County Consortium**  
**Housing Activities**  
**PY 2007/2008**

**Legend**

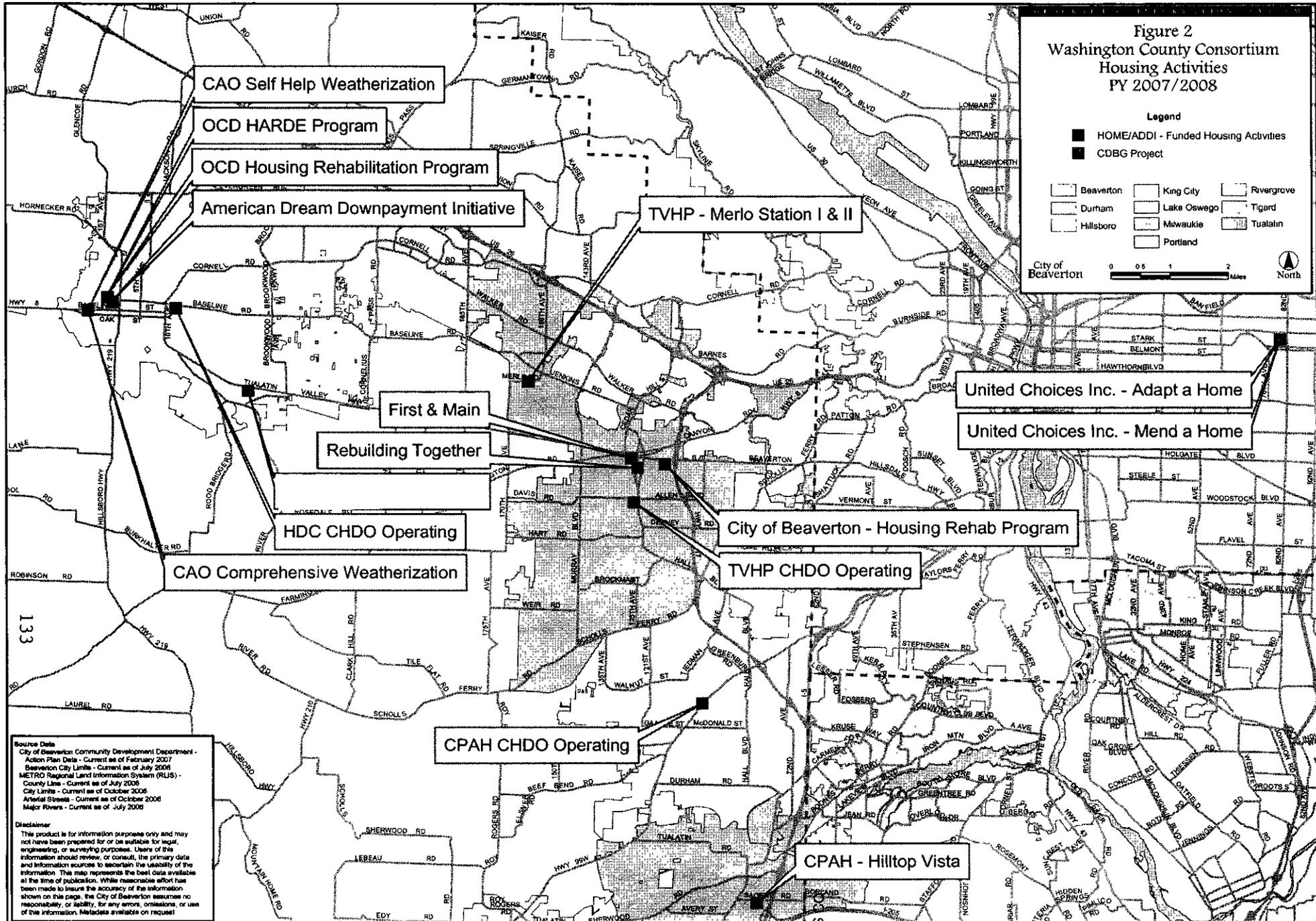
- HOME/ADDI - Funded Housing Activities
- CDBG Project

□ Beaverton	□ King City	□ Rivergrove
□ Durham	□ Lake Oswego	□ Tigard
□ Hillsboro	□ Milwaukie	□ Tualatin
□ Portland		

City of Beaverton

0 0.5 1 2 Miles

North

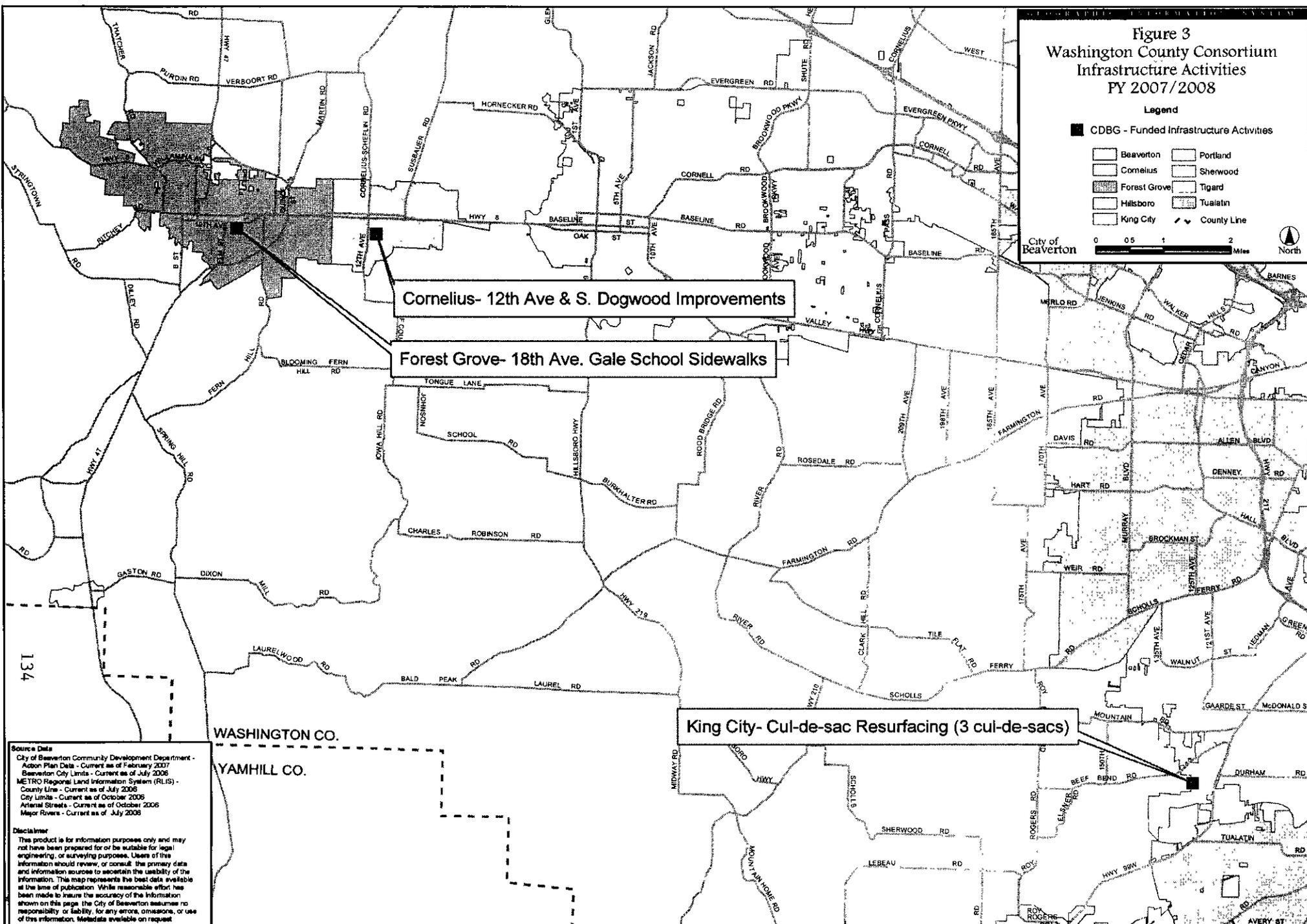


**Source Data**  
 City of Beaverton Community Development Department - Action Plan Data - Current as of February 2007  
 Beaverton City Limits - Current as of July 2006  
 METRO Regional Land Information System (RLIS) - County Lines - Current as of July 2006  
 City Limits - Current as of October 2006  
 Aerial Streets - Current as of October 2006  
 Major Rivers - Current as of July 2006

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**Figure 3**  
**Washington County Consortium**  
**Infrastructure Activities**  
**PY 2007/2008**

- Legend**
- CDBG - Funded Infrastructure Activities
  - Beaverton
  - Cornelius
  - Forest Grove
  - Hillsboro
  - King City
  - Portland
  - Sherwood
  - Tigard
  - Tualatin
  - County Line



**Source Data**  
 City of Beaverton Community Development Department - Action Plan Data - Current as of February 2007  
 Beaverton City Limits - Current as of July 2006  
 METRO Regional Land Information System (RLIS) - County Line - Current as of July 2006  
 City Limits - Current as of October 2006  
 Aerial Streets - Current as of October 2006  
 Major Rivers - Current as of July 2006

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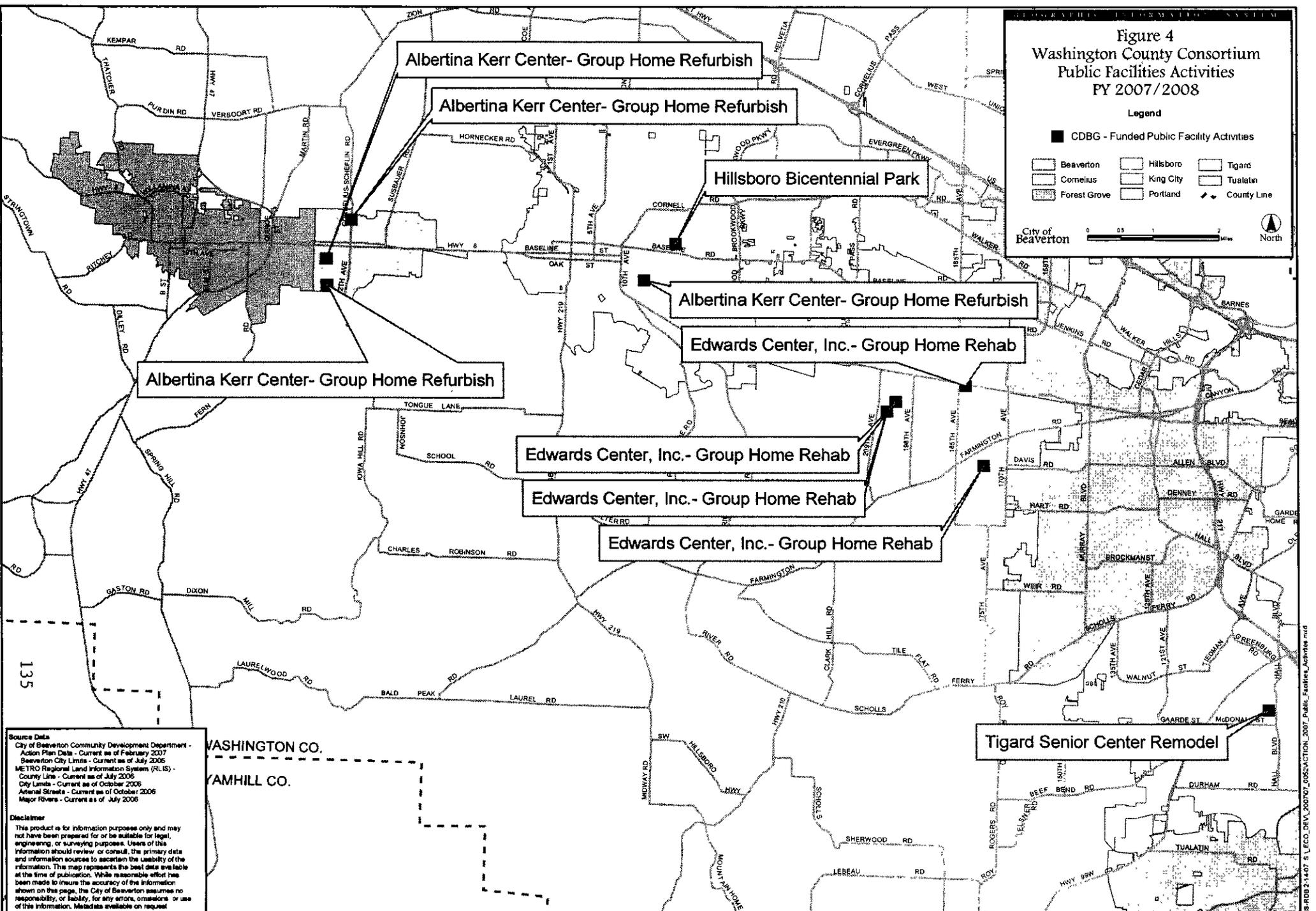
Figure 4  
 Washington County Consortium  
 Public Facilities Activities  
 PY 2007/2008

**Legend**

- CDBG - Funded Public Facility Activities
- Beaverton
- Hillsboro
- Tigard
- Cornelius
- King City
- Tualatin
- Forest Grove
- Portland
- ◆ County Line

City of Beaverton 0 0.5 1 2 Miles

North



**Source Data**  
 City of Beaverton Community Development Department - Action Plan Data - Current as of February 2007  
 Beaverton City Limits - Current as of July 2006  
 METRO Regional Land Information System (RLIS) - County Line - Current as of July 2006  
 City Limits - Current as of October 2006  
 Arterial Streets - Current as of October 2006  
 Major Rivers - Current as of July 2006

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**Figure 5**  
**Washington County Consortium**  
**Public Services Activities**  
**FY 2007/2008**

**Legend**

- CDBG - Funded Public Services Activities

Beaverton	King City	Rivergrove
Durham	Lake Oswego	Tigard
Hillsboro	Milwaukie	Tualatin
Portland	County Line	

City of Beaverton 0 0.5 1 2 Miles North

Community Corrections Post-Conviction Victims' Spec

Project Access Washington County

Community Action  
 Basic Needs Assistance

Shared Housing

LCSNW Mobile  
 Community Counseling

Community Action  
 Basic Needs Assistance

**Source Data**  
 City of Beaverton Community Development Department -  
 Action Plan Data - Current as of February 2007  
 Beaverton City Limits - Current as of July 2006  
 METRO Regional Land Information System (RLIS) -  
 County Line - Current as of July 2006  
 City Limits - Current as of October 2006  
 Arterial Street - Current as of October 2006  
 Major Rivers - Current as of July 2006

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 responsibility, or liability, for any errors, omissions or use  
 of this information. Metadata available on request.

## Appendix C

### SUMMARY OF OBJECTIVES AND PERFORMANCE MEASUREMENTS

**Table 3A  
Summary of Specific Annual Objectives**

<b>Obj #</b>	<b>Specific Objectives</b>	<b>Sources of Funds</b>	<b>Performance Indicators</b>	<b>Expected Number (this year)</b>	<b>Actual Number</b>	<b>Outcome/Objective*</b>
	<b>Rental Housing Objectives</b>					
DH-2.1	Washington County will use federal HOME funds to build or preserve 100 affordable rental units each year over the five-year cycle for households earning less than 50% MFI. Projects: Merlo I, Merlo II, Hilltop Vista, and Beaverton Senior Housing.	HOME	# of housing units	249		DH-2
DH-2.2	Washington County will use federal funds to assist at least 60 low and moderate-income homeowners each year through the housing rehabilitation programs. Projects: HARDE (OCD is unable to anticipate how many applicants will be living in rental units as opposed to owner-occupied units. Therefore the total estimated to be served is shown below under owner-occupied).	CDBG	# of housing units	*		DH-2

<b>Owner Housing Objectives</b>						
DH-2.2	Washington County will use federal funds to assist at least 60 low and moderate-income homeowners each year through the housing rehabilitation programs. Projects: Housing Rehabilitation Program, HARDE, Weatherization, and Rebuilding Together.	CDBG	# of housing units	234		DH-2
DH-2.3	Washington County will use HOME/ADDI funds to purchase/build 12 units of owner-occupied housing each year over the five-year period.	HOME	# of housing units	4		
<b>Homeless Objectives</b>						
SL-1.1	Washington County will use ESG/CDBG resources to provide homeless prevention assistance and/or other essential services to 6,000 homeless persons each year over the five-year cycle.	ESG/CDBG	# of persons with new access	1,592		SL-1
<b>Special Needs Objectives</b>						
	No projects were funded this year meeting this objective.					
<b>Community Development Objectives</b>						
<b>Infrastructure Objectives</b>						
SL-1.12	Construct, replace, or repair sidewalks. Project: Forest Grove 18 <sup>th</sup> Avenue/Gale School Sidewalks.	CDBG	# of persons with improved access	810		SL-1
SL-1.13	Replace, repair or develop streets and related infrastructure. Projects: Cornelius Dogwood and 12 <sup>th</sup> Avenue and King City Cul-de-sac.					

	<b>Public Facilities Objectives</b>					
SL-1.1	Develop parks and recreational facilities for low-income areas. Project: Bicentennial Park	CDBG	# of persons with improved access	4,856		SL-1
SL-1.5	Develop senior centers for improved access to services/activities. Project: Tigard Senior Center					
SL-1.6	Develop centers for persons with disabilities. Project: Albertina Kerr and Edwards Center.					
	<b>Public Services Objectives</b>					
SL-1.19	Improve access to health and dental care services and/or education to low-income families. Projects: Project Access Washington County and Mobile Counseling.	CDBG	# of persons with new access.	3,075		SL-1
SL-1.24	Provide other public services such as counseling for victims of crime, emergency basic needs, access to affordable housing, homeownership classes, literacy programs, job education and life skills training and professional development opportunities. Projects: Basic Needs, Shared Housing, and Post Conviction Specialist.					
	<b>Economic Development Objectives</b>					
	N/A					
	<b>Other Objectives</b>					
	N/A					

**Outcome/Objective Codes**

	<b>Availability/Accessibility</b>	<b>Affordability</b>	<b>Sustainability</b>
<b>Decent Housing</b>	DH-1	DH-2	DH-3
<b>Suitable Living Environment</b>	SL-1	SL-2	SL-3
<b>Economic Opportunity</b>	EO-1	EO-2	EO-3

**AGENDA BILL**

4/2/07: Rescheduled to 4/16/07  
at Claimant's request.

**Beaverton City Council  
Beaverton, Oregon**

4-16-07

**SUBJECT:** Harmony Investments Ballot Measure 37  
Claim for Compensation M37 2006-0003

**FOR AGENDA OF:** ~~4-2-07~~ **BILL NO:** 07064

**Mayor's Approval:** *Linda G. Goddard*

**DEPARTMENT OF ORIGIN:** CDD *AK/JS*

**DATE SUBMITTED:** 3-20-07

**CLEARANCES:** City Attorney *AK*  
Dev Serv. *AK*

**PROCEEDING:** Public Hearing

**EXHIBITS:** -Map  
- Staff Report dated 3/20/07 with  
exhibits 1 through 5.3

**BUDGET IMPACT**

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

The amount of compensation claimed by Harmony Investments is \$3,441,000 as a result of City zoning regulations affecting the subject property

**HISTORICAL PERSPECTIVE:**

On November 29, 2006, representatives for Harmony Investments, LP (Harmony) filed a claim for compensation against the City as authorized by Ballot Measure 37. The claim is for \$3,441,000. In the claim, Harmony alleges the subject properties have been devalued due to zoning regulations. The claim does not state which specific zoning regulations have devalued the property. However, the claim implies that the provisions regulating office and retail use in the IP (Industrial Park) zone are the basis of the claim. The subject property is located at 10605 SW Allen Boulevard (also known as TLID# 1S114CC00400).

**INFORMATION FOR CONSIDERATION:**

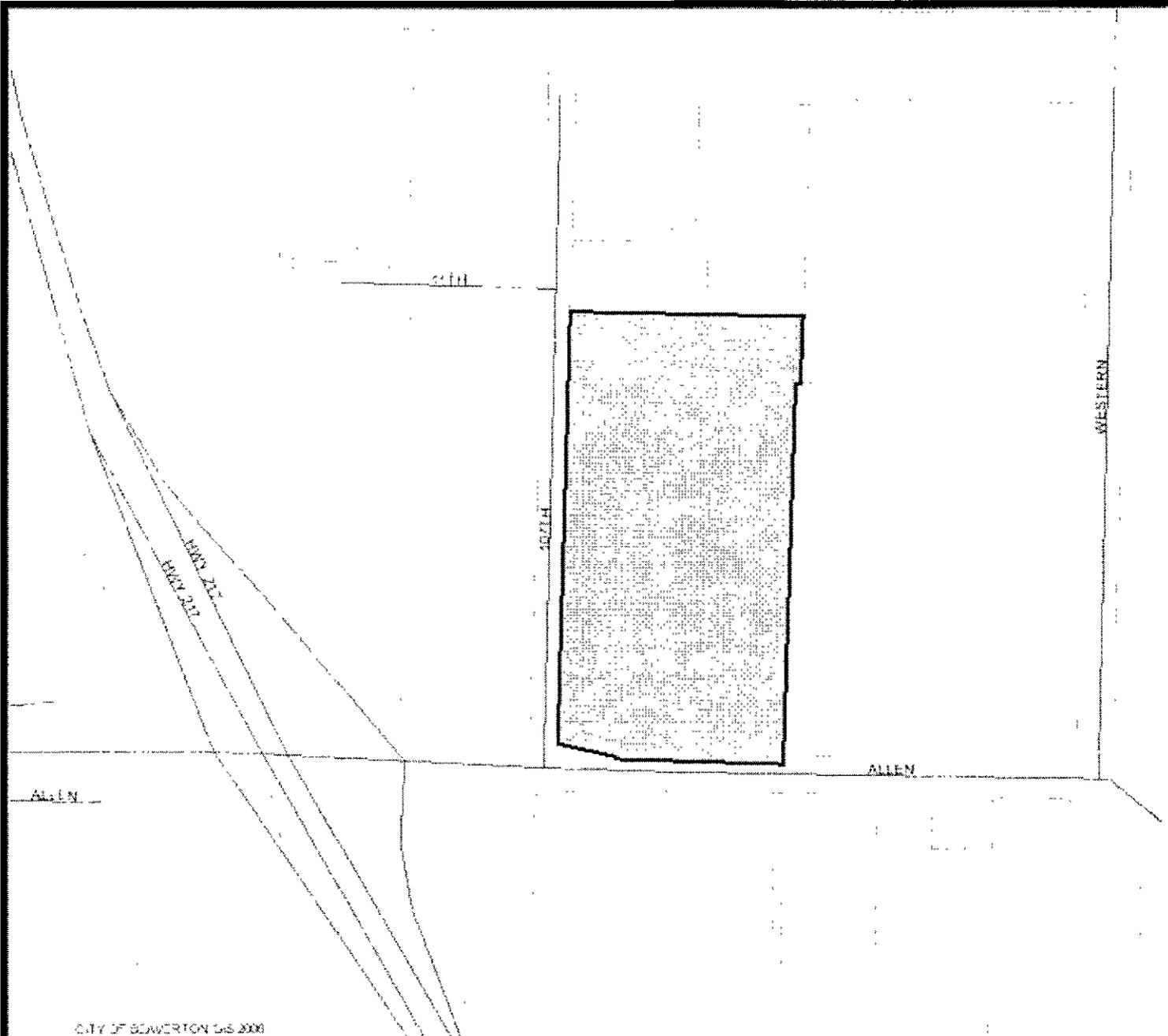
Attached staff report.

**RECOMMENDED ACTION:**

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

# City of Beaverton - M37 2006-0003 HARMONY INVESTMENTS

COMMUNITY DEVELOPMENT - Development Services



Notes 1S114CC00400  
Printed 07-Mar-07 01:31 PM

### Legend

Scale 1:4,138  
1 in = 345 ft

# Measure 37 Claim 2006-0003

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# 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, March 20, 2007

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

**SUBJECT:** **M37 2006-0003 (Harmony Investments Claim)**

**REQUEST:** Payment of \$3,441,000 to Harmony in compensation for the imposition of land use restrictions on the property located at 10605 SW Allen Boulevard or waiver of the zoning current regulations affecting this property.

**PROPERTY OWNER:** **Harmony Investments, LP (Harmony)**  
10605 SW Allen Boulevard  
Beaverton OR 97005

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

**HEARING DATE:** Monday, April 2, 2007

**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. Under the terms of Measure 37, before December 4, 2006, a property owner is able to file a claim for compensation without having the jurisdiction enforce any land use regulation on the property owner.

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 Harmony filed a claim with the City on November 29, 2006. In the claim, Harmony states that imposition of City zoning regulations reduces the value of the property by \$3,441,000. Pursuant to Section 2.07.015, staff informed Harmony representatives that the materials submitted for the claim were incomplete. On January 9, 2007, Harmony representatives amended their materials by submitting some of the additional information requested by staff.

## **B. Subject Property**

The subject property is located at 10605 SW Allen Boulevard (also known as TLID# 1S114CC00400). A vicinity map is attached to this report. The subject property is improved with a structure which is occupied by Platt Electric.

## **C. Analysis of Claim for Compensation**

The representatives for Harmony filed their claim on November 29, 2006 and supplemented the claim with submissions dated December 7, 2006 and January 8, 2007. In the November 29, 2006 claim for compensation filed by Harmony representatives, it asserts that Harmony Investments, LP took possession of the property on July 10, 1986. The name of the ownership in July 1986 was M&J Investment Company which was an Oregon general partnership. M&J Investment Co was converted to a limited partnership and changed its name to Harmony Investments on June 26, 1998.

On July 10, 1986, the subject property was zoned IP (Industrial Park). The applicable Development Code was Ordinance 2050 as amended through Ordinance 3509. Exhibit 5.1 to this report contains the applicable IP code requirements in effect on July 10, 1986 for the subject properties.

### Uses

In the January 8, 2007 correspondence, Harmony's representative states that Measure 37 does not require a claimant to identify specific regulations which have devalued the subject property and accordingly, the claimant is not identifying any

specific regulation. The January 8, 2007 correspondence states that the claimant “seeks compensation for, or a waiver of, all land use regulations negatively affecting the value of the property that were enacted after [July 10, 1986]”.

There was some reformatting of the text since 1986, but the list of uses for the IP zone in 1986 is almost exactly the same in 2007 with two modifications. In 1986, a nursery, day or child care facility use was a conditional use. In 2007, the use is a permitted use. In 1986, public services or utility uses were permitted. In 2000, the use listing was modified to read “Public services or utility uses **including vehicle storage and, incidental service and repair**” Since 1986, the IP zone has added several uses. Exhibit 5.3 lists those uses of which have been added to the IP zone since 1986.

With such a broad statement of adverse impact by imposition of undefined land use regulations and no submitted evidence that any land use regulation enacted since July 1986 has adversely affected the value of the subject property, it is impossible for the staff to address the claim with any certainty as to the appropriateness of compensating the property owner or waiving a regulation. The Harmony representative states that a prohibition of retail or office uses reduces the value of the property. However, the Code in July 1986 is the same in 2007 with respect to prohibiting retail and office uses in the IP zone. Therefore, the prohibition of those uses is not new since the owner of the property acquired the subject property. Nevertheless, staff can support application of the use provisions contained in the 1986 code to the subject properties with the understanding that the property owner will be subject to a more limited number of uses under the 1986 Code.

#### Site Development Requirements

The site development requirements for lot area, setbacks, building height, and lot coverage for the IP zone are exactly the same in 1986 and 2007.

#### Supplementary Regulations

The supplementary regulations concerning parking and loading, development adjacent to residential districts, and required conditions are the same in 2007 as they were in 1986. The sole difference is the 2007 Code requires extension of water lines, sanitary and storm sewer utilities through a property to an adjoining property.

#### Chapter 40 (Applications)

In 1986, just as in 2007, any development proposal would be subject to a land use application. Since no proposal for development has been suggested by Harmony, 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)

Harmony has not identified any provision in Chapter 60 (Special Requirements) as devaluing the subject property. 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 inferred in the materials submitted by Harmony is the prohibition of retail and office use in the IP zone. Land uses are identified by Chapter 20 (Land Uses, not by Chapter 60. If the claimant were to identify any regulations in Chapter 60 which devalue the subject property, the staff would then be able to provide an analysis of and response to that claim.

#### **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.

The claim was submitted to the City on November 29, 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 December 14, 2006, staff found the materials submitted by Harmony's representatives to be incomplete. Harmony's representatives submitted letters dated December 7, 2006 and January 8, 2007 supplementing the November 29, 2006 claim for compensation. The submitted materials did not adequately respond to the staff request for information. The City has not deemed the application complete. The City is proceeding with processing the claim since the City must render a decision on the claim by May 28, 2007.

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 subject property identified as 10605 SW Allen Boulevard (also known as TLID# 1S114CC00400) 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 above 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: Harmony has submitted a letter dated November 17, 2006 from George Slevin in which retail and office uses are listed as a potential use of the subject property. Both retail and office uses are prohibited uses when Harmony acquired the subject property and in 2007. Therefore, staff cannot respond to how the City is restricting a use of the subject property that would have been otherwise allowed when the property was acquired.

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

Staff Finding: Harmony has made broad assertions that the Code has devalued the subject property without identifying any specific section of the Code. The City's floodway and floodplain regulations are contained in Chapter 60 of the Development Code. 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: Harmony has submitted a title summary report which shows that M & J Investment Company acquired the subject property on July 10, 1986. Harmony has also submitted a document indicating that M & J Investment Company converted to Harmony Investments Limited Partnership on June 26, 1998.

- 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 Harmony 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: Harmony has specified a claim of \$3,441,000 in the materials dated November 29, 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 on July 10, 1986, staff recommend that the provisions concerning public safety such as floodway and floodplain regulations and transportation not be waived as they are requirements 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 Harmony 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**

Harmony and representatives have not provided the City with evidence of how the City has applied or enforced any regulations on the development of the subject property. Further, Harmony has not provided the City with a development proposal which illustrates how the City's regulations would prevent Harmony from achieving any development goal for the subject property. By failing to provide any evidence with sufficient specificity to the City Council, Harmony has prevented the Council an opportunity to respond to each issue in a manner anticipated by Measure 37. The claim for \$3,441,000 is entirely based on the letter dated November 17, 2006 from George Slevin of GVA Kidder Mathews. The only regulations identified in the Slevin letter is the prohibition of retail and office uses. As documented in staff's analysis of the claim in Section C of this report, the basis for the \$3,441,000 claim is flawed since the zoning in 1986 clearly did not allow retail or office uses in the IP zone. Due to the lack of any other evidence submitted by Harmony, 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 is little evidence of any diminution in value, it is possible that Harmony 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 recommend that the Council waive the use restrictions of the current Development Code and apply the use restrictions contained in the 1986 Development Code (Ordinance 2050 as amended through Ordinance 3509). 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 Harmony Investments, LP. Furthermore, the waiver license shall be construed to mean that upon a land use application for a permit by Harmony Investments, LP, 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 July 10, 1986 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 November 29, 2006 with exhibits A through D
2. Incomplete letter from Steven A. Sparks, AICP
3. Letter dated December 7, 2006 from Harmony representative David Petersen with attachment.
4. Letter dated January 8, 2007 from Harmony representative David Petersen with attachment.
5. Staff identified relevant sections of Ordinance 2050.
  - 5.1 IP Zoning in 1986
  - 5.2 IP Zoning in 2007
  - 5.3 Uses which have been added to the IP zone since 1986.

**ORIGINAL**

1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, Oregon 97204  
503.221.1440

DAVID J. PETERSEN  
ADMITTED TO PRACTICE IN OREGON AND CALIFORNIA

503 802.2054  
FAX 503.972 3754  
DavidP@tonkon.com

November 29, 2006

**VIA MESSENGER**

City of Beaverton  
Development Services Division  
4755 SW Griffith Drive  
Beaverton, OR 97076

**RECEIVED**  
NOV 29 2006  
City of Beaverton  
Development Services

Re: Harmony Investments Limited Partnership Measure 37 Claim  
10605 SW Allen Blvd., Beaverton

To Whom It May Concern:

Enclosed please find an *original* Measure 37 claim to the City of Beaverton on behalf of Harmony Investments Limited Partnership, and the required filing fee. I have also enclosed a copy of the claim. Please stamp the copy as "Received" with the appropriate date and return it to me via the messenger.

Thank you and please call if you have any questions.

Best regards,



David J. Petersen

DJP/DJP  
Enclosures  
cc: Mr. Andy Wilk (w/copy of encl.)



**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>M37 2006-0003</u>
FILE NAME:	<u>HARMONY CLAIM</u>
TYPE: <u>M37</u>	RECEIVED BY: <u>JS</u>
FEE PAID: <u>\$1000</u>	CHECK/CASH: <u>CH</u>
SUBMITTED: <u>11-29-06</u>	LWI DESIG: _____
LAND USE DESIG: _____	NAC: <u>RW</u>

**RECEIVED**

NOV 29 2006

City of Beaverton  
 Development Services

**MEASURE 37 CLAIM FORM**

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

COMPANY: Harmony Investments Limited Partnership  
 ADDRESS: 10605 SW Allen Blvd.  
 (CITY, STATE, ZIP) Beaverton, OR 97005  
 PHONE: 503-526-2323 FAX: 503-350-5579 E-MAIL: ajwilk@comcast.net

SIGNATURE: \_\_\_\_\_ CONTACT: \_\_\_\_\_  
 (Original Signature Required)  
 SIGNATURE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_  
 (Original Signature Required) (Original Signature Required)

**REPRESENTATIVE:**  Check box if Primary Contact

COMPANY: Tonkon Torp LLP  
 ADDRESS: 888 SW 5th Avenue, Suite 1600  
 (CITY, STATE, ZIP) Portland, OR 97204  
 PHONE: 503-802-2054 FAX: 503-972-3754 E-MAIL: davidp@tonkon.com  
 SIGNATURE: \_\_\_\_\_ CONTACT: David J. Petersen  
 (Original Signature Required)

**PROPERTY INFORMATION (REQUIRED)**

SITE ADDRESS: 10605 SW Allen Blvd.

**CONTIGUOUS SITES UNDER SAME OWNERSHIP:**

ASSESSOR'S MAP & TAX LOT #	LOT SIZE	ZONING DISTRICT
<u>1S114CC 00400</u>	<u>11.47 ac</u>	<u>IP</u>
_____	_____	_____
_____	_____	_____

ASSESSOR'S MAP & TAX LOT #	LOT SIZE	ZONING DISTRICT
_____	_____	_____
_____	_____	_____
_____	_____	_____

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](http://www.ci.beaverton.or.us)

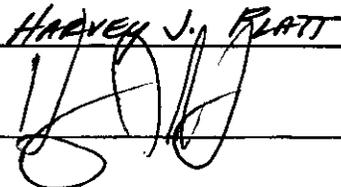
**MEASURE 37 CLAIM FORM**

**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 \$3,441,000 (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).

*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.*

Print Name HARVEY J. PLATT  
 Signature 

Telephone Number n/a  
 Date 11/28/06

**Harmony Investments Limited Partnership  
Measure 37 Claim  
10605 SW Allen Boulevard, Beaverton**

**RECEIVED**  
NOV 29 2006  
City of Beaverton  
Development Services

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

A. Names and Addresses of Owners Within 500 Feet: The application will be supplemented with the required information as soon as it is available.

B. Copy of Land Use and Enforcement Orders: The requirement to identify prior City enforcement of the identified regulations is not permitted under Section 7 of Measure 37 (ORS 197.352(7)), 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 (ORS 197.352(5)) 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. 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.

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 property, there are none.

C. Title Report and Proof of Ownership: A current status of record title report showing title vested in Harmony Investments Limited Partnership ("Harmony") is attached as Exhibit A. The title report includes a vesting deed showing that Harmony acquired title to the property as M&J Investment Company, an Oregon general partnership, on July 10, 1986. M&J Investment Company converted to a limited partnership pursuant to ORS 67.345 on June 26, 1998, and changed its name to Harmony Investments Limited Partnership, as evidenced by the

Certificate of Limited Partnership attached as Exhibit B. Conversion from a general partnership to a limited partnership is merely a change in the business form of the owner, not a change in the identity of the owner. Instead, "the business entity continues its existence despite the conversion [and] title to all real estate and other property owned by the converting business entity is vested in the converted business entity without reversion or impairment." ORS 67.348(1)(a) and (b). Consequently, Harmony is and has been the current owner of the Property continuously since July 10, 1986.

D. Identification of Regulations For Which Claim Is Made. Measure 37 does not require the claimant to identify specific regulations to which the claim is addressed, and any such requirement in the Beaverton Code is contrary to law. The relevant fact is the date of acquisition, and compensation should be paid for, or a waiver granted of, all land use regulations negatively affecting the value of the property enacted after that date. Consequently, this claim is for compensation for, or a waiver of, all land use regulations that negatively impact the value of the property and have been made applicable to the property after July 10, 1986.

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, and in an amount no less than the amount 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.*

The property is within the city limits. The claim is for all land use regulations made applicable to the property after July 10, 1986 which negatively affect the property's value.

*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 property after July 10, 1986 restrict the use of the property in comparison to what was permitted on that date. 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.*

See part F below.

*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.

*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 Part F below.

F. Amount of Claim. As noted above, the relevant date for purposes of this claim is July 10, 1986. It cannot seriously be disputed that the land use regulations made applicable to the property after that date collectively have caused a substantial reduction in the property's value, compared to its value should those regulations not apply.

To provide just one example, if land use regulations enacted after July 10, 1986 that prohibit the use of the property for retail or office uses were waived, the value of the property would increase by at least \$300,000 per acre and probably more (see letter from Mr. George Slevin attached as Exhibit C). Mr. Slevin's letter indicates that the property in its current industrial use is worth between \$260,000 and \$350,000 per acre. If retail or office uses were permitted, the property would be worth between \$650,000 and \$2,000,000 per acre. Even if one assumes the high end of the range for the current use and the low end of the range for the prohibited uses, the regulations have a negative value impact of \$300,000 per acre. At 11.47 acres, the total lost value is at least \$3,441,000.

G. Appraisal Report. 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,<sup>1</sup> 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 discussed above in Part F, the prohibition of use of the property for retail or office uses alone has a negative impact on the value of the property of at least \$3,441,000. The cumulative negative impact on the value of the property from all land use regulations within the scope of this claim certainly is much higher. To our knowledge there has not been a single Measure 37 claim anywhere in the state where compensation of more than \$50,000 has been awarded rather than a waiver granted, and it seems highly unlikely the City is going to consider payment of compensation in the neighborhood of \$3,441,000 or higher on this claim. Thus, neither of the situations are presented that might justify the need for an appraisal here. The letter attached as Exhibit C is sufficient evidence to demonstrate that the regulations in question have reduced the fair market value of the property, entitling the applicant to have its claim granted.

H. 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.

---

<sup>1</sup> <http://measure37.com/measure%2037/faq.htm#14>

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 property after July 10, 1986 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 property after July 10, 1986 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 property since July 10, 1986 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. A copy of the most recent property tax statement for the property is attached as Exhibit D. The current tenant of the property is Platt Electric Supply, Inc.

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.





**Chicago Title Insurance Company of Oregon**

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

**RECEIVED**

NOV 29 2006

City of Beaverton  
Development Services

**STATUS OF RECORD TITLE**

November 28, 2006

Order No.: 434511

TO: Tonkon Torp LLP  
1600 Pioneer Tower, 888 SW Fifth Ave.  
Portland, OR 97204

ATTN.: David J. Petersen

Customer Ref : Harmony Investments (Beaverton property)

Charge: \$200.00

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

See Legal Description Attached Hereto

*Vestee: Harmony Investments Limited Partnership, an Oregon limited partnership, successor in interest to M & J Investment Company, an Oregon general partnership*

Dated as of: November 17, 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.

LEGAL DESCRIPTION:

All that certain parcel of land situated in Section 15, Township 1 South, Range 1 West, Willamette Base and Meridian, in the City of Beaverton, County of Washington and State of Oregon, described as follows:

Commencing at the Southeast corner of said Section 15; thence North  $88^{\circ}35'02''$  West along the South line thereof, 118.25 feet to the true point of beginning of the parcel of land to be described; thence North  $88^{\circ}35'02''$  West continuing along said South line, 501.63 feet to the Southerly prolongation of the Easterly line of that certain 7.77 acre parcel of land described in Deed, dated January 7, 1966, from Southern Pacific Company to D.H. Overmyer Warehouse Co., recorded February 4, 1966 in Book 587, Page 193, Film Records of said County; thence North  $1^{\circ}51'05''$  East along said prolongation and Easterly line, also being along the East line of 107th Avenue, 1019.61 feet to the Southerly line of that certain 5.450 acre parcel of land described in Deed, dated September 26, 1969 from Southern Pacific Company to American International Forest Products, Inc., recorded November 24, 1969 in Book 763, Page 512, Film Records of said County; thence South  $88^{\circ}03'04''$  East along said Southerly line 511.64 feet (shown as 510.54 feet in last said Deed) to the Southeasterly corner thereof; thence South  $1^{\circ}51'05''$  West along the Southerly prolongation of the Easterly line of said land, 120.09 feet to the Northerly line of the land now of Georgia Pacific Corporation; thence North  $88^{\circ}03'04''$  West along said Northerly line 10.02 feet to the Northwest corner of last said land; thence South  $1^{\circ}51'05''$  West along the Westerly line of last said land, 894.66 feet to the true point of beginning.

EXCEPTING THEREFROM that portion of said property lying below a depth of 500 feet measured vertically from the contour of the surface thereof, as excepted in Deed from Southern Pacific Transportation Company, recorded November 6, 1974 in Book 999, Page 613, Records of Washington County, Oregon.

ALSO EXCEPTING THEREFROM that parcel deeded to the State of Oregon, by and through its State Highway Department, recorded November 14, 1978, fee number 78050252.

**RECEIVED**

**NOV 29 2006**

City of Beaverton  
Development Services

Order No.: 434511

Said property is subject to the following on record matters:

1. City liens, if any, of the City of Beaverton. No search has been made or will be made as to the existence of such liens.
2. The premises herein described are within and subject to the statutory powers including the power of assessment of Clean Water Services.
3. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways
4. An easement created by instrument, including terms and provisions thereof;  
Dated: December 7, 1970  
Recorded: January 27, 1971  
Book: 805  
Page: 39  
In Favor Of: City of Beaverton  
For: Roadway purposes  
Affects: A strip of land 10 feet in width across the southerly portion of the subject property
5. An easement created by instrument, including terms and provisions thereof;  
Dated: June 14, 1974  
Recorded: November 6, 1974  
Book: 999  
Page: 613  
In Favor Of: Southern Pacific Transportation Company  
For: Railroad, transportation and communication purposes and sideyard clearance  
Affects: The easterly portion of the subject property
6. An easement created by instrument, including terms and provisions thereof,  
Dated: April 13, 1978  
Recorded: April 18, 1978  
Recorder's Fee No.: 78 17469  
In Favor Of: General Telephone Company of the Northwest, Inc., a corporation and Portland General Electric, a corporation  
For: Communication and power services  
Affects: A ten foot wide utility easement bordering the southerly property line.
7. Trust Deed, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein;  
Dated: October 28, 1996  
Recorded: November 21, 1996  
Recorder's Fee No.: 96104216  
Amount: \$4,800,000.00  
Grantor: M & J Investment Company, an Oregon general partnership  
Trustee: Wells Fargo Bank (Arizona), National Association  
Beneficiary: Wells Fargo Bank, National Association  
Loan No.: 5435638208

Reaffirmation of Assumption, including the terms and provisions thereof,

Dated: March 1, 1999  
Recorded: September 30, 1999  
Recorder's Fee No.: 99111829  
By and Between: Harmony Investments Limited Partnership, an Oregon limited partnership ("Successor") and Platt Electric Supply Inc., an Oregon corporation ("Guarantor") in favor of Wells Fargo Bank, National Association ("Bank")

NOTE: Taxes for the fiscal year 2006-2007, paid in full;  
Amount: \$109,750.70

9014710056 rdw

020

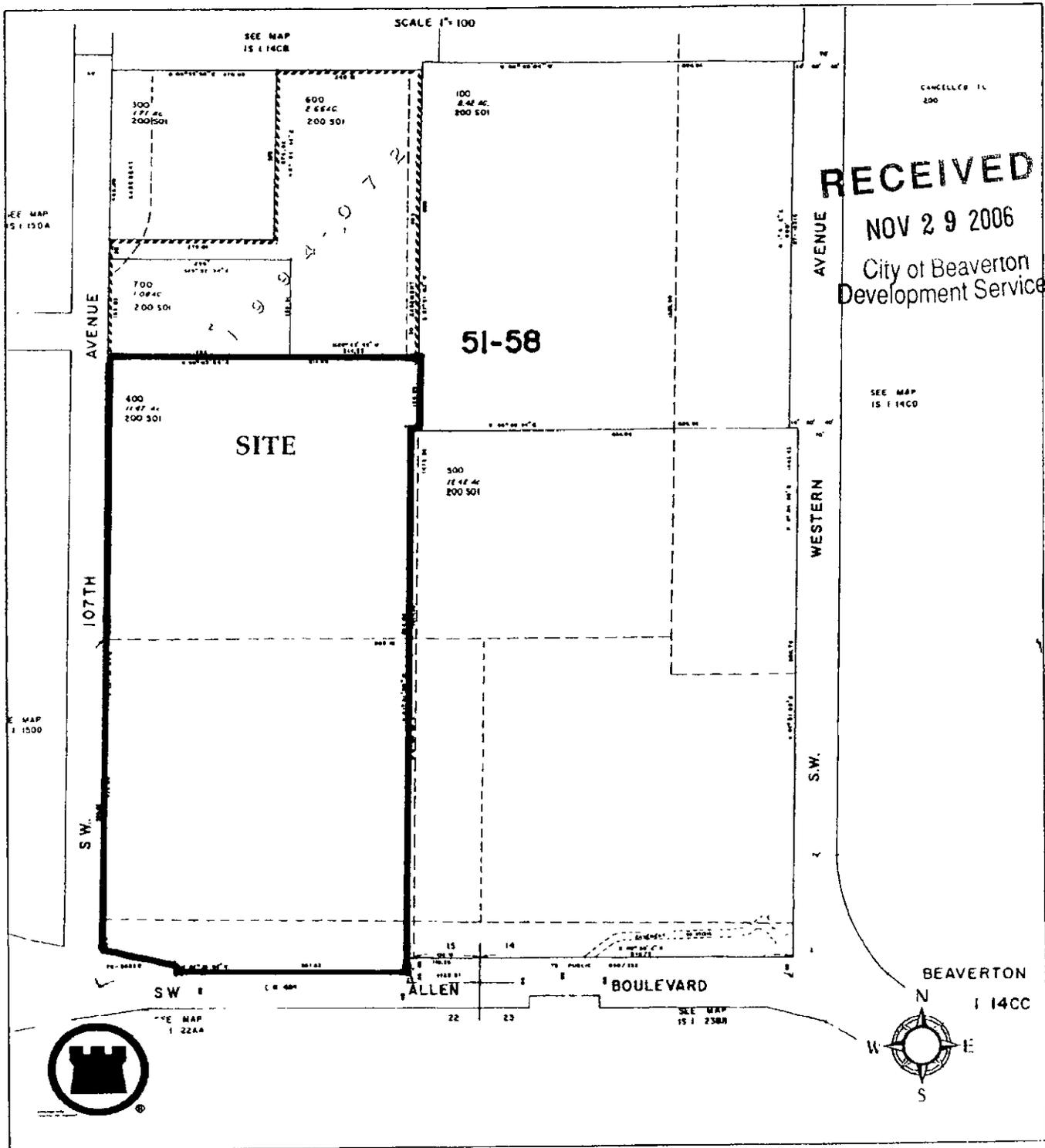
Order No.: 434511

Levy Code:	051-58
Account No.:	R103168
Map No.:	1S114CC
Tax Lot No.:	00400

NOTE: Property address is identified as:  
10605 SW Allen Boulevard and 5620 SW 107th Avenue, Beaverton, Oregon 97005

END OF REPORT

ml/ml  
November 28, 2006



# CHICAGO TITLE

"This plat is for your aid in locating your land with reference to streets and other parcels. While this plat is believed to be correct, the company assumes no liability for any loss occurring by reason of reliance thereon."

Map No. 1S114CC 00400  
CHICAGO TITLE INSURANCE COMPANY  
10135 S.E. SUNNYSIDE ROAD Suite 200  
CLACKAMAS, OREGON 97015

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TI

TICOR TITLE  
INSURANCE

86031215

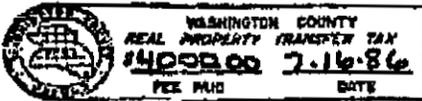
STATUTORY WARRANTY DEED

YOUNG & RUBICAM INC., a New York corporation, Grantor, conveys and warrants to M & J INVESTMENT COMPANY, an Oregon general partnership, Grantee, the real property described on the attached Exhibit A, free of encumbrances except as specifically set forth therein.

The true consideration for this conveyance is \$4,000,000.

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.

DATED, this 10<sup>th</sup> day of July, 1986.



YOUNG & RUBICAM INC., a New York corporation

By: Carl E. Sturges  
(Title)

STATE OF New York }  
County of New York } ss.

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 1986, by Carl E. Sturges who is Senior Vice President of YOUNG & RUBICAM INC., a New York corporation, on behalf of the corporation.

Robert Charles  
Notary Public for  
Residing at: 25 W. 26th St, New York, NY 10001  
My commission expires: 12/31/87  
Qualified in New York State  
Commission Expires 12/31/87

Until a change is requested, all my statements shall be sent to the following address: M & J Investment Company, 1305 N.W. Davis Portland OR

1 - STATUTORY WARRANTY DEED

AFTER RECORDING RETURN TO: Tonkon, Torg, Galen, Harmadak & Booth Attorneys at Law  
Attn: Mr. Owen D. Blank, Attorney at Law  
1001 S. W. 5th - Suite 1800  
Portland OR 97204-1162

1-3

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NOV 29 2006

City of Beaverton  
Development Services

04 07'00 12127

M 503 254 9467 STAGL RIVER PTL.

M/

**EXHIBIT A**  
Description of Property

All that certain parcel of land situate in Section 15, Township 1 South, Range 1 West, Willamette Base and Meridian, City of Beaverton, County of Washington, State of Oregon, described as follows:

Commencing at the Southeast corner of said Section 15, thence North 88° 35' 02" West along the South line thereof, 119.25 feet to the true point of beginning of the parcel of land to be described, thence North 88° 35' 02" West continuing along said South line, 501.63 feet to the southerly prolongation of the Easterly line of that certain 7.77 acre parcel of land described in Deed, dated January 7, 1966, from Southern Pacific Company to D.H. Overmyer Warehouse Co., recorded February 4, 1966 in Book 547, page 183, Film Records of said County; thence North 1° 51' 05" East along said prolongation and Easterly line, also being along the East line of 107th Avenue, 1019.61 feet to the southerly line of that certain 5.450 acre parcel of land described in Deed, dated September 26, 1969 from Southern Pacific Company to American International Forest Products, Inc., recorded November 24, 1969 in Book 763, page 512, Film Records of said County; thence South 88° 03' 04" East along said southerly line 511.64 feet (shown as 510.94 feet in last said deed) to the Southeast corner thereof; thence South 1° 52' 05" West along the southerly prolongation of the Easterly line of said land, 120.29 feet to the Northerly line of the land now of Georgia Pacific Corporation; thence North 88° 03' 04" West along said Northerly line 10.02 feet to the Northwest corner of last said land; thence South 1° 51' 05" West along the Westerly line of last said land, 894.66 feet to the true point of beginning.

EXCEPTING THEREFROM that portion of said property lying below a depth of 500 feet measured vertically from the contour of the surface thereof, as excepted in Deed from Southern Pacific Transportation Company, recorded November 6, 1974 in Book 899, page 613, Records of Washington County, Oregon.

ALSO EXCEPTING THEREFROM that parcel deeded to the State of Oregon, by and through its State Highway Department, recorded November 14, 1978, fee number 78010252.

**SUBJECT TO:**

1. Current installment of property taxes and assessments affecting the Property.
2. The premises herein described are within and subject to the statutory powers including the power of assessment of the Unified Sewerage Agency of Washington County, a municipal corporation.

2

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City of Beaverton  
Development Services

EXHIBIT A - continued

3. Rights of the public in streets, roads and highways as disclosed by Oregon Bargain and Sale Deed, including the terms and provisions thereof,

From: Southern Pacific Transportation Company, a Delaware corporation  
To: Payless Properties Corporation, an Oregon corporation

Recorded: November 6, 1974 in Book 999, at page 613, Records of Washington County, Oregon.

4. An easement, including the terms and provisions thereof,

From: Southern Pacific Transportation Company, a Delaware corporation  
To: The City of Beaverton

Recorded: January 27, 1971 in Book 805 at Page 39, Records of Washington County, Oregon.

5. An easement as reserved in deed, including the terms and provisions thereof,

From: Southern Pacific Transportation Company, a Delaware corporation  
To: Payless Properties Corporation, an Oregon corporation

Recorded: November 6, 1974, in Book 999, at page 615, Records of Washington County, Oregon.

6. An easement, including the terms and provisions thereof,

From: Payless Drug Stores Northwest, Inc.  
To: General Telephone Company of the Northwest, Inc., corporation

Recorded: April 18, 1978 under Fee No.: 78017469, Records of Washington County, Oregon.

STATE OF OREGON }  
County of Washington } 88

I, Donald W. Mason, 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 of records of said county.

Donald W. Mason, Director of Assessment and Taxation, Ex-Officio County Clerk

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NOV 29 2006

City of Beaverton  
Development Services

3

1996 JUL 16 PM 4:08



Certificate of Limited Partnership

For office use only



Phone: (503) 986-2200  
Fax: (503) 378-4381

Secretary of State  
Corporation Division  
255 Capitol St. NE, Suite 151  
Salem, OR 97310-1327

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City of Beaverton  
Development Services

FILED

JUN 26 1998

OREGON  
SECRETARY OF STATE

Registry Number:

640863-83

Attach Additional Sheet if Necessary  
Please Type or Print Legibly in Black Ink

1) NAME (Must contain the words "Limited Partnership" without abbreviation.)  
Harmony Investments Limited Partnership

2) LATEST DATE UPON WHICH THE PARTNERSHIP IS TO DISSOLVE  
December 31, 2027

3) ADDRESS OF THE OFFICE WHERE RECORDS OF THE PARTNERSHIP  
WILL BE KEPT (Must be an Oregon Street Address.)  
888 S.W. 5th Avenue  
Suite 1600  
Portland, Oregon 97204

4) NAME AND STREET ADDRESS OF INITIAL REGISTERED AGENT  
(Must be an Oregon Street Address which is identical to the registered  
agent's business office.)  
Owen D. Blank  
888 S.W. 5th Avenue  
Suite 1600  
Portland, Oregon 97204

5) ADDRESS WHERE THE DIVISION MAY MAIL NOTICES  
888 S.W. 5th Avenue  
Suite 1600  
Portland, Oregon 97204

6) NAME AND ADDRESS OF EACH GENERAL PARTNER  
Harmony Capital LLC, an Oregon limited  
liability company  
10604 S.W. Allen Boulevard #633706-8  
Beaverton, Oregon 97005

9) The partnership was converted from a  
general to a limited partnership  
pursuant to ORS 67.345.

10) The former name of the partnership was  
M&J Investment Company.

7) EXECUTION (All general partners must sign.)

Printed Name  
Harmony Capital LLC  
By: Harvey Platt, Member

Signature

8) CONTACT NAME  
Ingolf Noto

DAYTIME PHONE NUMBER  
(503) 802-2113

FEEES

Make check for \$40 payable to  
"Corporation Division"

NOTE: Filing fees may be paid  
with VISA or MasterCard. The  
card number and expiration date  
should be submitted on a  
separate sheet for your  
protection

027



November 17, 2006

One SW Columbia Street, Suite 950  
Portland, Oregon 97258  
Tel: 503.221 9900  
Fax: 503.221 2277  
www.gvakm.com

Mr. David J. Petersen  
Tonkon Torp LLP  
1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204

**RECEIVED**

NOV 29 2006

City of Beaverton  
Development Services

Re: 10605 SW Allen Boulevard, Beaverton, Oregon

Dear Mr. Petersen:

I am a commercial real estate broker with 13 years experience in the Portland metropolitan area market. As part of my business, I am familiar with the marketplace for land that is available for a variety of commercial uses. Furthermore, I am specifically familiar with the above-referenced property, which consists of about 11.47 acres of improved industrially-zoned property currently used as a distribution center.

I understand that the owner of this property seeks to obtain a waiver under Ballot Measure 37 of all land use regulations negatively impacting the property's value that were enacted after the date the owner acquired the property. In my opinion, it is reasonable to assume that the value of the property would increase significantly if the City waived certain land use regulations applied to the property after the owner acquired it. For example, based on my knowledge of land values in the area of this property, it is my opinion that as industrially-zoned land, this property is currently worth about \$260,000 to \$350,000 per acre. If the owner were able to obtain waivers of land use regulations so that retail use of the property was permitted, the value of the property would be about \$870,000 to \$2,000,000 per acre. Similarly, if the owner were able to obtain waivers of land use regulations so that office use of the property was permitted, the value of the property would be about \$650,000 to \$1,100,000 per acre. This is not an exhaustive analysis of the impact of the land use regulations within the scope of the owner's requested Measure 37 claim, but rather an illustration of a particular negative impact to the property's value arising out of a particular restriction on the use of the property.

Please feel free to contact me if you have further questions.

Sincerely,



George Slevin  
GVA Kidder Matthews

009287\00029\726108 V001



**PROPERTY DESCRIPTION**                      **MAP: 15114CC-00400**                      **ACCOUNT NO: R103168**

**SITUS: 10605 SW ALLEN BLVD,                      CODE AREA: 051.58**

ACRES 11.47

**2006-2007 CURRENT TAX BY DISTRICT:**

COLL-PORTLAND 1,793.95  
 BSD-NW REGIONAL 975.63  
 SCHOOL-BEAVERTON 29,770.19  
 EDUCATION TAXES: \$32,539.77

HARMONY INVESTMENTS LP  
 PO BOX 3167  
 PORTLAND, OR 97208

WASHINGTON COUNTY 14,262.16  
 REG-METRO SERVICE 612.79  
 PORT-PORTLAND 444.68  
 PARK-TUALATIN HILLS 8,292.90  
 FIRE-TV FIRE & RESCUE 9,675.15  
 CITY-BEAVERTON 25,041.72  
 TV FIRE & RESCUE LOL 1,585.88  
 GENERAL GOVERNMENT TAXES: \$59,915.28

**VALUES: LAST YEAR THIS YEAR**

**MARKET VALUES:**  
 LAND 2,473,170 2,698,000  
 STRUCTURE 5,955,160 5,813,610  
 TOTAL RMV VALUE 8,428,330 8,511,610

**TAXABLE VALUES:**  
 ASSESSED VALUE 6,158,770 6,343,530

**PROPERTY TAXES: \$118,391.29 \$109,750.70**

BOND-WASHINGTON COUNTY 1,275.05  
 BOND-METRO SERVICE DIST 1,151.99  
 BOND-PCC 1,307.40  
 BOND-SD #48-BEAVERTON 10,130.62  
 BOND-TUAL HILLS PARK & REC 857.65  
 BOND-TV FIRE & RESCUE 280.38  
 BOND-CITY OF BEAVERTON 1,675.33  
 BOND-TRI-MET 617.23  
 BOND AND MISC TAX: \$17,295.65

2006-07 TAX (Before Discount) \$109,750.70

**APPEAL DEADLINE** January 2nd, 2007  
 Value Questions Call 503-846-8826  
 Tax Questions Call 503-846-8801  
 Personal Property Questions Call 503-846-8741  
 Other Questions Call 503-846-8741

**RECEIVED**

NOV 29 2006

000-00-4901 Platt

City of Beaverton  
 Development Services

**PROPERTY TAX PAYMENT OPTIONS**

(See back of Statement for payment instructions.)

Pay	Due	Discount	Net Amount Due
In Full	11/15/06	3,292.52	\$106,458.18
2/3	11/15/06	1,463.34	\$71,703.80
1/3	11/15/06	NONE	\$36,583.57

PLEASE MAKE PAYMENT TO: Washington County Tax

**DELINQUENT TAXES:** NO DELINQUENT TAXES DUE

(See back for explanation of taxes marked with an asterisk (\*).  
 Delinquent Tax Total is included in payment options to the left.)

**TOTAL (After Discount): \$106,458.18**

All Payments Processed Upon Receipt

Make Online Payments at:  
<https://ecommerce.washington.or.us/propertytax>  
 Pay by Phone at: (888) 510-9274

Tear Here                      PLEASE RETURN THIS PORTION WITH PAYMENT - SEE BACK OF STATEMENT FOR INSTRUCTIONS                      Tear Here

2006-2007 Property Tax Payment Stub                      WASHINGTON COUNTY, OREGON                      **ACCOUNT NO: R103168**

**SITUS: 10605 SW ALLEN BLVD,**

Mailing address change or name change on back of stub.

FULL PAYMENT (Includes 3% Discount)  
 2/3 PAYMENT (Includes 2% Discount)  
 1/3 PAYMENT (No Discount Offered)

Unpaid DELINQUENT TAX DUE IS INCLUDED IN PAYMENT OPTIONS.  
 DUE: 11-15-06 ..... \$106,458.18  
 DUE: 11-15-06 ..... \$71,703.80  
 DUE: 11-15-06 ..... \$36,583.57  
 DISCOUNT IS LOST & INTEREST APPLIES AFTER DUE DATE.

ENTER AMOUNT PAID

Please Make Payment to:  
 WASHINGTON COUNTY  
 Property Tax Payment Center  
 P. O. Box 3587  
 Portland, OR 97208-3587

031

HARMONY INVESTMENTS LP  
 PO BOX 3167  
 PORTLAND, OR 97208



# CITY of BEAVERTON

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

December 14, 2006

David Petersen  
Tonkon Torp LLP  
888 SW 5<sup>th</sup> Avenue  
Portland OR 97204-2099

**RE: Harmony Investments LP Measure 37 Claim (M37 2006-0003)**

Mr. Petersen:

As you have noted in your application materials dated received November 29, 2006, you state that you are claiming compensation on the behalf of your client, Harmony Investments, 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. 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.

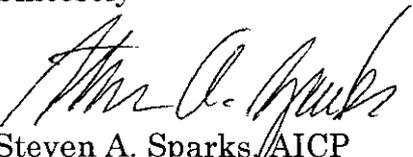
Pursuant to Section 2.07.015, the following information must be submitted to find that the application for a compensation claim is complete:

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.
2. Evidence that any regulation being challenged enhances the value of the property.
3. Evidence that the City has enforced on the subject property a regulation for which the claim has been filed.
4. 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.

5. 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.
6. A copy of all enforcement actions taken by any governmental body as regards the Property.

Please submit this information by January 16, 2007. 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 decision by providing the above information would be appreciated.

Sincerely



Steven A. Sparks, AICP  
Development Services Manager

c Joe Grillo, AICP  
Alan Rappleyea, AICP



1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, Oregon 97204  
503.221.1440

DAVID J. PETERSEN  
ADMITTED TO PRACTICE IN OREGON AND CALIFORNIA

503.802.2054  
FAX 503.972.3754  
DavidP@tonkon.com

December 7, 2006

**VIA 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: Measure 37 Claims for Harmony Investments (10605 SW Allen Blvd.)  
and Grabhorn/Snyder (10720 SW Allen Blvd.)

Dear Mr. Sparks:

As a supplement to each of the above-referenced Measure 37 claims, enclosed please find the required list of names and addresses of owners within 500 feet of the subject properties. Please contact me if you have any questions.

Best regards,

A handwritten signature in black ink, appearing to read "David J. Petersen", written over a horizontal line.

David J. Petersen

DJP/DJP  
Enclosures

009287\00029\729559 V001

DEC 08 2006

COMMUNITY DEVELOP DEPT.

034

1S114CB00702  
30TH GROUP, LLC  
BY CARLETON MGMT INC  
11440 W BERNARDO CT #240  
SAN DIEGO CA 92127

1S114CC00500  
ABP OR (BEAVERTON) LLC  
BY ABP DISTRIBUTION HOLDINGS INC  
4300 WILDWOOD PKWY  
ATLANTA GA 30339

1S123BB00500  
BEAVERTON SCHOOL DIST #48J  
16550 SW MERLO RD  
BEAVERTON OR 97006

1S114CC00300  
F C FOREST PRODUCTS LLC  
PO BOX 4209  
PORTLAND OR 97208

1S115DD00100  
FRY, GEORGE F JR/HELEN  
PO BOX 685  
WILSON WY 83014

1S122AA00300  
GRABHORN, ALTON F  
BY HOLIDAY INN  
25425 SW 95TH AVE  
WILSONVILLE OR 97070

1S114CC00400  
HARMONY INVESTMENTS LP  
PO BOX 3167  
PORTLAND OR 97208

1S114CC00600  
KELLER BEAVERTON LIMITED  
PARTNERSHIP  
ATTN: LAURIE MCGIBBON  
3209 17TH AVE WEST  
SEATTLE WA 98119

1S114CC00700  
LEISURE BEAVERTON PARTNERSHIP  
ATTN: LAURIE MCGIBBON  
PO BOX 79014  
SEATTLE WA 98119

1S115DA01000  
MCDONALD, CHARLES H  
BY SAVAGE WHOLESale  
PO BOX 8100  
TACOMA WA 98418

1S122AA00100  
PARK PLAZA OFFICES, LLC  
9701 SE MCLOUGHLIN BLVD  
PORTLAND OR 97222

1S123BB00400  
REA REAL ESTATE LLC  
3701 7TH AVE S  
SEATTLE WA 98134

1S115DA00800  
ROSE PROPERTY MANAGEMENT CORP  
6149 SW SHATTUCK RD  
PORTLAND OR 97221

1S115DA00700  
SCHNITZER INVESTMENT CORP  
PO BOX 10047  
PORTLAND OR 97296

1S123BB00300  
WESTON INVESTMENT CO LLC  
BY POORMAN-DOUGLAS CORP  
10300 SW ALLEN BLVD  
BEAVERTON OR 97005

1S114CB00600  
WEYERHAEUSER COMPANY  
WBM ACCOUNTING EC4-2A4  
PO BOX 9777  
FEDERAL WAY WA 98063

1S114CC00100  
WEYERHAEUSER COMPANY  
TAX DEPT CH2E29  
PO BOX 9777  
FEDERAL WAY WA 98063

DAVID J PETERSEN  
TONKON TORP LL[  
888 SW 5<sup>TH</sup> AVE #1600  
PORTLAND OR 97204

ANDREW BYNUM CHAIR  
DENNEY WHITFORD NAC  
10440 SW HEATHER LN  
BEAVERTON OR 97008

MORGAN SELPH VICE-CHAIR  
DENNEY WHITFORD NAC  
7305 SW 101<sup>ST</sup> AVE  
BEAVERTON OR 97008

PENNY DOUGLAS CHAIR  
VOSE NAC  
6170 SW MAD HATTER LANE  
BEAVERTON OR 97008

CHRISTOPHER REDMOND VICE-CHAIR  
VOSE NAC  
7470 SW ALPINE DR  
BEAVERTON OR 97008

RALEIGH WEST NAC  
NEIGHBORHOOD PROGRAM  
PO BOX 4755  
BEAVERTON OR 97076

Harmony Investments  
10605 SW Allen

JAN 09 2007

COMMUNITY DEVELOP DEPT.

1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, Oregon 97204  
503.221.1440

DAVID J. PETERSEN  
ADMITTED TO PRACTICE IN OREGON AND CALIFORNIA

503.802.2054  
FAX 503.972.3754  
DavidP@tonkon.com

January 8, 2007

Mr. Steven A. Sparks  
Development Services Manager  
City of Beaverton  
4755 SW Griffith Drive  
P. O. Box 4755  
Beaverton, OR 97076

Re: Harmony Investments Limited Partnership Measure 37 Claim  
Your File No. M37 2006-0003

Dear Mr. Sparks:

We are in receipt of your incompleteness notice of December 14, 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 date of acquisition as July 10, 1986. The applicant seeks compensation for, or a waiver of, all land use regulations negatively affecting the value of the property that were enacted after that date.

2. Evidence that any regulation being challenged enhances the value of the property.

I think you mean to request evidence that any regulation being challenged *reduces* rather than *enhances* the value of the property. This evidence was provided as Exhibit C to the claim, which demonstrates that one regulation alone – prohibition of retail or office uses – has a negative impact on the value of the property of at least \$3,441,000. 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.

3. Evidence that the City has enforced on the subject property a regulation for which the claim has been filed.

As explained in part B of the claim, 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.

4. 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.

As explained in part G of the claim, 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 explained in the claim, 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 date for purposes of this claim is July 10, 1986. It cannot seriously be disputed that land use regulations made applicable to the property after that date collectively have caused a substantial reduction in the property's value, compared to its value should those regulations not apply. As noted in the letter attached to the claim as Exhibit C, the effect of one regulation alone – prohibition of retail or office uses – has a negative impact on the value of the property of at least \$3,441,000. 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 of more than \$50,000 has been awarded rather than a waiver granted, and it seems highly unlikely the City is going to consider payment of compensation in the neighborhood of \$3.4 million or higher on this claim. Thus, neither of the situations are presented that might justify the need for an appraisal here. Exhibit C to the claim is sufficient evidence to demonstrate that land use regulations enacted after July 10, 1986 have reduced the fair market value of the property, entitling the claimant to have those regulations waived.

5. 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.

6. A copy of all enforcement actions taken by any governmental body as regards the Property.

There are none.

Mr. Steven A. Sparks  
January 8, 2007  
Page 4

Please process the claim based on the November 29, 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 May 29, 2007. Thank you for your cooperation.

Best regards,

A handwritten signature in black ink, appearing to read "David J. Petersen", with a long horizontal flourish extending to the right.

David J. Petersen

DJP/DJP

cc: Mr. Andrew Wilk, Harmony Investments Limited Partnership (via facsimile)

009287\00029\733110 V001

INDUSTRIAL - IP, LI & CI

Section 52. Purpose

52.1 Industrial Park or "IP" District. The Industrial Park District is intended to provide sites for manufacturing, distribution and industrial uses.

52.2 Campus Industrial "CI" District. The Campus Industrial or "CI" District is intended to provide areas for the combining of light manufacturing, office and limited retail uses in an "employment activity center" concept.

52.3 Light Industrial or "LI" District. The Light Industrial District or "LI" District is intended to provide for general industrial activities which require processing, fabrication and storage, including outdoor storage areas, heavy equipment and other uses not compatible in Industrial Park or Campus Industrial areas.

Section 53. Uses Within the Industrial Park District

"P" - Permitted uses.

"C" - Conditional uses which may be permitted subject to the approval of a Conditional Use Permit.

"X" - Uses specifically prohibited.

	<u>IP</u>
53.1 Manufacturing, fabricating, processing, packing or storage except the following uses, which are prohibited in the districts:	P
A. Any use having the primary function of storing utilizing or manufacturing explosive materials.	X
B. Any principal use involving the rendering of fats, the slaughtering of fish or meat, or the fermenting of foods such as sauerkraut, vinegar or yeast.	X
53.2 Wholesale and distributive activities.	P
53.3 Public services or utility uses.	P
53.4 Research laboratory.	P
53.5 Public parks, parkways, recreation facilities, trails and related facilities.	P
53.6 Heliport (See also Special Regulations chapter, Aircraft Landing Facilities)	C

3/86

53.7	Facilities related to utility distribution such as substations, water towers, pump stations, other than transmission lines.	C
53.8	Motor freight terminal	C
53.9	Administrative, employee physical fitness, educational and other related activities and facilities subordinate to a permitted use. (ORD 3136; October 1979)	
53.10	Cold storage plants.	P
53.11	Equipment sales, including incidental service and repair (excludes retail sales of specific items on display).	P
53.12	Fuel oil distributors.	P
53.13	Printing, publishing and book binding.	P
53.14	Processing uses such as bottling plants, creameries, laboratories, blueprinting and photocopying, laundries, carpet and rug cleaning plants, cleaning and dyeing plants, tire retreading, recapping and rebuilding.	P
53.15	Retail or combination retail-wholesale lumber and/or building materials yard, not including concrete mixing.	X
53.16	Storage or sale yard for contractors equipment, house mover, delivery vehicles, transit storage, trucking terminal and used equipment in operable condition.	X
53.17	Storage yard for building materials; except bulk materials such as sand, gravel and the like are not allowed in the IP zone.	P
53.18	Trailer, recreational vehicle or boat storage only.	P
53.19	Accessory structures and uses to a particular permitted use.	P
53.20	Trailer sales or repair.	X
53.21	Restaurants, cafes except drive-in restaurants (windows) and take-out restaurants serving market areas outside the Industrial Park District.	C
53.22	Railroad tracks and facilities such as switching yards, spur or holding tracks, freight depots but not within 200' of a residential zone.	P
53.23	Salvage yards.	C

53.24 Office uses existing at the effective date of this ordinance or vested by this ordinance, subject to the provisions of Section 56.	P
53.25 Planned Unit Developments.	C
53.26 Vehicle repair shops (located entirely within an enclosed building). (ORD 3108; April, 1979)	X
53.27 Equipment rental agencies (ORD 3136; October 1979)	C
53.28 Auto, truck and trailer rental agencies (ORD 3162; March 1980)	C
53.29 Mini-storage facilities (ORD 3177; June 1980)	C
53.30 Nursery, day or child care facility (ORD 3184; July 1980) (See also Special Regulations chapter)	C
53.31 Surface parking lots as principal use (ORD 3204; January 1981) (See also Special Regulations chapter, Park 'n Ride Facilities)	P
53.32. Parking structures (ORD 3204; January 1981) (See also Special Regulations chapter, Park 'n Ride Facilities)	C
53.33 Solid Waste Transfer Stations (ORD 3499)	C

**Section 54. Uses Permitted Within the CI District.**

54.1 Up to 100 percent of the land area in a Development Control Area may provide for manufacturing, assembly, fabricating, processing, packing, storage and wholesale and distribution activities. These uses shall meet all of the following conditions:

A. Activities are entirely enclosed within a building or structure whose appearance is compatible with normal industrial or office building design.

B. Odors, noise, vibrations or other emissions are controlled within the confines of the building or structure.

C. Are not for servicing or use by the general public.

D. Do not entail outdoor storage of raw materials or finished products.

E. Do not entail movement of heavy equipment on and off the site, except truck deliveries.

F. Do not involve bringing live animals or the offal of dead animals to the site.

G. Do not involve outdoor testing of products or processes on the site.

H. Do not involve highly combustible, explosive or hazardous materials or waste.

Section 56. Site Development Requirements.

56.1	Land Area Standards	<u>CI</u>	<u>LI</u>	<u>IP</u>
	A. Minimum lot area	None	None	None
	B. Minimum area for new zoning district (acres)	25	None	None

In instances involving annexation, the Planning Director may authorize a minimum district area of less than 25 acres when it is determined that abutting land outside the City has a similar land use designation and that the area will develop as an employment center. For requests involving zone amendments, Council may approve a minimum district area of less than 25 acres when a similar determination is made. However, for purposes of determining the applicable Development Control Area, only that land area actually within the City shall be considered. (3475)

56.2	Minimum lot dimensions			
	A. Width	None	None	None
	B. Depth	None	None	None

56.3	Minimum yard setbacks			
	A. Front	35 ft.	35 ft.	35 ft.
	B. Side	10 ft.	10 ft.	10 ft.
	C. Rear	None	None	None
	D. Any yard abutting a residential zone	75 ft.	75 ft.	75 ft.

- E. No side or rear yard setbacks are required where side or rear property lines abut a railroad right-of-way or spur track.
- F. Reduction to setback standards. Under conditions outlined in Section 78, application may be made for zero side yard setbacks. (ORD 3494)

56.4	Maximum building height, without a conditional use permit, except as provided by Section 72 of this ordinance.	45 ft.	45 ft.	45 ft.
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56.5 Maximum building coverage. 60% 60% 60%

56.6 Fences, walls and hedges: Fencing shall be allowed inside a boundary planting screen.

56.7 Off-street parking: No parking shall be allowed within the first 20 feet of the front yard setback. Parking shall be permitted within side or rear yard setbacks; provided, however, when the side and/or rear yards abut a residential district there shall be no parking within the first 20 feet of the setback.

56.8 Off-street loading: In addition to the requirements of Section 89, off-street loading shall not be permitted within side or rear yard setbacks abutting a residential district or within front yard setbacks abutting any non-industrial zoning district unless the setback is increased to 75 feet and the first 20 feet from the property line is landscaped or screened.

56.9 Access: Access points shall minimize traffic congestion and avoid directing traffic into residential or local access streets. Whenever possible within an industrial zone, access to the public road shall be made to more than one industrial site.

56.10 No service roads, spur trackage, hardstands, outside storage areas, etc. shall be permitted within required yards adjacent to residential district.

56.11 Other required conditions within the Campus Industrial, Industrial Park and Light Industrial District:

A. All business, service, repair, processing, storage or merchandise display shall be conducted wholly within an enclosed building unless screened by a sight-obscuring fence or wall.

B. Motor vehicle, boat, or trailer storage lots shall be drained and surfaced with crushed rock or pavement except in those portions of the lot maintained as landscaped areas.

C. All materials, including wastes, shall be stored and all grounds shall be maintained in a manner which will not attract or aid the propagation of insects or rodents or create health or fire hazards. All areas for storage of waste shall be fully screened.

56.12 Supplementary Regulations: All uses shall be subject to Sections 71-84, Special Regulations.

56.13 Landscaping: Not less than 15% of the total lot area shall be landscaped.

56.14 Public parks, parkways, recreation facilities, trails and related facilities are exempt from these site development requirements.

**20.15.10. Industrial Park Districts: IP**

1. **Purpose.** The Industrial Park District or “IP” District is intended to provide sites for manufacturing, distribution and industrial uses.
2. **District Standards and Uses.** IP Districts and uses shall comply with the following:

A. Permitted Uses:

Unless otherwise prohibited or subject to a conditional use, the following uses and their accessory uses are permitted:

1. Manufacturing, fabricating, processing, packing or storage except the uses detailed in C.1. and C.2., which are prohibited in the districts.
2. Wholesale and distributive activities.
3. Public services or utility uses, including vehicle storage and, incidental service and repair. [ORD 4093; March 2000]
4. Research laboratory.
5. Public parks, parkways, recreation facilities, trails and related facilities.
6. Administrative, employee physical fitness, educational and other related activities and facilities subordinate to a permitted use. (ORD 3136; October 1979)
7. Cold storage plants.
8. Equipment sales, including incidental service and repair (excludes retail sales of specific items on display).
9. Fuel oil distributors.
10. Printing, publishing and book binding.

20.15.10.2.A.

11. Processing uses such as bottling plants, creameries, laboratories, blueprinting and photocopying, laundries, carpet and rug cleaning plants, cleaning and dyeing plants, tire retreading, recapping and rebuilding.
12. Storage yard for building materials; except bulk materials such as sand, gravel and the like are not permitted in the IP zone.
13. Trailer, recreational vehicle or boat storage only.
14. Accessory structures and uses to a particular permitted use.
15. Railroad tracks and facilities such as switching yards, spur or holding tracks, freight depots but not within 200' of a residential zone.
16. Office uses existing at the effective date of this ordinance or vested by this ordinance, subject to the provisions of Section 30.15.
17. Nursery, day or child care facility (ORD 3184; July 1980) (See also Special Use Regulations Section, Uses Requiring Special Regulations - Nursery Schools, Day or Child Care Facilities.)
18. Surface parking lots as principal use (ORD 3204; January 1981) (See also Special Use Regulations Section, Uses Requiring Special Regulations - Park and Ride Facilities.)
19. Privately owned recreational facilities such as fitness clubs, racquetball or handball clubs, tennis courts or swimming pools exclusive of spectator sports facilities. (ORD 3739)
20. Collocation of wireless communication facilities on an existing wireless communication facility tower [ORD 4248; April 2003]

20.15.10.2.

21. 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]
22. 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]
23. Temporary wireless communication facilities structures (See also Temporary Structures – Section 40.80) [ORD 4248; April 2003]
24. Up to and including two (2) satellite antennas less than five (5) meters in diameter on one (1) lot [ORD 4248; April 2003]
25. 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]

B. Conditional Uses: (Subject to Section 40.15 or Section 40.96 as applicable)

The following uses and their accessory uses may be permitted subject to the approval of a Conditional Use (CU):

1. Heliport (See also Special Use Regulations Section, Uses Requiring Special Regulations - Aircraft Landing Facilities.)
2. Facilities related to utility distribution such as substations, water towers, pump stations, other than transmission lines.
3. Motor freight terminal.
4. Eating or drinking establishments. [ORD 3975, February 1997]

20.15.10.2.B.

5. Salvage yards.
6. Planned Unit Developments.
7. Equipment rental agencies (ORD 3136; October 1979)
8. Auto, truck and trailer rental agencies (ORD 3162; March 1980)
9. Self Storage Facilities [ ORD 4354; June 2005]
10. Parking structures (ORD 3204; January 1981). (See also Special Use Regulations Section, Uses Requiring Special Regulations - Park and Ride Facilities.)
11. Solid Waste Transfer Stations (ORD 3499)
12. Construction of a wireless communication facility tower [ORD 4248; April 2003]
13. Attachment of a new wireless communication facility to an existing or new privately-or publicly owned building or structure that does not utilize stealth design [ORD 4248; April 2003]
14. More than two (2) satellite antennas five (5) meters or greater in diameter on one (1) lot [ORD 4248; April 2003]
15. Direct-to-home satellite service having antennas greater than one (1) meter in diameter [ORD 4248; April 2003]

C. Prohibited Uses:

1. Any use having the primary function of storing, utilizing or manufacturing explosive materials.
2. Any principal use involving the rendering of fats, the slaughtering of fish or meat, or the fermenting of foods such as sauerkraut, vinegar or yeast.
3. Retail or combination retail-wholesale lumber and/or building materials yard, not including concrete mixing.

20.15.10.2.C.

4. Storage or sale yard for contractors equipment, house mover, delivery vehicles, trucking terminal, used equipment in operable condition, and transit storage, except for public transit vehicles. [ORD 4093; March 2000]
5. Trailer sales or repair.
6. Eating or drinking establishments providing drive-in (windows) or take-out serving market areas outside the Industrial Park District. [ORD 3975, February 1997]
7. Automotive Services, Major or Minor [ORD 3975, February 1997]
8. Mobile home parks and subdivisions. (OED 3739)

D. Use Restrictions:

reserved. (not currently specified in Development Code.)

E. District Requirements:

1. There is no Minimum Area for a new Zoning District.
2. There is no Maximum Area for a new Zoning District.

**20.15.50. Site Development Requirements.**

	<u>CI</u>	<u>LI</u>	<u>IP</u>
<b>1. Minimum Lot Area:</b> (in Square Feet)	None	None	None
<b>2. Minimum Lot Dimensions:</b> (in feet)			
A. Width	None	None	None
B. Depth	None	None	None
<b>3. Minimum Yard Setbacks:</b> (in feet)			
A. Front	35	35	35
B. Side	10	10	10
C. Rear	None	None	None
D. Reduction to setback standards. Under the thresholds outlined in Section 40.30.5, application may be made for zero side yard setbacks. (ORD 3494) [ORD 4224; August 2002]			
E. Any yard abutting residentially developed property or developable property in a residential zone shall have a minimum setback of 75 feet (ORD 3549)			
F. No side or rear yard setbacks required where side or rear property lines abut a railroad right-of-way or spur track.			
<b>4. Maximum Building Height:</b> (in feet)			
A. Maximum building height except as provided by Section 60.50.10 of this ordinance	45'	45'	45'

20.15.50.4.

B. The maximum height for wireless communication facilities inclusive of antennas in all industrial zoning districts shall be one hundred twenty (120) feet. The maximum height of at-grade equipment shelters for wireless communication facilities in all industrial zoning districts shall be twelve (12) feet. [ORD 4248; April 2003]

	<u>CI</u>	<u>LI</u>	<u>IP</u>
5. <b>Maximum Lot Coverage:</b>	60%	60%	60%
6. <b>Public parks:</b> Public parks, parkways, recreation facilities, trails and related facilities are exempt from these site development requirements.			

**Exhibit 5.3 - Uses which have been added since 1986**

20.15.10.2.A. Permitted Uses

19. Privately owned recreational facilities such as fitness clubs, racquetball or handball clubs, tennis courts or swimming pools exclusive of spectator sports facilities. (ORD 3739)
20. Collocation of wireless communication facilities on an existing wireless communication facility tower.
21. 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.
22. 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.
23. Temporary wireless communication facilities structures (See also Temporary Structures – Section 40.80).
24. Up to and including two (2) satellite antennas less than five (5) meters in diameter on one (1) lot.
25. 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.

20.15.10.2.B. Conditional Uses

12. Construction of a wireless communication facility tower.
13. Attachment of a new wireless communication facility to an existing or new privately-or publicly owned building or structure that does not utilize stealth design.
14. More than two (2) satellite antennas five (5) meters or greater in diameter on one (1) lot.
15. Direct-to-home satellite service having antennas greater than one (1) meter in diameter.

## AGENDA BILL

Beaverton City Council  
Beaverton, Oregon

**SUBJECT:** Ordinance to Adopt Procedures for  
Reviewing Candidate Statements in City  
Voters' Pamphlet.

**FOR AGENDA OF:** 4-16-07 **BILL NO:** 07076

**Mayor's Approval:** 

**DEPARTMENT OF ORIGIN:** City Attorney 

**DATE SUBMITTED:** 4-10-07

**CLEARANCES:**

**PROCEEDING:** Work Session

**EXHIBITS:** Draft Ordinance

### **BUDGET IMPACT**

<b>EXPENDITURE</b>	<b>AMOUNT</b>	<b>APPROPRIATION</b>
<b>REQUIRED \$0</b>	<b>BUDGETED \$0</b>	<b>REQUIRED \$0</b>

**HISTORICAL PERSPECTIVE:**

The City Charter, Chapter VI, Section 30, provides that "if there is a material misstatement of fact published in the City's voters' pamphlet which was submitted by or on behalf of a person nominated or elected to the Council, the nominations or election of that person is nullified". During the last election, questions arose on how to interpret this section and what procedures would the City use to review a claim. The Council directed the City Attorney to draft an ordinance for its review.

**INFORMATION FOR CONSIDERATION:**

There are three principal parts of this ordinance. The first part requires that a candidate sign a statement that the facts submitted for the City Voters' Pamphlet are true and that the candidate agrees to provide supporting information and authorize release of information from third parties. The second part provides for procedures for time of filing, requirements of the petitions, investigation, preliminary determination by the Council, public hearing by the Council and standards of proof. The third part of the ordinance describes what happens if the Council determines that a candidate has made a material misstatement of fact in the voters' pamphlet.

**RECOMMENDED ACTION:**

Conduct work session.

# DRAFT

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO ESTABLISH PROCEDURES TO NULLIFY THE NOMINATION OR ELECTION OF A CANDIDATE FOR CITYWIDE OFFICE UPON VOTER PAMPHLET MISSTATEMENT.

WHEREAS, a candidate for public office in Oregon may discuss his or her qualifications and background in a public circular known commonly as the voters' pamphlet; and

WHEREAS, the Charter of the City of Beaverton provides that the City shall publish a voters' pamphlet for any primary, general, or special election; and

WHEREAS, Chapter IV, Section 30.B of the Charter also authorizes the Council to verify a claim that a candidate or official stood for election upon a material misstatement in the voters' pamphlet, and further provides that Council shall remove a person from office upon so finding; and

WHEREAS, a voters' pamphlet misstatement submitted by a candidate or on behalf of a candidate being a matter of citywide importance, it is appropriate to create a public process for the consideration of such a misstatement; now, therefore,

BE IT ORDAINED BY THE CITY OF BEAVERTON, OREGON,

**Section 1.** The Beaverton Code is amended in Chapter 2 by adding the following sections.

2.06.486 Rebuttable Presumption. For the purposes of applying this Ordinance, facts submitted for publication in the voters' pamphlet by a candidate or on behalf of a candidate are unverified facts yet presumed truthful. The burden rests with a challenger to the veracity of a fact to overcome this presumption.

2.06.487 Voters' Pamphlet Submission Requirements. To accept a statement for publication in the voters' pamphlet, whether submitted by the candidate or on behalf of a candidate:

A. The candidate shall sign a statement that the submitted facts are true as the candidate believes.

B. The signed statement in subsection (A) shall also contain a provision that the candidate agrees to provide supporting information if requested under this Ordinance, and shall release and authorize third parties to participate in an investigation under this Ordinance.

2.06.488 Verification of Facts. Any person registered to vote at an address in the City of Beaverton, Washington County, State of Oregon, who is so registered on the date of publication of the particular voters' pamphlet in controversy, is entitled to a cause of action before Council to challenge the truth of a fact published in the City voters' pamphlet as to the candidacy of an individual for a seat on the City Council. This subsection is a standing requirement and shall be construed broadly.

2.06.489 Limitation. The procedures and remedies provided under this Ordinance are available for 30 days following the date of distribution of the voters' pamphlet, as described in the City Code at Section 2.06.405, alleged to contain the factual misstatement. Within 5 days of the distribution the City Recorder shall imprint a copy of the pamphlet with a sworn statement of its distribution date, to begin reckoning the 30 day period under this section.

2.06.490 Petition Required; Sworn Statement; Administrative Fee.

A. To challenge the veracity of a material statement in the voters' pamphlet, a challenging party must file a petition with the City Recorder.

B. The petition shall contain the following elements:

1. A recitation of the statements the person alleges are false.
2. The facts of which the person is aware, from which Council could more likely than not conclude that a candidate or official has published a false material fact in the voters' pamphlet.
3. A listing of sources, either human or corporate, which the person believes may be contacted for information or confirmation of the falsity.
4. A sworn statement, bearing a notarized signature that the person is filing the statement reasonably believing the truth of the matters they are asserting.
5. Payment of a non-refundable administrative fee in an amount to be determined by Council resolution. If the payment is dishonored by the bank, unpaid due to insufficient funds, or returned otherwise for any reason, the proceedings upon the verification petition shall immediately cease and the original petitioner shall have no further rights under this ordinance as to any statements in the particular voters' pamphlet at issue.

2.06.491 Investigation and Marshaling of Probative Facts. The City Recorder shall immediately transmit a filed verification petition to the City Attorney. The City Attorney shall have 10 days to investigate and marshal any evidence or facts discovered which tend to prove or

disprove the allegations contained in the verification petition. After no more than these 10 days the City Attorney shall transmit the cause to Council to determine if the evidence is adequate to conduct a hearing on the issue.

2.06.492 Determination by Council of the Need for a Public Hearing. If, in reviewing the petition and any products of the investigation, Council finds probable cause to believe there has been a false statement of material fact, and the belief appears reasonable under the circumstances, the Council shall conduct a quasi-judicial administrative hearing.

2.06.493 Public Council Hearing Required. Time is of the essence in a verification petition therefore Council shall conduct a quasi-judicial public hearing within 14 days of its vote to conduct the hearing.

2.06.494 Automatic Recusal of Official. If the challenged party or candidate designated in a verification petition is a sitting elected official, that official shall be automatically recused from any decision upon a verification petition. This recusal is not intended to divest an official of due process rights he or she may possess in connection with a quasi-judicial administrative hearing.

2.06.495 Standards of Proof. The ultimate question for Council shall be whether there was a misstatement of material fact published in the voters' pamphlet which was submitted by or on behalf of a person nominated or elected to the City Council. In addressing this question the following issues shall be reviewed:

A. Is the challenged statement a fact, as opposed to a statement of policy or opinion?

B. Is the fact material, which means is the fact of such importance to a reasonable person that its existence or non-existence affects a reasonable person's decision-making process about a candidacy? (*In re Eadie, 333 Or 42 (2001); lawyer cannot knowingly make false statement of law or fact. Misrepresentation must be material.*)

C. Did the proponent knowingly assert a false material fact?

D. The presumptive truthfulness of submitted facts shall stand unless and until Council determines, by a majority vote upon clear and convincing evidence, that each standard recited above is answered in the affirmative. Clear and convincing evidence is evidence which allows a person to find that the truth of facts is highly probable. Upon proof of that degree, the presumption shall be overcome. Council shall publish its decision in a resolution and order. (*The "clear and convincing" standard of proof is the mid-level burden of proof between a mere preponderance at the least rigorous end, and no reasonable doubt at the highest end. Oregon law applies the clear and convincing standard of proof in a civil case for damages from fraudulent misrepresentation. We are dealing with the same situation here, a design to induce a vote by way of trickery. A claim in fraud closely resembles misrepresenting oneself in the voters'*

*pamphlet.)*

2.06.496 Order. Council's final decision upon a factual verification petition shall be reduced to writing in an Order. The Order shall denominate the parties, recite the facts believed by Council, and explain how the facts believed support the stated conclusions. Such an Order shall take effect immediately upon passage by Council and signature by the Mayor.

2.06.497 Effects of Finding a Verification Petition Proven.

A. If the majority of Council resolves that the verification petition is supported by clear and convincing evidence, the order shall automatically contain an order disqualifying the person from office or nullifying the election or nomination of that person. The order shall have the following effects:

1. If the person is a sitting elected official, he or she shall be immediately divested of office and an opening on Council declared for want of qualification for office.

2. If the person is a councilor-elect or mayor-elect, the person's election shall be nullified thus rendering the person unqualified for office. This nullification shall relate back to the date of election.

3. If the person is a candidate for elective office, the person shall be precluded from taking office. The receipt of any votes cast in any manner in an election, if any, shall be of no effect in granting that person elective office in the particular contest. The office shall be treated as if no person was nominated in the primary or general election, whichever is applicable.

B. If the nullification of an election renders a vacancy in an elective office, the provisions of Chapter VII of the Charter, shall govern the filling of the vacancy.

2.06.498 Effects of Finding a Verification Petition Not Proven by Clear and Convincing Evidence. If the majority of Council resolves that a verification petition is not supported by clear and convincing evidence, the presumption in favor of truthfulness remains intact and Council shall dismiss the petition.

2.06.499 Appeal. A party aggrieved by Council's decision, and which is named in the verification petition, may appeal Council's decision upon a petition to verify facts by filing a writ of review in Washington County Circuit Court within the time provided under state law. Absent equitable relief from the court, the filing of an appeal does not stay an act mandated by this Ordinance.

**Section 2.** This Ordinance is not intended to displace any other civil or criminal remedy allowed under law.

**Section 3.** This Ordinance may be cited by the short title of, "Voter Pamphlet Fact Verification."

**Section 4. Severability.** If any part of this Ordinance should be determined by any tribunal of competent jurisdiction to be unconstitutional, the remaining parts of the ordinance shall remain in full force and effect.

First reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.  
Passed by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2007.  
Approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

ATTEST:

APPROVED:

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

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

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

4-16-07

**SUBJECT:** An Ordinance Amending Beaverton Code Section 8.02.015 (A) and Repealing a Portion of Beaverton Code Section 8.02.015 (E) and Declaring an Emergency

**FOR AGENDA OF:** ~~4-09-07~~ **BILL NO:** 07073

**Mayor's Approval:** *Paul Staley*

**DEPARTMENT OF ORIGIN:** CDD *BCR*

**DATE SUBMITTED:** 3-22-07

**CLEARANCES:** City Attorney *AK*

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

**EXHIBITS:** Ordinance  
Current Code Language with  
Proposed Changes (Information  
Only)

**BUDGET IMPACT**

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

The State Building Code is comprised of four Specialty Codes. Beaverton Code (BC) Section 8.02.015 (A) adopts the State Structural Specialty Code and BC Section 8.02.015 (E) adopts the State Residential Specialty Code.

**INFORMATION FOR CONSIDERATION:**

As required by ORS 455.010 through 455.895, ORS 447.020, and ORS 479.020, the City has adopted the State Building Code. The State Building Code is amended and/or new editions are adopted from time to time. The adoption of a new State Building Code will cause some of the Beaverton Code to become outdated.

Effective April 1, 2007, the State will adopt a new State Structural Specialty Code. The authority for local jurisdictions to adopt apartment fire sprinkler regulations, formerly found in the Residential Specialty Code, has been removed and is now found in the Structural Specialty Code. In order to continue to require automatic fire sprinkler systems to be installed in new apartment buildings, Appendix AN, Section 109.4.2, Alternate Fire Sprinkler Requirements must be adopted as part of Beaverton Code Section 8.02.015 (A). Adoption of this appendix will continue to require the installation of an automatic fire sprinkler system in all new apartment buildings over one story in height or containing more than 16 units.

The immediate effective date is intended to allow quick implementation of practices now in common use elsewhere in the area.

**RECOMMENDED ACTION:**

~~First Reading.~~  
Second Reading and Passage.

**ORDINANCE NO. 4434**

**AN ORDINANCE RELATING TO THE BUILDING CODE AMENDING BEAVERTON CODE SECTION 8.02.015 (A), AND REPEALING A PORTION OF BEAVERTON CODE SECTION 8.02.015 (E) AND DECLARING AN EMERGENCY**

**WHEREAS**, the City's Building Code (BC) must be compatible with the State Building Code, including the State Structural Specialty Code and the Residential Specialty Code; and

**WHEREAS**, the State Structural Specialty Code will be amended effective April 1, 2007; and

**WHEREAS**, the City's Building Code was last amended in 2005 and is in need of minor changes to better comply with the State Building Code; and

**WHEREAS**, changes in the new State Specialty Codes modifies the specific Specialty Code for adopting requirements for automatic fire sprinkler systems to be installed in newly constructed apartment buildings; and

**WHEREAS**, the City's Building Code has previously adopted requirements for automatic fire sprinkler systems to be installed in all newly constructed apartment buildings; therefore,

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

**Section 1.** BC 8.02.015 (A) and (E) are amended to read as follows:

8.02.015 State Codes. The following State Specialty Codes are adopted as part of the Beaverton Code except as otherwise provided in this ordinance:

- A. State of Oregon Structural Specialty Code, as adopted by ORS 455.010 through 455.895, OAR 918-460-010 through OAR 918-460-015 including Appendix AN Section 109.4.2 - Alternate Fire Sprinkler Requirements ("Structural Specialty Code");
- E. State of Oregon Residential Specialty Code, as adopted by ORS 455.610, OAR 918-480-000 through OAR 918-480-010 ("Residential Specialty Code");

**Section 2.** Emergency Clause. The Council finds that immediate adoption of building and specialty codes consistent with those in force elsewhere in the state is necessary to the public's safety and welfare. The Council declares an emergency to exist, and this Ordinance shall take effect immediately on its passage.

First reading this 9<sup>th</sup> day of April, 2007.

Passed by the Council this \_\_\_ day of \_\_\_\_\_, 2007.

Approved by the Mayor this \_\_\_ day of \_\_\_\_\_, 2007.

ATTEST:

APPROVED:

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

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

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