

ORDINANCE NO. 442

AN ORDINANCE AMENDING ORDINANCE 440 CONCERNING FINDING F AND ORDAINING SECTION NO. 2, TRAIL 20, REGARDING PROPERTY OF JOE BERNERT TOWING COMPANY, INC. AND WILSONVILLE CONCRETE PRODUCTS.

WHEREAS, the City of Wilsonville enacted Ordinance 440 entitled "*An Ordinance of the Wilsonville City Council Adopting New and Additional Off-Street Trails and Pathways (as Remanded by the City Council to, and Amended by, the Planning Commission) for the Parks & Recreation Master Plan and Map and Amending Said Plan and Map Along with Adopting New and Additional Findings Adopted in Support of All Plans for the Entire Bicycle and Pedestrian Pathways and Trails" ; and*

WHEREAS, Joe Bernert Towing Company, Inc. and Wilsonville Concrete Products appealed to the Oregon Land Use Board of Appeal, No. 95-005, the City's enactment of Ordinance 440, over concerns they had with the language of finding in paragraph F, page 4, and an ordaining section no. 2, Trail 20, page 5, which specifically address the master planning of a trail in concept over their property; and

WHEREAS, the City and Joe Bernert Towing Company, Inc. and Wilsonville Concrete Products are desirous of mutually settling and compromising their dispute and have negotiated the amending language, and have reached an agreement that when and if the City Council should adopt such amending language, Joe Bernert Towing Company, Inc. and Wilsonville Concrete Products would dismiss their LUBA appeal with prejudice and without costs to either party; and

WHEREAS, the amending language has been reviewed by Glenn Milnor on behalf of the Parks and Recreation Department and Wayne Sorensen on behalf of the Planning Department, and they recommend approval; and

WHEREAS, a public hearing has been duly noticed, scheduled and conducted and the public provided an opportunity to give comment; and

WHEREAS, the City Council finds that the language changes are satisfactory, in that they primarily affect the property of Joe Bernert Towing Company, Inc. and Wilsonville Concrete Products, and are in keeping with Council's original intent in

adopting Ordinance No. 440;

NOW, THEREFORE, THE WILSONVILLE CITY COUNCIL ORDAINS AS FOLLOWS:

1. Recited Findings, paragraph F, page 4 of Ordinance 440 is amended to read as follows:

"The City Council finds that the development of Trail Nos. 16, 20, 22, and 26 should be deferred until the property owners, or their successors in title, submit preliminary development plans to the City for land use approval or, alternatively, until development within this southwest area has reached a point where trail location and alignment can be finalized, funded and developed by the City. Trail No. 20 has been located conceptually in a corridor that follows the power line easement east from the RWL subdivision (the Hummelt property) to where it intersects the private road identified as 'Industrial Way'. From that point it continues generally eastward to where the existing unimproved road crosses the railroad which is just south of the present Wilsonville Elementary School site. This general location of Trail No. 20 currently appears to be the most reasonable location for a future connection between the area west to east and vice versa, but the City Council does not intend to proceed with trail development in the near term, and future development of the Wilsonville Concrete site and neighboring properties could cause a relocation of Trail No. 20. The Westside Planning Task Force will also be studying the location and timing of development of Trail No. 20 along with recommendations for new uses and/or redevelopment of the entire area. Trail No. 26 shall be generally located in or along the drainage identified as 'Seeley Ditch' and Trail No. 16 shall be generally located in or along the drainage that is located north and east of the Oak Leaf Mobile Home Park. Trail No. 22 is located generally along the westerly property line of SYSCO Continental, Inc. and the east property line of the 'Elligsen' property."

2. Ordaining section No. 2, Trail 20, page 5 of Ordinance 440 is amended to read as follows:

"Trail No. 20 The City Council adopts a relocated portion of this trail,

known as the eastern portion of the Wood - Boones Trail, so that it will connect the Hummelt subdivision with the Wilsonville Elementary School and the shopping center. The most likely location for the trail is generally in a corridor that follows the power line easement east from the RWL subdivision (the Hummelt property) to where it intersects the private road identified as 'Industrial Way', and from that point, continuing generally eastward to where the existing unimproved road crosses the railroad which is just south of the present Wilsonville Elementary School site. The City Council does not intend to proceed with trail development without obtaining the land for the trail by either (i) making a further land use decision to take the land for the trail as an exaction; (ii) pursuing condemnation or the threat of condemnation; or (iii) accepting a donation of the land. See Recital Paragraph F above."

3. Ordinance 440 is subject to LUBA appeal No. 95-005 and adoption of this language is a precondition to settling and dismissing this appeal with prejudice and without costs. Therefore, in the event Joe Bernert Towing Company, Inc. and Wilsonville Concrete Products do not cause LUBA appeal No. 95-005 to be dismissed, this amending language shall become null and void and the original language of Ordinance 440 shall be reinstated.

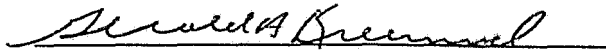
SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 20th day of March, 1995, and scheduled for the second reading at a regular meeting of the Council on the 17th day of April 1995, commencing at the hour of 7:00 o'clock p.m. at the Community Development Hearings Room.


VERA A. ROJAS, CMC/AEE, City Recorder

ENACTED by the City Council on the 17th day of April, 1995, by the following votes: YEAS: 5 NAYS: None


SANDRA C. KING, City Recorder

DATED and signed by the Mayor this 17 day of April, 1995.



GERALD A. KRUMMEL, Mayor

SUMMARY OF VOTES:

Mayor Krummel	<u>Yes</u>
Councilor Lehan	<u>Yes</u>
Councilor Hawkins	<u>Yes</u>
Councilor Leo	<u>Yes</u>
Councilor Leahy	<u>Yes</u>