CITY OF KEIZER MISSION STATEMENT

KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES TO THE COMMUNITY IN A COORDINATED, EFFICIENT AND LEAST COST FASHION

AGENDA

URBAN RENEWAL AGENCY OF THE CITY OF KEIZER

Monday, June 3, 2002
6:30 p.m.
Robert L. Simon Council Chambers
Keizer, Oregon

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC TESTIMONY

   This time is provided for citizens to address the Urban Renewal Agency on any matter not scheduled for public hearing.

4. PUBLIC HEARING

   a. RESOLUTION – Adopting Fiscal Year 2002-03 Keizer Urban Renewal Budget, Making Appropriations, Imposing and Categorizing Taxes

5. ADMINISTRATIVE ACTION

6. CONSENT CALENDAR

7. OTHER BUSINESS

   This time is provided to allow Urban Renewal Agency members the opportunity to bring matters before the Agency that are not on tonight's agenda.

8. ADJOURN

Upon request, auxiliary aids and/or special services will be provided to participants with disabilities. To request services, please contact us at (503) 390-3700 at least two working days (48 hours) in advance.

City of Keizer, Oregon

URBAN RENEWAL AGENCY BOARD
June 3, 2002

AGENDA ITEM 5a

2002-2003 URBAN RENEWAL BUDGET

URBAN RENEWAL MEETING: June 3, 2002

AGENDA ITEM NUMBER:

TO: CHAIR CHRISTOPHER AND BOARD MEMBERS

THROUGH: CHRIS EPPLEY
CITY MANAGER

FROM: SUSAN GAHLSDORF, CPA
FINANCE DIRECTOR

SUBJECT: RESOLUTION ADOPTING FISCAL YEAR 2002-03 BUDGET, MAKING APPROPRIATIONS, IMPOSING AND CATEGORIZING TAXES

BACKGROUND:

The Budget Committee comprised of the Board and seven citizens, reviewed, modified and, on May 14, 2001, approved the Manager's Recommended Budget for Fiscal Year 2002-03, as amended. The Committee Approved Budget was published in a local newspaper as required by Oregon Budget Law. After publication, the law requires the governing body to conduct a public hearing on the Committee Approved Budget. The Board must adopt the upcoming fiscal year budget by June 30.

RECOMMENDATION:

Staff recommends that the Board hold a public hearing on the Committee Approved Budget. After which Staff recommends that the Board deliberate on the Urban Renewal Budget as shown on the attached resolution, if it so wishes, and adopt the budget with amendments, if any.

CITY OF KEIZER, STATE OF OREGON

RESOLUTION UR02-_____

ADOPTING THE FY'02 BUDGET, MAKING APPROPRIATIONS,
AND IMPOSING AND CATEGORIZING TAXES

BE IT RESOLVED, that the Keizer Urban Renewal Agency hereby adopts the budget for fiscal year 2002-03 in the sum of $9,004,243 now on file at Keizer City Hall.

BE IT FURTHER RESOLVED that the amounts for the fiscal year beginning July 1, 2002 and for the purposes shown below are hereby appropriated:

Tax Increment Fund	Debt Service	$4,089,087	
TOTAL TAX INCREMENT FUND			**$4,089,087**
Project Fund	Personal Services	$198,430	
	Materials & Services	95,177	
	Capital Outlay	4,478,389	
	Contingency	143,160	
TOTAL PROJECT FUND			**$4,915,156**
TOTAL ALL FUNDS			**$9,004,243**

BE IT FURTHER RESOLVED that the Urban Renewal Board for the Keizer Urban Renewal District hereby resolves to certify to the county assessor for the North River Road Plan Area a request for the maximum amount of revenue that may be raised by dividing the taxes under section 1c, Article XI, of the Oregon Constitution with no amount to be raised through the imposition of a special levy.

BE IT FURTHER RESOLVED that no taxes will be imposed from a Special Levy.

PASSED this _____ day of _____, 2002.

SIGNED this _____ day of _____, 2002.

_____
Chair

_____
City Recorder

SPECIAL REVENUE FUND

Urban Renewal Project Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
				RESOURCES			
1	$ (87,296)	$ 323,457	$ 1,764,047	Beginning Fund Balance	2,812,480.00	$ 2,812,480	$ -
2	2,811,589	2,884,283	1,542,973	Loan Proceeds	3,107,487	3,107,487	-
3	1	1	1	Stadium Rent	1	1	-
4	5,535	45,650	13,374	Interest	24,995	24,995	-
5	-	-	1,696	Transfer from Street Fund	-	-	-
6	-	-	45,821	Transfer from Revenue Sharing Fund	-	-	-
7	-	-	56,008	Transfer from City Hall Facility Fund	-	-	-
8	-	-	1,997	Transfer from Utility Fund	-	-	-
9	-	-	3,844	Transfer from Water fund	-	-	-
10	-	-	238	Transfer from SLD Fund	-	-	-
11	$ 2,729,829	$ 3,253,391	$ 3,429,999	TOTAL RESOURCES	$ 5,944,963	$ 5,944,963	$ -

Notes:

2 By law, Tax Increment Fund moneys are restricted for debt service payments. Each year overnight debt is issued to bring cash into the Project Fund. The debt is then paid from the Tax Increment Fund.

4 The economic downturn has caused a reduction in interest rates in FY01-02. However, cash balances were higher than projected in FY 01-02 because several capital outlays were not expended. FY 02-03 is estimated at current year actuals projected out to year end and take into consideration ending fund balance.

5-10 The transfer from other funds in FY 01-02 is for repayment of funds used by the City for facility maintenance. The City discovered this error and repaid the Urban Renewal District in FY 01-02 with interest.

SPECIAL REVENUE FUND

Urban Renewal Project Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
				EXPENDITURES			
				PERSONAL SERVICES			
	$ 1,848	$ 23,975	$ 30,812	City Manager	$ 41,844	$ 41,844	$ -
	-	11,221	12,398	Public Works Director	13,082	13,082	-
	-	-	-	Public Works Superintendent	2,978	2,978	-
	5,901	5,863	6,050	City Recorder	6,199	6,199	-
	6,491	21,092	22,432	Planning Director	23,671	23,671	-
	-	939	1,971	Planner	-	-	-
	-	-	-	Senior Planner	9,322	9,322	-
	21,874	24,651	25,277	Administrative Support Staff	27,030	27,030	-
	-	1,310	1,413	Human Resources Director	1,491	1,491	-
	17,885	18,693	19,305	Finance Director	19,779	19,779	-
	-	2,703	2,641	Facility Maintenance Worker	2,891	2,891	-
	302	1,444	1,500	Overtime	500	500	-
	823	1,726	1,847	Medicare	2,286	2,286	-
	8,957	16,905	22,055	Retirement	29,399	29,399	-
	6,190	12,982	14,574	Insurance Benefits	17,300	17,300	-
	283	446	292	Workers Compensation	658	658	-
	$ 70,554	$ 143,950	$ 162,567	TOTAL PERSONAL SERVICES	$ 198,430	$ 198,430	$ -

SPECIAL REVENUE FUND

Urban Renewal Project Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
33							
34				**MATERIALS & SERVICES**			
35							
36	$ 850	$ 1,790	$ 1,935	Materials & Supplies	$ 2,031	$ 2,031	$ -
37	1,222	1,464	1,863	Printing & Postage	2,741	2,741	-
38	646	1,523	1,647	Dues & Subscriptions	1,179	1,179	-
39	1,250	1,272	1,009	Training & Travel	4,220	4,220	-
40	1,669	681	2,000	Advertising	1,000	1,000	-
41	15,051	30,186	30,581	Legal Services	25,668	25,668	-
42	103,204	51,462	14,501	Contractual Services	1,138	1,138	-
43	350	2,640	3,520	Audit	3,520	3,520	-
44	11,316	-	10,000	Design Services	-	-	-
45	-	-	-	Janitorial	1,750	1,750	-
46	8,258	126	168	Insurance	210	210	-
47	-	-	-	Software Maintenance Agreements	833	833	-
48	2,054	1,150	1,000	Computer Maintenance	1,028	1,028	-
49	344	1,030	14,239	Equipment Maintenance	92	92	-
50	1,472	8,491	5,487	Facility Maintenance	1,138	1,138	-
51	-	-	42,000	Engineering	38,577	38,577	-
52	3,200	-	5,000	Mapping	2,000	2,000	-
53	-	1,041	1,380	Utilities	852	852	-
54	22,563	-	-	CCTV / Cable Regulatory Commission	-	-	-
55	6,192	7,293	7,200	Bond Issue Costs	7,200	7,200	-
56	$ 179,641	$ 110,149	$ 143,530	TOTAL MATERIALS & SERVICES	$ 95,177	$ 95,177	$ -

Notes:

39 Travel & Training costs are budgeted based on salary allocations. Increases reflect the change in salary allocations and the addition of a Senior Planner position.

40 Advertising costs are for legal notices for budget hearings and property improvement issues.

41 Legal services include basic services performed by the City Attorney and issues referred to the Agency's bond counsel.

41,42,44 51,52 These costs have decreased primarily because of a change in capital improvement projects requiring operational services. Operational costs for the Radiant Drive line-item are included in the $2,750,000 in capital outlay and have not been separately identified.

42&51 Previous to FY 01-02, Engineering was recorded in Contractual Services. Engineering has been separated in recent budgets to better track these costs.

49 $92 is for the Agency's share of the photocopy machine maintenance. The FY 01-02 budget included a one-time expenditures for Christmas lights.

50 The Board appropriated a supplemental budget in FY 01-02 increasing facility maintenance from $800 to $5,487 to address environmental issues.

SPECIAL REVENUE FUND

Urban Renewal Project Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
57				CAPITAL OUTLAY			
58							
59	$ -	$ 110,646	$ -	Street Improvements	$ -	$ -	$ -
60	-	677,939	350,000	River Road Overlay	375,000	375,000	-
61	-	-	75,000	Fire Hydrants	-	-	-
62	-	-	40,000	Gateway	40,000	40,000	-
63	-	-	45,000	Crosswalks - ADA Standards	25,000	25,000	-
64	-	-	500,000	Chemawa Activity Center Infrastructure	-	-	-
65	354	1,289	445	Office Furniture & Equipment	1,057	1,057	-
66	3,214	1,502	745	Computer Equipment & Software	2,332	2,332	-
67	271,017	-	-	Cherry Avenue	-	-	-
68	5,603	-	-	East/West Connector	-	-	-
69	-	-	-	Traffic Signals	140,000	140,000	-
70	2,585	-	-	Street Lighting	-	-	-
71	16,675	-	50,000	Improvements - Landscape & Sidewalks	50,000	50,000	-
72	325,555	-	200,000	Water System Infrastructure	305,000	305,000	-
73	63,765	-	-	Parking Lot	-	-	-
74	216,047	118,314	400,000	Land Acquisition - Alder Street	440,000	440,000	-
75	7,350	-	-	Sewer & Water	-	-	-
76	176,904	-	-	Right-of-Way	-	-	-
77	-	-	-	Radiant Drive	2,750,000	2,750,000	-
78	208	1,968	100,000	Alder Street Realignment	125,000	125,000	-
79	87,356	305,204	-	Storm Sewer & Water & Street- Plymouth	-	-	-
80	116,238	-	225,000	Storm Drainage	225,000	225,000	-
81	244,792	-	-	Heritage School	-	-	-
82	-	-	30,000	Master Plan Civic Center	-	-	-
83	513,299	35,771	-	Sewer Trunk - Chemawa Activity Center	-	-	-
84	$ 2,050,962	$ 1,252,633	$ 2,016,190	TOTAL CAPITAL OUTLAY	$ 4,478,389	$ 4,478,389	$ -

SPECIAL REVENUE FUND

Urban Renewal Project Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
85							
86				**TRANSFERS**			
87							
88	$ 5,215	$ -	$ -	General Fund	$ -	$ -	$ -
89	100,000	-	-	City Hall Facility Fund	-	-	-
90	$ 105,215	$ -	$ -	TOTAL TRANSFERS	$ -	$ -	$ -
91							
92	$ 2,406,372	$ 1,506,732	$ 2,322,287	TOTAL EXPENDITURES	$ 4,771,996	$ 4,771,996	$ -
93							
94				**FUND BALANCE**			
95							
96	-	-	266,597	Contingency	143,160	143,160	-
97	-	-	400,000	Reserve for River Rd - Chmw Rd 7th to Rickman	650,000	650,000	-
98	323,457	1,746,659	441,115	Undesignated Fund Balance	379,807	379,807	-
99							
100	$ 2,729,829	$ 3,253,391	$ 3,429,999	TOTAL EXPENDITURE & FUND BALANCE	$ 5,944,963	$ 5,944,963	$ -

Notes:

60 Improvements are for River Road - Chemawa to Lockhaven

69 Traffic signals improvements will be made at Lockhaven & River Road. New signals will be installed at Wheatland Road and River Road.

71 $50,000 is provided for the River Road Commercial Property Matching Grant Landscaping Program. This item is carried over from FY 01-02.

72 A total of $305,000 is needed for water system improvements at River Road – Lockhaven to Manzanita.

75,79 Alder Street improvements include $400,000 for land acquisition and $125,000 for the street realignment. The project is a carryover from fiscal year 2001-2002.

77 $2,750,000 has been budgeted for improvements to Radiant Drive as provided for in the Agency's contract with the Volcano Ball Club.

80 Storm drain improvements are also a carryover from the previous fiscal year.

96 Contingency is 3% of total FY 02-03 expenditures.

SPECIAL REVENUE FUND

Urban Renewal Tax Increment Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
				RESOURCES			
1	$ 2,473,666	$ 1,535,700	$ 470,773	Beginning Fund Balance	$ 1,584,100	$ 1,584,100	$ -
2	2,548,713	2,709,239	2,908,351	Tax Increment Revenue	3,041,881	3,041,881	-
3	61,715	103,906	107,970	Prior Year Taxes	123,217	123,217	-
4	116,080	77,745	86,419	Interest	24,995	24,995	-
5	$ 5,200,174	$ 4,426,590	$ 3,573,513	**TOTAL RESOURCES**	$ 4,774,193	$ 4,774,193	$ -

Notes:

3 Delinquent tax payments from property taxpayers increase each year with the amount of tax increment revenue apportioned to urban renewal. FY 2003 estimates are based on current year actuals plus 3% assessed value increases and 1% for growth.

SPECIAL REVENUE FUND

Urban Renewal Tax Increment Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
6							
7				**EXPENDITURES**			
8							
9				**DEBT SERVICE**			
10							
11	$ 170,000	$ 175,000	$ 185,000	Principal - 1993 Series A	$ -	$ -	$ -
12	197,030	188,277	179,098	Interest - 1993 Series A	-	-	-
13	330,000	400,000	420,000	Principal - 1998 Series A & Series B	-	-	-
14	235,940	212,955	187,027	Interest - 1998 Series A & Series B	-	-	-
	-	-	-	Principal - 2001 Series	725,000	725,000	-
	-	-	-	Interest - 2001 Series	256,600	256,600	-
15	2,814,294	2,884,955	1,542,973	Loan Payment	3,107,487	3,107,487	-
16	$ 3,747,264	$ 3,861,187	$ 2,514,098	TOTAL DEBT SERVICE	$ 4,089,087	$ 4,089,087	$ -
17							
18				**FUND EQUITY**			
19							
20	$ 808,779	$ -	$ 777,225	TOTAL RESERVES	$ 585,106	$ 585,106	$ -
21							
22	644,131	565,403	282,190	ENDING FUND BALANCE	100,000	100,000	-
23							
24	$ 1,452,910	$ 565,403	$ 1,059,415	TOTAL FUND EQUITY	$ 685,106	$ 685,106	$ -
25							
26	$ 5,200,174	$ 4,426,590	$ 3,573,513	**TOTAL EXPENDITURE & FUND BALANCE**	$ 4,774,193	$ 4,774,193	$ -

Notes:

15 By law, Tax Increment Fund moneys are restricted for debt service payments. Each year overnight debt is issued to bring cash into the Project Fund. The debt is then paid from the Tax Increment Fund.

20 Reserve Requirements are provided for in the Bond Covanents and must comply with the IRS regulations. The reserve must be the lesser of 10% of the par amount of the Series, maximum annual debt service, or 125% of the average annual debt service.

Reserve requirements by series are as follows:

Series 2001 A Tax Exempt Bonds: $358,713

Series 2001 B Taxable Bonds: $226,392

Total Reserve Requirment $585,106

SPECIAL REVENUE FUND

Urban Renewal Refund Fund

Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
			RESOURCES			
$ 57,534	$ -	$ -	Beginning Fund Balance	$ -	$ -	$ -
21,997	-	-	Tax Revenues	-	-	-
3,408	-	-	Interest	-	-	-
$ 82,939	$ -	$ -	**TOTAL RESOURCES**	$ -	$ -	$ -
			EXPENDITURES			
			SPECIAL PAYMENTS			
149	-	-	Property Tax Refund	-	-	-
$ 149	$ -	$ -	TOTAL EXPENDITURES	$ -	$ -	$ -
82,790	-	-	ENDING FUND BALANCE	-	-	-
$ 82,939	$ -	$ -	**TOTAL EXPENDITURE & FUND BALANCE**	$ -	$ -	$ -

Note: The Urban Renewal **Refund Fund** was set up to specifically refund a Special Levy that was inadvertently assessed. All refunds have been made and the Fund is closed.

MARION COUNTY FARM BUREAU

Post Office Box 9249 Salem, Oregon 97305
Telephone: (503) 399-6417
Fax: (503) 399-8082

Submitted by Larry Monagon 6-3-02

Mr. Chris Eppley
City Manager
City of Keizer
PO Box 21000
Keizer, OR 97307-1000

May 22, 2002

Dear Mr. Eppley:

Marion County Farm Bureau (MCFB) has been contacted by Mr. and Mrs. Monagon and Mr. and Mrs. Sturgill concerning the proposed acquisition by the City of Keizer for a park, a parcel of land that is currently outside the Urban Growth Boundary (UGB).

We have an interest in land use issues and a special concern with actions that effect Exclusive Farm Use (EFU) zoned land around cities. We also follow and monitor aggregate operations and the siting of these in EFU zones.

The Board of Directors of MCFB voted this past Wednesday evening, May15, to voice some concerns with this proposal, as we understand the situation. First we are in agreement with the letter sent to you by Sid Friedman of 1000 Friends of Oregon and Bob Lindsey of Friends of Marion County, which points out some of the current fine points of the law.

Our first concern is over the affect that this proposal could have on an existing aggregate operation. This property in question is currently a buffer zone between development and mining, and we need to preserve this existing site so that there won't be a need to acquire prime farmland elsewhere to meet our aggregate needs.

Our second concern is the affect people can have when they have access to farming operations and aggregate mines. The farming community supports current land use statutes because they do a good job of addressing infringement issues. The current property owners in the area are clearly not supporting of this park in their neighborhood.

The Marion County Farm Bureau would like to be part of the discussion on this issue. And if we are missing any of the facts, we would appreciate hearing from you.

Sincerely

Larry Wells

Larry Wells, President
Board of Directors

Cc: Marion County Board of Commissioners
Sid Friedman, 1000 Friends of Oregon
Bob Lindsey, Friends of Marion County
Keizer Parks and Recreation Advisory Board
Keizer Dept of Public Works

Submitted by -
Wayne Sturgill
6-3-02

June 03, 2002

City of Keizer Council

Regarding: Update on possible Park

Lova Sturgill talked with Tim Gerling, Interm Director of Public Works for the City of Salem. Tim Gerling said that approximately 2 weeks ago he had contacted Chris Eppley about the possibility of a City Park on the property that the City of Salem owns. This property is located at 6000 Windsor Island Rd, tax lot 700. The Public Works Department of the City of Salem is very open to the idea of a City Park for Keizer Residents in that location. There is another proposal for a driving range on part of the land. There would still leave a remaining 10.29 acres left for a Park and the city also has another section with 5.67 acres. It is also possible to use Reuse water, which is grade A water for flushing toilets and watering the Park. This will make a City Park that would last the Kezier Residents on the west side of River Road a long time into the future. Tim Gerling and Chris Eppley are going to set up a time that they can get together to start discussion of this process. We would like to see this be worked out between the City of Salem and City of Keizer. This is an opportunity to make a difference, and for it to benefit both cities. City of Salem will not let this land be developed. It is a buffer zone for the sewage plant. That is just one more reason this would be a great location for a City Park. There would be a buffer zone on the east side of the property for the McNary Estates also. Thank You.

Sincerely,

Lova Sturgill

Wayne & Lova Sturgill
Good Buddies of Keizer Parks

CC: Tim Gerling

KEIZER CHAMBER OF COMMERCE
KEIZER MERCHANTS ASSOCIATION 1959-1986
AND VISITOR CENTER

Phone (503) 393-9111
Fax (503) 393-1003
www.keizerchamber.com
Email keizercc@keizerchamber.com
980 Chemewa Rd. NE
Keizer, Oregon 97303

June 3, 2002

To: Mayor Lore Christopher
City Councilors
City of Keizer

From: Janet Porter, Chairperson Keizer Visitor Services Committee
Christine Jones, Keizer Chamber of Commerce
Robin Barney, Keizer Chamber of Commerce

Reason: Adoption of the Keizer 2002-2003 Budget

We would like to recommend your adoption of the Keizer 2002-2003 Budget and the allocation of 20% of the Hotel Tax to the Keizer Chamber of Commerce and Visitor Center. This allocation will help to continue the efforts of the Visitor Service Committee to internally and externally market Keizer.

We appreciate the past support and look forward to a continued relationship in helping improve the economic development of Keizer. Please review the attached information for your further comprehension of the services we provide.

KEIZER CHAMBER OF COMMERCE
AND VISITOR CENTER

Strategy for the Future - Market Keizer

Chamber Board Member – Janet Porter, Visitor Center
Chamber Board Member – Mary Opra, Iris Festival
Staff – Christine Jones & Robin Barney

Vision
The Chamber through the Visitor Center services promotes Keizer as a destiny and a great place to start from for day trips to area attractions, to stay and shop, or to live and work. The Visitor Center is a resource to these visitors, potential visitors, and the community by providing current information available at the center and on the Chamber web site. The Chamber facilitates the Keizer Iris Festival and other events designed to attract tourist for night stays, promote the area, and celebrate the unique spirit of Keizer.

Goal
Keizer Chamber of Commerce will emphases ongoing enhancement of the image and economic vitality of the Keizer community by promoting and facilitating festivals, events and visitor services that define Keizer as a unique destination.

Strategies and Action Plans

- Visitor Services Committee will provide a professionally staffed visitor center and information resource which:
  - Institutes a volunteer recruitment and training program for the visitor center
  - Produce a visitor brochure and coordinate visitor information on Chamber web site
  - Explores coordination and joint promotion of other events and attractions

- Chamber staff will continue to market Keizer to new businesses, residents and future residents using tools such as the Keizer Community Service and Business Directory.

- Executive Director will encourage better communication with local media for dissemination of accurate information of the Keizer community and its events.

- Iris Festival Council will coordinate the annual Keizer Iris Festival by:
  - Securing sponsorship and promotion avenues
  - Organizing the Iris Festival Parade
  - Support other organizations who schedule festival events
  - Organizing the Iris Days

2001/2002 Overview

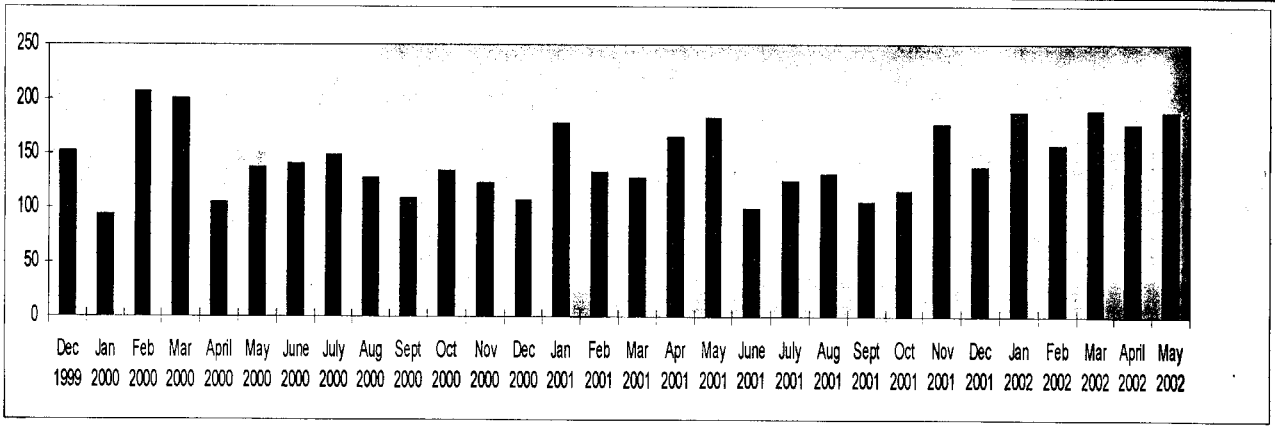
The Visitor Services Committee of the Keizer Chamber of Commerce has completed a successful year of marketing the Keizer area to visitors and operating the Visitor Center. Our phone inquires, in-person assistance and mail inquires have all increased substantially over the previous year. In 2001 the committee completed the new brochure "Keizer-the Heart of the Oregon Experience," and distributed 10,000 copies. An additional 10,000 new copies of inserts for the brochure were printed and a new distribution began in May 2002. These are sent to state's Welcome Centers, major visitor centers, and were used to respond to the Oregon Tourism Commission's advertising program. The brochure, along with the Keizer Directory, is sent to all inquiring about information on the Keizer area for relocation, visitation, or business.

The Committee wishes to build on last year's success and move forward into aggressive marketing, specifically in the area of group travel. This will be done in close partnership with the Wittenberg Inn.

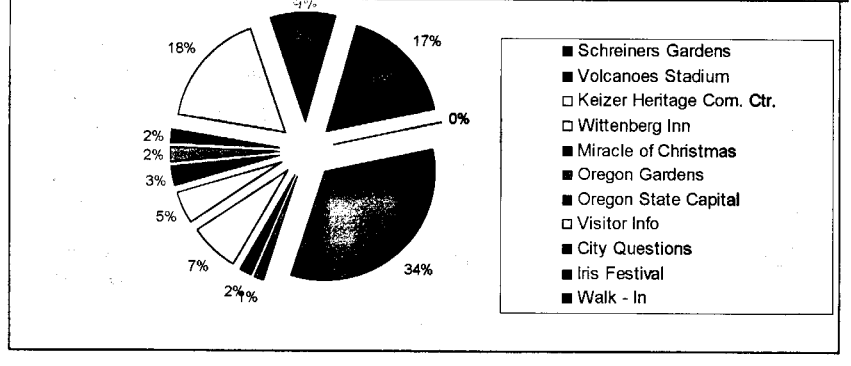
2002-03 Projects

1. Be involved in Focal Point Projects
   - Participate in all design phases of the project
   - Explore feasibility of a community reader board
   - Explore feasibility of a 45th Parallel Bench/Sign
2. Focus on Group Travel Opportunities
   - Join appropriate organizations for assistance in securing leads
   - Partner with Wittenberg Inn to produce a community convention packet
   - Create an ongoing program for welcoming groups, including flyers, and readerboard contact lists
   - Conduct internal marketing campaign to urge local members of professional organizations to bring conventions to Keizer
   - Participate in certain convention trade shows and opportunities as funds allow
3. Continue Marketing to Individual Travelers
   - Update and reprint inserts for marketing brochure
   - Update website and create significant links for marketing and selling local business products and services
   - Continue purchasing fulfillment leads from Oregon Tourism Commission
   - Continue to operate a full-time and professional Visitor Center
   - Continue marketing local events to outside markets
4. Conduct Internal Marketing Campaign
   - Retain influence on development of visitor kiosk at freeway interchange development project.
   - Conduct a media campaign to raise awareness of local residents of travel planning services available at the Visitor Center
   - Design and implement effective communication systems between Visitor Center and the Wittenberg Inn
   - Continually encourage local shopping and travel within Oregon
5. Produce Marketing Tools
   - Table top display for use at conventions and trade shows
   - Brochure insert reprints
   - Convention packet

Keizer Visitor Center Volunteer Hours



Keizer Visitor Center Referrals



City of Keizer
Planning Commission Recommendation

Alternative Keizer Station Plan

March 20, 2002

Includes recommended Keizer Station Plan, Alternative Zoning and Comprehensive Plan Amendments, and proposed Keizer Development Code Amendments.

area may not own or control all the land within the master plan boundary. The master plan shall still cover all the area. Individual subareas may determine a requirement for a minimum portion of ownership requirement prior to master plan approval. For those portions not owned or controlled by an applicant, the Master Plan shall focus on a cohesive interconnected system of planned public facilities and shall set general design guidelines to be used throughout the Master Plan area. Subdivision approval shall be based upon the zone and Section 3.108 as applicable.

The Master Plans will be developed and considered in accordance with the requirements of the Activity Center Overlay provisions (Chapter 2.125 of the Keizer Development Code). Individual subareas may require a detailed transportation system design plan as a requirement of Master Plan approval. Once a Master Plan is adopted, individual buildings and uses must receive Development Review and building permit approval. As part of the building permit process the proposal will be evaluated against the adopted Master Plan, zone standards, and applicable design standards as referenced in the Keizer Development Code. In the case of conflicts between the Keizer Station Plan and the Keizer Development Code, the Keizer Station Plan standards will apply.

- In order to establish the Type II B procedures, Section 3.101.02 of the Keizer Development Code is amended.

  - **See Recommended Text Amendments for Summary of Application Types – Section 3.101 of the Code. Attachment B.**

- In order to establish the criteria for Type II B review, a newly developed Chapter 3.113 of the Keizer Development Code shall be created.

  - **See Recommended Text Amendments for Keizer Station Master Plan Review – Newly Created Section 3.113 of the Code. Attachment C.**

Transportation Review Procedures

The Chemawa Activity Center Plan (1997) adopted a transportation level-of-service standard for future traffic operations at the signalized intersections on Lockhaven Drive and Chemawa Road between River Road and the eastern I-5 ramp. This level-of-service

1000 FRIENDS OF OREGON

534 SW Third Avenue, Suite 300 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org
Southern Oregon Office • 33 North Central Avenue, Rm. 429 • Medford, OR 97501 • (541) 245-4535 • fax (541) 776-0443
Willamette Valley Office • 388 State Street, Suite 604 • Salem, OR 97301 • (503) 371-7261 • fax (503) 371-7596
Coastal Project Office • 934 Washington, #8 • Eugene, OR 97401 • (541) 342-3527 • fax (541) 342-3527

June 3, 2002

Keizer City Council
Maria Meier, Keizer Planning Director
930 Chemawa Road, NE
P. O. Box 21000
Keizer, Oregon 97307-1000

re: Keizer Station Plan

Dear Council members and Staff:

We appreciate the careful consideration with which you are approaching the proposed amendments referred to as the Keizer Station Plan. As you know, our organization is opposed to the proposed amendments. A critical issue is the validity of the "market analysis" prepared by Hobson-Ferrarini that purports to demonstrate a "need" for the 928,000 square feet of additional retail space that would be developed under the "staff alternative."

Recently available additional information seriously undercuts the applicant's assertion that there is an existing or foreseeable need for anything approaching the amount of new retail contemplated by the application. The market forces of supply and demand ensure that in any area that truly has a shortage of retail space vacancy rates will be relatively low and rents will be relatively high. In Keizer's case, the opposite is true.

The attached "Salem/Keizer Office & Retail Survey 2002" was released last week. It shows **the retail vacancy rate for the North Salem/Keizer area is 20.41%.** This is double the regional vacancy rate and, according to the attached Statesman-Journal article, quadruple the 5-percent vacancy rate generally considered to be a sign of a healthy market.

Furthermore, the survey indicates that rents in the North Salem/Keizer area are only ¾ of the regional average. This newly released information validates our contention that there is no shortage of retail space in the Keizer market area.

The applicant has insisted that the proposed 928,000 to 1.2 million square feet of new retail space is intended to serve Keizer residents, not a regional market. Significantly, this is roughly equivalent to the amount of 1.25 million square feet of retail space in the Salem Center and Lancaster Mall, *combined.* The attached survey identifies these as "regional malls."

Finally, the following statistics further demonstrate the erroneous conclusions of the applicant's "market analysis." There is an average of 19 square feet of retail space per person in the United States.[1] Keizer has a population of 32,203.[2] The 928,000 square feet of retail allowed under the staff alternative is nearly 29 square feet of retail per person in Keizer, on top of existing retail space. Hobson-Ferrarini identified a total of 442,000 square feet of existing retail space in Keizer. These existing commercial uses, along with 19 acres of land currently zoned for commercial retail uses on the subject site and the other vacant commercial land in the City could easily provide for 19 square feet of retail for a population of over 41,000, even at the very low floor area ratios assumed by the applicant. This is a far larger population then either the accepted short term or long term (year 2021) projections for Keizer.

Given the above information, it simply is not credible to argue that Keizer has a demonstrable need for the additional retail space on the scale contemplated by the applicant.

Sincerely,

Sid Friedman
Planning Advocate
1000 Friends of Oregon

Bob Lindsey
President
Friends of Marion County

Jacob Brostoff
Transportation Advocate
1000 Friends of Oregon

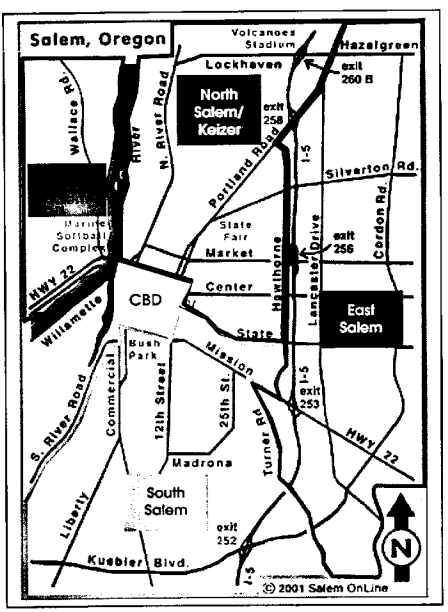
Attachments:
1. "Salem/Keizer Office & Retail Survey 2002," PGP Valuation Inc.
2. "Salem's Retail Vacancy Rate Climbs," Statesman-Journal, May 30, 2002

cc: Salem Department of Community Development
Marion County Planning Department
John Whittington, Salem Area Mass Transit District
Richard Schmid, Mid-Willamette Valley Council of Governments
Jeff Scheick, ODOT Region 2 manager
Bill Scott, OECDD
Ed Gallagher, Governor's CDO
DLCD

[1] Laing, Jonathon R. "Super-Saviors." *Barron's*, May 6 1996 p. 17. Also, The Shil Report, Chapter 1, p. 4
[2] U.S. Census data

PGP VALUATION INC
925 Commercial St. SE, Suite 310
Salem, Oregon 97302
503.371-2403 503.371-2613 Fax
Email: salem@pgpinc.com

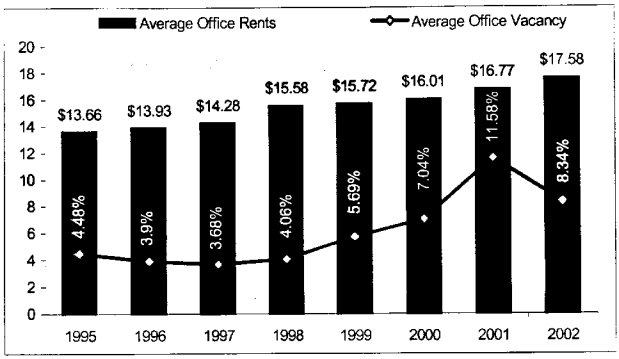
SALEM/KEIZER OFFICE & RETAIL SURVEY 2002 ®



SURVEY ASSUMPTIONS PGP Valuation Inc is proud to present the findings of its 18th annual Salem/Keizer Office and Retail Survey. As in previous years, property owners, managers and/or leasing agents from office and retail properties throughout the Salem/Keizer area were surveyed with regard to vacancy, consummated lease rates and current asking rents for available vacant space. The sample group represents retail and office space of varying sizes, tenancies and age/condition. Although the total population of office and retail space is unknown, we are confident that our sample represents the majority of this space in Salem/Keizer. Thus, it is a good indicator for overall rents and vacancies experienced in the Salem/Keizer area. In determining whether or not a particular vacant property is readily leaseable, several factors are considered. These factors include age/condition, utility and location of each individual property. Factors that significantly affect lease rates include the quality of the office/retail project, the cost of tenant improvements, lease term, tenant credit quality, overage clauses and potential customer draw. Individual building data is confidential.

OFFICE SURVEY

The 2002 office survey, which includes 96 properties totaling approximately 2,100,000 SF, revealed the first signs of market recovery. Overall vacancy dropped from 11.58% in 2001 to 8.34% in 2002. While still in excess of 5%, which indicates a stabilized market, office vacancy has decreased significantly within the past year. Vacancy in all sectors decreased except for CBD Class B where the addition of the Franklin Building pushed vacancy to 13.97%. Lack of new construction bodes well for continued improvement for the balance of 2002.



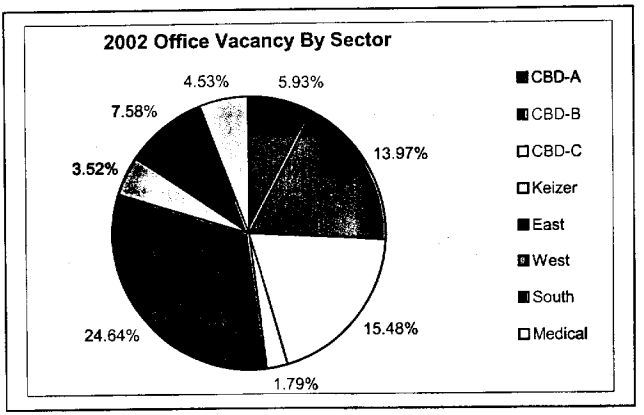
For consistency, all office properties have been **adjusted to reflect an annual full service rent structure**. Under these terms, the tenant's rent cost is a composite of all expenses (including parking) related to office space operation. Average rents, which include actual income and asking rents, **increased to $17.58 per SF per year, full service** in 2002. This continues the steady upward trend in office rents, which increased in all sectors over the last year.

Salem/Keizer Office Rents 1995-2002

Year	1995	1996	1997	1998	1999	2000	2001	2002
CBD - A	$16.74	$16.51	$16.56	$18.38	$17.76	$18.42	$18.21	$18.70
CBD - B	$12.30	$12.36	$12.84	$13.68	$14.16	$14.18	$14.70	$16.56
CBD - C	$11.88	$12.72	$13.68	$13.32	$13.32	$13.21	$12.86	$14.45
Suburban	$12.88	$12.74	$13.20	$15.12	$15.36	$15.51	$15.91	$16.61
Medical	$15.24	$15.58	$15.96	$17.16	$16.80	$17.53	$20.21	$20.70
Overall	**$13.66**	**$13.93**	**$14.28**	**$15.58**	**$15.72**	**$16.01**	**$16.77**	**$17.58**

Salem/Keizer Office Vacancies 1995-2002

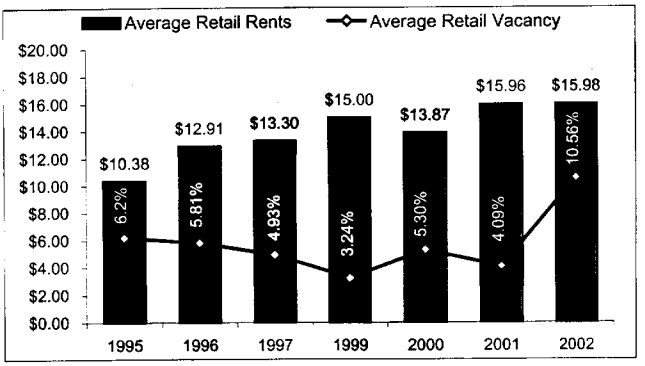
Year	1995	1996	1997	1998	1999	2000	2001	2002
CBD - A	2.64%	1.55%	1.05%	0.86%	4.44%	4.52%	10.22%	5.93%
CBD - B	2.96%	3.19%	2.94%	2.36%	3.37%	4.00%	6.21%	13.97%
CBD - C	4.15%	2.84%	6.58%	8.35%	8.72%	20.93%	18.75%	15.48%
Suburban	6.51%	7.73%	4.76%	7.11%	7.40%	8.11%	15.57%	8.39%
Medical	1.80%	1.02%	2.12%	0.37%	1.10%	0.00%	2.28%	4.53%
Overall	**4.48%**	**3.90%**	**3.68%**	**4.06%**	**5.69%**	**7.04%**	**11.58%**	**8.34%**



Rental concessions are offered periodically but inconsistently. New projects of a speculative nature are several years away. Given the continued absorption of vacant space we anticipate continued stable rents for the balance of 2002 and increased rents appearing in 2003. The office market, while still not healthy, has made significant improvement during the last 12 months. The events of September 11th do not seem to have made a measurable impact on either office vacancy or rent.

RETAIL SURVEY

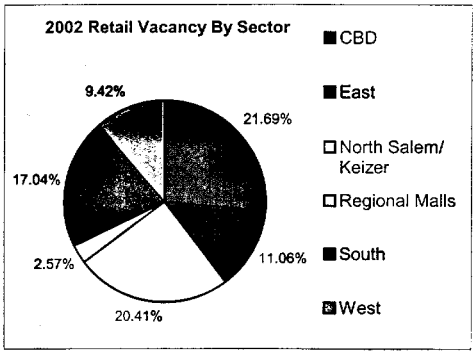
Our 2002 Retail Survey included 82 properties, totaling nearly 4,000,000 SF of retail space, located throughout the Salem/Keizer area. For consistency, retail properties were adjusted to reflect an **annual triple net** rent structure. The tenant is responsible for all expenses related to the operation of the space, whether charges are billed directly or passed through based on a pro-rata share of leasable area. Common area maintenance (CAM) and triple net pass-through charges vary widely from property to property. **Note:** Historical retail data represents 1995-1997 and 1999-2001. A retail survey was not conducted in 1998.



Overall, 2002 retail rents in the Salem/Keizer area remained stable, with an average annual rate of **$15.98 per SF triple net.** This reflects a 53.95% increase in rates since 1995.

A slight rise in rent was reflected in the Central Business District and Regional Malls, while all suburban sectors revealed a decrease. Salem's regional malls, Salem Center and Lancaster Mall, comprise nearly 1,250,000 SF of retail space. The 2002 average asking rent for the malls reached $25.52 per SF per year, triple net, a $1.47 increase from 2001. The sharpest decrease was seen in South Salem, where annual rental rates dropped from $14.88 per SF in 2001 to $13.26 per SF triple net in 2002.

Vacancy in the Salem/Keizer area has increased from 6.20% to 10.56% in the past seven years. Our survey indicates an **overall vacancy rate of 10.56% for 2002**. This is a severe rise from the 4.09% reported in 2001. All sectors surveyed revealed significant increases in vacancy.



The Central Business District, South Salem, and North Salem/Keizer showed the most dramatic increases in vacancy. These sectors experienced rates from 17.04% to 21.69%.

Although retail vacancy has increased dramatically, retail rental rates have remained steady, overall. Higher unemployment and a sagging economy appear to be taking a toll on the retail market. However, with minimal new construction, a recovering economy and recent community commitment to revitalizing the CBD, the retail sector should slowly recover during 2002.

Salem/Keizer Retail Rents 1995-1997/1999-2002

Year	1995	1996	1997	1999	2000	2001	2002
CBD	$10.44	$8.28	$8.40	$8.40	$8.34	$7.27	$7.40
East Salem	$10.56	$11.04	$11.20	$11.64	$11.30	$12.85	$12.24
South Salem	$10.96	$11.11	$11.52	$12.72	$12.40	$14.88	$13.26
North Salem/Keizer	$9.24	$9.84	$9.96	$10.20	$11.19	$11.94	$11.98
West Salem	$9.60	$10.92	$11.04	$12.48	$11.40	$10.42	$9.87
Regional Malls	N/A	$22.50	$23.04	$23.04	$22.14	$24.05	$25.52
Overall	**$10.38**	**$12.91**	**$13.30**	**$15.00**	**$13.87**	**$15.96**	**$15.98**

Salem/Keizer Retail Vacancies 1995-1997/1999-2002

Year	1995	1996	1997	1999	2000	2001	2002
CBD	0.47%	4.67%	3.85%	5.40%	2.90%	6.79%	21.69%
East Salem	0.07%	6.42%	5.80%	2.55%	8.70%	6.05%	11.06%
South Salem	8.84%	3.24%	0.69%	5.80%	9.17%	5.93%	17.04%
North Salem/Keizer	0.11%	0.11%	6.77%	5.30%	8.60%	6.17%	20.41%
West Salem	0.00%	9.30%	11.30%	5.00%	0.10%	1.29%	9.42%
Regional Malls	0.07%	5.65%	4.44%	2.50%	2.50%	0.74%	2.57%
Overall	**6.20%**	**5.81%**	**4.93%**	**3.24%**	**5.30%**	**4.09%**	**10.56%**

This information is provided as a courtesy to clients of PGP VALUATION INC and to respondents of the survey. Every effort has been made to provide accurate and unbiased information. Results of this survey are not intended as legal or financial advice and should not be used to make investment decisions. No part of this publication may reproduced in any form without the express written permisssion of PGP VALUATION INC. Please address inquiries of this nature to the Salem Office of PGP VALUATION INC. ®

Statesman Journal/StatesmanJournal.com

BUSINESS

INSIDE BUSINESS
Energy crisis: El Paso Corp. is curtailing activities and cutting about 300 jobs. **7B**
Stubborn: Columnist Warren Boroson says some mutual fund managers are still bullish. **7B**

Business editor: Don Currie (503) 399-6677; dcurrie@StatesmanJournal.com

Thursday, May 30, 2002

RETAIL AVAILABILITY JUMP TO 10.6 PERCENT WHILE OFFICE FIGURES DECLINE

City's vacancy rate rises

Downtown fares poorly in a survey, but some landlords report new tenants.

BY DON CURRIE
Statesman Journal

Commercial landlords in Salem are facing their worst market in nearly two decades, according to a new survey.

Vacancy rates for retail buildings jumped from 4.1 percent in 2001 to 10.6 percent this year, led by a whopping 21.7 percent vacancy rate in downtown Salem, according to the survey by PGP Valuation Inc. of Salem.

"The size of the vacancy rates in some of the sectors I haven't seen in the 18 years we've been doing the survey," said Spencer Powell of PGP, whose survey included more than 170 buildings and 6 million square feet of space.

Vacancies in the North Salem/Keizer segment of the market reached 20.4 percent and 17 percent in South Salem. Only a solid 2.6 percent vacancy rate at Salem Center and Lancaster Mall kept the overall rate from being even higher.

For office buildings, however, the rate declined from 11.6 percent to a still-high 8.3 percent. Landlords generally consider a 5 percent vacancy rate a sign of a healthy market.

In both stores and offices, rental rates remained fairly stable, Powell said. Office rents rose slightly from $16.77 per square foot annually to $17.58. Retail rates rose two cents to $15.98.

KOBBI R. BLAIR / Statesman Journal

PRESENTATION COUNTS: Soprano's Italian Steakhouse owner Richard Giddens and his daughter Molly garnish dishes. Soprano's is in the Reed Opera House, which has signed nearly a dozen new tenants recently.

"That leads me to the conclusion that this downturn is temporary," Powell said. "People are going to rent their buildings even if takes six to 12 months longer than they anticipate. Building owners feel that, long term, the market still feels strong and it will heal itself."

Ian Bourne, owner of the Reed Opera House downtown, said he's actually seen an increase in activity recently. He's signed leases for nearly a dozen new tenants in the past six months.

The building, a landmark built in 1869, holds a variety of retail tenants in its basement and first two floors, with offices on upper floors.

Bourne suggested that improving downtown's fortunes could be simple.

"If some of these people would actually fix up their buildings, just paint the front and fix the awnings," he said. "They've got all these 'for lease' signs up, but who's going to lease it looking all bombed out?"

Others aren't quite so optimistic. Larry Epping, a longtime commercial and residential developer in Salem, said until demand for commercial space increases significantly the market will remain soft.

"I think it's going to take longer to get back to something that's more robust," Epping said.

His company is concentrating on the other side of development: housing.

"We've got land to do the project and the demand is there," Epping said.

Meier, Maria

EXHIBIT A-75

From: Klaus Schilde [KSchilde@mail.open.org]
Sent: Monday, June 03, 2002 3:12 PM
To: MeierM@Keizer.org
Cc: BOB Wells; CECELIA URBANI; DAVID Pratt; Mark Becktel; Sharman MEINERS; VICKIE Woods
Subject: Council staff report and comments on minutes

Maria,

The Salem City Council just concluded its noon meeting and approved a Council staff report that I would like to submit into your Council's hearing record and the SKAPAC record tonight. Council members also commented on the draft minutes that we had attached to the report prior to your E-mail of Friday. They requested that two items be changed:

1. Rick Stucky is referred to as a Planning Commissioner. Instead, the minutes should indicate that he is a City Councilor (pp. 3 and 4 of the draft minutes).

2. The last sentence on page 3 of the draft minutes should be modified to reflect that this statement is the City of Keizer's opinion and has not been established as a fact.

Please include this E-mail in the hearing record for SKAPAC and the Chemawa Activity Center amendments.

Oregon
John A. Kitzhaber, M.D., Governor

Department of Transportation
Region 2
455 Airport Rd. SE, Bldg B
Salem OR 97301-5395
(503) 986-2600
FAX (503) 986-2630

June 3, 2002

FILE CODE:

Ms. Maria Meier, Planning Director
City of Keizer Community Development Department
P.O. Box 21000
Keizer, OR 97307-1000

EXHIBIT A-74

SUBJECT: Supplemental Comments on Proposed Keizer Station Plan

Thank you for notifying and involving the Oregon Department of Transportation (ODOT) of the land use action identified above. The purpose of this letter is to inform you that ODOT has concerns about this proposed project and its potential impacts to area transportation facilities.

By letter dated November 16, 2001, ODOT provided comments to the City of Keizer on the proposed Keizer Station project as presented by Northwest National LLC. The traffic analysis prepared for that project concluded that Northwest National's proposal would generate fewer PM peak period trips than the existing zoning for the Chemawa Activity Center adopted in 1997 and, therefore, would not have a significant impact on area transportation facilities. In our November 16 letter (incorporated herein by this reference), ODOT concluded that the findings of the traffic analysis were correct only if the conditions of approval applied to the Chemawa Activity Center project were carried forward and applied to this proposal. The letter also contained proposed conditions of approval for the Keizer Station project.

The City staff has proposed an alternative to the Northwest National LLC project which is documented in a report to the City's Planning Commission dated December 5, 2001. The staff alternative is currently being considered by the City Council. ODOT staff have reviewed the City's alternative, comparing it against the Chemawa Activity Center and Keizer Station proposals. Using the same assumptions contained in the transportation analysis for Keizer Station, we have prepared a comparative analysis of the PM peak period traffic for the staff alternative (attached). Based on that review, we have concluded the City staff alternative will generate fewer trips than either the Chemawa Activity Center (existing zoning) or Keizer Station proposals. ODOT's previous comments, therefore, remain applicable for the staff alternative.

ODOT would also like to inform the City that we believe this project will generate substantial traffic volumes on a daily basis and that major improvements to the transportation infrastructure in the area (including the I-5/Chemawa Road interchange) will ultimately be necessary. We would encourage the City to establish a funding mechanism (e.g., local improvement district) and apply it to the entire Keizer Station development area to ensure that transportation infrastructure improvement costs are equitably borne by all future developers in the area.

This letter should be included in the record as ODOT testimony. ODOT should be considered a party to the hearing and be entitled to notices of future hearings, or hearing continuance or extensions. Please provide me with a copy of the City's decision including findings and conditions of approval.

Sincerely,

Erik M. Havig
Planning/Development Review Manager

EH:dlf
cc: Dave Bishop, ODOT Region 2
Don Jordan, ODOT District 3
Gerry Juster, ODOT Region 2
Jane Lee, ODOT Region 2
Dan Fricke, ODOT Region 2
Mark Radabaugh, DLCD
Kathy Lincoln, DOJ/General Counsel Division
Richard Schmid, Mid-Willamette Valley Council of Governments

Keizer Station
Trip Generation Comparison

Current Zoning			
Land Use	ITE Code	Size	PM Peak Trips
Village Center			
Office	750	876,360 sq.ft.	1,170
Shopping Center	820	330,924 sq.ft.	1,385
SUB-TOTAL			2,555
Internalization Reduction (10%)			255
Pass-by trip reduction (20%)			250
Diverted trip reduction (26%)			320
Sub-area Total			*1,730*
Retail Service Center			
Shopping Center	820	163,500 sq.ft.	305
SUB-TOTAL			305
Internalization Reduction (10%)			30
Pass-by trip reduction (20%)			-
Diverted trip reduction (26%)			-
Sub-area Total			*275*
Keizer Station Area			
Office	750	251,790 sq.ft.	415
Residential	220	308 units	185
SUB-TOTAL			600
Internalization Reduction (10%)			60
Pass-by trip reduction (20%)			-
Diverted trip reduction (26%)			-
Sub-area Total			*540*
Commerce Center			
Shopping Center	820	80,225	545
Park & Ride	90	200 spaces	130
SUB-TOTAL			675
Internalization Reduction (10%)			70
Pass-by trip reduction (20%)			100
Diverted trip reduction (26%)			130
Sub-area Total			*375*
Entertainment and Sports Center			
Office	750	375,395 sq.ft.	565
SUB-TOTAL			565
Internalization Reduction (10%)			60
Pass-by trip reduction (20%)			-
Diverted trip reduction (26%)			-
			505
Total PM Peak Trips			***3,425***

Keizer Station Proposed Zoning			
Land Use	ITE Code	Size	PM Peak Trips
Village Center			
Shopping Center	820	1,002,800 sq.ft.	2,875
SUB-TOTAL			2,875
Internalization Reduction (10%)			290
Pass-by trip reduction (20%)			520
Diverted trip reduction (26%)			670
Sub-area Total			*1,395*
Retail Service Center			
Shopping Center	820	125,350 sq.ft.	730
SUB-TOTAL			730
Internalization Reduction (10%)			75
Pass-by trip reduction (20%)			130
Diverted trip reduction (26%)			170
Sub-area Total			*355*
Keizer Station Area			
Office	750	290,375 sq.ft.	460
Shopping Center	820	15,040 sq.ft.	180
MF Residential	220	237 units	150
SUB-TOTAL			790
Internalization Reduction (10%)			80
Pass-by trip reduction (20%)			30
Diverted trip reduction (26%)			40
Sub-area Total			*640*
Commerce Center			
Office	750	196,200 sq.ft.	345
SUB-TOTAL			345
Internalization Reduction (10%)			35
Pass-by trip reduction (20%)			-
Diverted trip reduction (26%)			-
Sub-area Total			*310*
Entertainment and Sports Center			
Office	750	268,140	430
Light Industrial	110	8.2 ac	145
SUB-TOTAL			575
Internalization Reduction (10%)			60
Pass-by trip reduction (20%)			-
Diverted trip reduction (26%)			-
			-
			515
Total PM Peak Trips			***3,215***

Keizer Staff AlternativeProposed Zoning				
Land Use	ITE Code	Size	Trip Rate	PM Peak Trips
Village Center				
Shopping Center	820	714,000 sq.ft.	3.74/1000	2,670
Industrial	110	25.85 ac	15.85/ac.	415
SUB-TOTAL				3,085
Internalization Reduction (10%)				310
Pass-by trip reduction (20%)				555
Diverted trip reduction (26%)				718
Sub-area Total				*1,502*
Retail Service Center				
Comm. Mixed Use	820	115,000 sq.ft.	3.74/1000	430
SF Residential	210	1.1 ac.	2.74/ac	3
SUB-TOTAL				433
Internalization Reduction (10%)				43
Pass-by trip reduction (20%)				86
Diverted trip reduction (26%)				98
Sub-area Total				*206*
Keizer Station Area				
Commercial	820	87,000 sq.ft.	3.74/1000	325
MF Residential	220	415 units	0.63/unit	260
Shopping Center	820	15,000 sq.ft.	3.74/1000	56
SUB-TOTAL				641
Internalization Reduction (10%)				64
Pass-by trip reduction (20%)				115
Diverted trip reduction (26%)				147
Sub-area Total				*315*
Commerce Center				
Industrial Bus. Park	130	196,000 sq.ft.	0.92/1000	180
SUB-TOTAL				180
Internalization Reduction (10%)				18
Pass-by trip reduction (20%)				-
Diverted trip reduction (26%)				-
Sub-area Total				*162*
Entertainment and Sports Center				
Industrial Bus. Park	130	395,000 sq.ft.	0.92/1000	365
Light Industrial	110	16.3 ac	15.85/ac	260
SUB-TOTAL				625
Internalization Reduction (10%)				65
Pass-by trip reduction (20%)				-
Diverted trip reduction (26%)				-
				580
Total PM Peak Trips				***2,744***

City of Keizer, Oregon

PUBLIC HEARING SIGN UP SHEET

PUBLIC HEARING RE: CHEMAWA ACTIVITY CENTER/KEIZER STATION (TEXT AMENDMENT/COMP PLAN CHANGE/ZONE CHANGE – CASE NO. 01-50)

DATE: May 20, 2002 **TIME:** 7:00 p.m. **AGENDA ITEM #** 6a

BEFORE THE: KEIZER CITY COUNCIL **PLACE:** ROBERT L. SIMON COUNCIL CHAMBERS

(PLEASE PRINT)

NAME	ADDRESS	GENERAL	PROPONENT	OPPONENT
JACOB BROSTOFF	534 SW 3RD SUITE 300 PDX OR 97204	X		
WAYNE + LOU STURGILL	1656 Willow Lake Rd N Salem OR 97303			
Bob Thompson	4970 Chaumon Ct Salem OR 97302		✓	
Charles Matschek	4131 SW Jerald CT. Portland OR 97221		✓	↑ ?
Steve Fervarini	1610 SW Alder Suite 915 Portland OR 97205		✓	X.
Chris Stamley	610 SW ALDER STE. 700 PORTLAND OR 97205		✓	X 21
Tom Jonnes	8405 SW Nimbus Ave, Beaverton, OR 97008		✓	Sen
FRANK ANGELO	1620 SW Main Suite 201 Portland Or. 97205		✓	
Wendie Kellington			✓	
Kelly Walther	Keizer Chamber of Commerce	X		
Bruce Anderson	1291 Leo St NE, Keizer 97303	✓	✓	

City of Keizer, Oregon

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EXHIBIT "A-69"

THE SHILS REPORT

MEASURING THE ECONOMIC AND SOCIOLOGICAL IMPACT OF THE MEGA-RETAIL DISCOUNT CHAINS ON SMALL ENTERPRISE IN URBAN, SUBURBAN AND RURAL COMMUNITIES

Study Director
Edward B. Shils, Ph.D., J.D., LL.M.
George W. Taylor Emeritus Professor
of Entrepreneurial Studies
Director Emeritus, Wharton Entrepreneurial Center
The Wharton School
University of Pennsylvania
February 7, 1997

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PREFACE

In 1973, as Chairman of the Department of Management at the Wharton School, I envisaged a teaching program in Entrepreneurship and a research center to stimulate interest both in internal corporate entrepreneurship and the creation of small businesses. The Center was the first of its kind in the world. Ultimately the Wharton Entrepreneurial Center became known as the Sol C. Snider Entrepreneurial Center, and the writer, who retired in 1986, holds the title of Director-Emeritus. My experiences at Wharton with small enterprise and my work with several trade associations, consisting of small enterprises, gave me a special zest to study the impact of mega-retail discount chains on small enterprises.

With the problems besetting cities and the rise of retail chains, and later the mega-retail discount chains, bad times have fallen on the traditional retailer. Will this affect the social stability of the neighborhood? As the residents begin to shop along the highways, little by little the neighborhood stores are closing.

Similarly, have the small towns in the United States been adversely affected as the giant mega-retail discount chains moved into the Midwest, the West, the Northeast and the South, or have they affected communities positively? Today, the rivalry of these giants has negatively impacted traditional retailing. Why are the downtown "Main Streets," which were the dynamic centers of the small cities and towns, dying and portraying a ghetto-like appearance? Moreover, are Redevelopment Agencies (RDAs) within cities ameliorating the problem of blighted downtowns or are RDA's, in fact, exacerbating the situation by providing corporate welfare giants to the mega-retail discount chain rather than to the small struggling retailers? I feel confident this study will help answer some of these provocative questions.

Furthermore, not only is "Main Street" America becoming a ghetto but evidence shows additionally that traditional retail malls and strip centers in the cities, suburbs and rural areas have also begun to decline when a mega-retail discount chain with 40,000 square feet moves out because a "big-box" competitor with over 150,000 square feet opens a half a mile away.

Soon the traffic density is reduced and possibly one of every three stores goes out of business, leaving the mall to appear to be boarded up, graffiti laden, and replete with vacancies and discouraged survivors.

As the mega-retail discount chains have grown in power, they have been able to buy in massive quantities directly from manufacturers. In fact regional wholesalers that traditionally sold to small retailers are disappearing as they are bypassed by massive direct purchases from manufacturers and in some cases from national wholesalers. The price available to the mega-retail discount chain are certainly denied even to small retailers who somehow struggle to remain in business.

This may be creating an interesting phenomenon when a retailer's wholesale resources disappear, and he often is reduced to buying from a Sam's Club, et al. As a proponent in understanding the plight of small business which traditionally represents an overwhelming proportion of national economic activity and currently as one who observes the trend in corporate downsizing where more and more jobs are vanishing at an alarming rate, I decided to undertake a study of what

impact the mega-discount retail chains are having on communities, both economically and sociologically.

In the Spring of 1994, I began to raise funds for a national survey of this problem, concentrating in the states of California, Illinois, New York and Pennsylvania. I needed funds for clerical help, computerization, travel, printing and research assistance. In addition to the use of a considerable amount of my own financial resources, I was aided by my family (my wife, Mrs. Shirley R. Shils and my sister, Mrs. Charles Marshak of Atlantic City, New Jersey); by the United Food and Commercial Workers; by the Knitted Outerwear Manufacturers' Association of Pennsylvania and the Fashion Apparel Manufacturers' Association of Pennsylvania and other individuals.

The study was launched in the Spring of 1994, when 6,000 questionnaires were sent to retailers in four states: California; Pennsylvania, Illinois and New York. There was a 9% return, with these returns providing both quantitative data (see Chapter III) and qualitative narrative data (see Chapter IV). Also, I traveled frequently to the four states and interviewed surviving retailers on the "Main Street," and in the suburban or rural malls and the strip centers.

My recommendations, in part, apply to city, state and the federal governments with respect to their present practice of providing "public funds" or "corporate welfare" to help finance capital outlays and debt service for the infrastructure construction of "Big Boxes" currently being erected throughout the United States. Many of the development packages provide that a new "Big Box" will be able to retain all sales taxes collected for a given number of years in order to help finance the construction and debt costs of the new facility. When this happens the local government and the school districts which depend on sales and real estate tax revenues find themselves in desperate financial condition since the small retailers which have been displaced are not providing revenues through and sales tax to the schools and property and real estate taxes to the community.

Congress should not only review the "corporate welfare" benefits not so broadly understood and in addition should review whether or not a more rigorous enforcement of the Sherman, Clayton, Robinson-Patman and Federal Trade Commission Acts would or would not be applicable with respect to determine the existence of possible predatory behavior on the part of the mega-retail discount chains and other overwhelming retail conglomerates.

The study and interviews with small and medium sized retailers confirms the fact that intense price competition has closed and is closing hundreds, if not thousands of small retailers? Ironically, it is now affecting the large discount chains themselves? Bradlees, Ames, Jamesway, Hills, Caldor and Boston Stores are in or near bankruptcy. Kmart reeled from a string of quarterly losses. Wal-Mart, the behemoth of retail recently reported for the first time, a decline in earnings. Charming Shoppes has been in serious financial difficulty. Where will it all end?

Finally, Congress and state governments need to examine the effect mega-discount chains have on small business. A comparative analysis needs to be explored concerning those cities which acquire the new "Big Boxes" and the economic fallout which occurs to the losing city. What happens to the consumer in a town or medium sized city, which lost all of its "Main Street" retailers upon the arrival of a neighboring "Big Box," when the mega-retail discount chain decides to close because of the now weakened buying power of the community. When jobs disappear it must sooner or later have a definite impact on the ability to purchase from a traditional retailer or discount chain.

Moreover, what are the social and economic dynamics that occur when two cities are competing for the same revenue dollars? Competition between cities can affect each community, possibly through revenue loss to schools, putting police and fire protection in jeopardy while a multi-billion dollar corporation sits on the sideline and takes the best deal. Free enterprise, yes, but what are the long term ramifications? Is small business being priced out of the marketplace due to massive buying power of the "Big Boxes"? Are these trends isolated to retail or will the future determine only the biggest will survive in their particular niche? It is the writer's hope that this study will help shed some needed light upon these questions.

Congress and state governments should also be concerned with the preservation of the environment; physical, economic, aesthetic and sociological. The writer has presented a picture of rapidly increasing ghettoization and blight as the mega-retail discount chains continue their free-wheeling from city to city, town to town and county to county, leaving behind, in many cases, urban, suburban and rural sprawl.

My description of this blight parallels that of Constance Beaumont in her book, How Superstore Sprawl Can Harm Communities.... and What Citizens Can Do About It, published by the National Trust for Historic Preservation. Not only must we look at this issue from an architectural preservation standpoint but also from an economic and social preservation point of view. Certainly we must all change and be open to change; however, we must question if these changes/effects attributed to the "Big Box" phenomena are healthy for this country's welfare and are not at the economic and sociological expense of its people and what has made America a world power.

Edward B. Shils

February 7, 1997

CHAPTER I

SURVIVING THE INVASION OF THE MEGA STORES

THE IMPACT OF MEGA-RETAIL DISCOUNT CHAINS ON URBAN, SUBURBAN AND RURAL ECONOMIES

Traditionally small retailers, department stores and well-known retail chains such as Sears, Penney's, Woolworth's, Krogers and various food and supermarkets were able to live together in relative peace. Sears, Penney's and Woolworth's were designed to be part of the "Main Street" environment. The original purpose of J.C. Penney was to be part of the community and to increase consumer buyer capability; not to interfere with local businesses and entrepreneurs.

With the advent of Kmart, Wal-Mart, Target and other mega-retail discount chains, a new era in retailing developed. As the mega-retailers were able to discount all types of products, "one stop" shopping became the vogue aided by the more intensive use of the automobile and new highway networks.

The large mega-retail discount chains developed such strong competitive advantages that the "Main Streets" of cities and towns became threatened, and the "Mom and Pop" stores were soon part of a dying breed.

"Partnering" developed between the mega-retail discount chains and the manufacturers allowing these chains to buy "direct." In many cases they eliminated the regional wholesalers who had traditionally served the small downtown retailer as well. The new position of the powerful mega-retail chains, discounters or otherwise, was not to augment but to compete.

Powerful chains were able to secure federal, state and local funds to help defray the capital outlay and debt service cost of building the "Big Boxes," Supercenters and Power Centers. These funds should and could have aided in the rehabilitation of the dying downtown districts.

Besides the economic effects of large "behemoths," the growing downtown traffic congestion and parking problems have created a new commercial environment in both urban and rural areas, usually pulling consumers away from "Main Streets" downtown and into the Targets, Kmarts, Home Depots, Wal-Marts and other mega-retail discount stores located in adjacent areas situated on formerly zoned "industrial" areas replete with more than ample black-top parking lots. Furthermore, citizens have begun to feel the effects of social changes taking place in their cities and towns. The impact of these giant competitors begins to reduce employment on the old "Main Street." Loss of job opportunities for both young and old leads to social instability, crime, violence and creates a broad negative impact upon the "sociology" of the community.

As these "Big Boxes," or warehouse type stores, locate near the traditional business areas, commercial activities tend to drain away from the "Main Street" and transfer away from downtowns, causing the "hollowing out of the city," states Sylvia Lewis.[1]

Edward O. Wells reported on a study by Kenneth Stone, Professor of Economics at Iowa State University and a Wal-Mart guru, that the revenues generated by major discount chains such as Wal-Mart (or Kmart) and others, have actually been revenues lost by local merchants. His

hypothesis appears based on the assumption that these areas consisted of static populations where the retail market had largely remained unchanged. When major discounters enter, therefore, sales tend to be taken from those originally destined for local stores. This is actually a shifting of market shares, and not necessarily newly generated sales through an increase in the market or its demography. In fact, between 1980 and 1990, total retail sales increased only 8% while total retail space soared by 40%.2 This re-allocating of sales from one area to another has been extreme enough to be detrimental to local economies. And sales were not the only area affected: jobs as well shifted and not even jobs with as much to offer were the result. Further concern arises as Wal-Mart and Kmart move aggressively into the food industry with their "Supercenter" facilities. Both chains have developed 100,000 - 200,000 square foot "Boxes" which sell a full line of food as well as general merchandise. Additionally, Kenneth Stone's early studies found that towns outside of Wal-Marts had lost sales on an average of 25% because of the attracting of consumers to these new centers.3

More recent data on retail square footage shows that the United States is in a condition of being "'over-stored' with 19 square feet of retail space per capita compared with just half that level a decade ago."4

The following chapters in this study are concerned as much with the "desocialization" of traditional family communities, sometime ethnic, religious, racial, blue or white collar, or socialized by national origin or with the economic impact of the mega-discount chain on the small retailer. As the retailers fail to survive, so do the neighborhoods fail, with resultant urban crime, drugs, gangs and blight.

The writer's interest in the impact of the giant retail discounters upon small retailers was aroused because of his long-time exposure as a professor teaching the values of small business entrepreneurship and as well as an expert in a number of trade associations in the dental, sweater, women's apparel and carpet retail industries' small businesses.

Further, in 1973, as Chairman of the Department of Management at the Wharton School of the University of Pennsylvania, the writer founded and became the founding Director of the Wharton Entrepreneurial Center, which became a prototype for hundreds of such centers at colleges and universities throughout the world. The writer is no longer associated with the center except as one who holds Director-Emeritus rank. The center and its teaching program in Entrepreneurial Studies were designed to explore the entrepreneurial spirit in America's youth and to instill in both undergraduate and graduate students both special skills and an intense desire to create and grow small businesses in America. The concern is not only with the establishment of small retail businesses, but also with depriving the creative entrepreneur of developing new products and getting shelf space. Further thirteen Small Business Development Centers (SBDC's) were set up in colleges and universities throughout Pennsylvania. Students and faculty assisted small entrepreneurs, many of them retailers to sharpen their skills to be more competitive. This program was funded in part by the U.S. Small Business Administration (SBA) and SBDC's became a model for other states and universities.

It was apparent in 1973, that for America's largest corporations to compete globally, they would down-size their staffs, and hence export tens of thousands of jobs to other nations. This has occurred as expected. There was and still is a need to save small business in the United States and to "grow" new businesses; retail, wholesale, service and manufacturing.

During the past 23 years, there has been substantial new job creation by small U.S. entrepreneurs. These gains have been overcome by major corporate down-sizing and the loss of jobs in the manufacturing sector. Illustrative of this has been a shift of manufacturing jobs to low labor cost areas throughout the world.

Business census data discloses the fact that the number of small businesses in the United States has increased 49% since 1982. As of 1994, there were approximately 22.1 million non-farm businesses, of which 99% are small by size standards set by the U.S. Small Business Administration (SBA). These include corporations, partnerships and sole proprietorships. Almost two-thirds of the 22.1 million businesses operate full-time, the rest part-time.5

The writer's concern about loss of jobs in retail resulting in great part on the inability of the small retailer to compete with the mega-retail discount chain might very well contribute to a reversal of the trend in which small business is compensating for the continuous loss in jobs in America's major corporations. The SBA tells us that, "Small businesses employ 53% of the private work force, contribute 47% of all sales in the country, and are responsible for 50% of the private gross domestic product. Small-business-dominated industries produced an estimated 62% of the 3.3 million new jobs created during 1994."6

SBA data prepared for the 1995 White House Conference on Small Business corroborate the writer's concern, that small business offers perhaps the only refuge for the corporate redundant employee.

As to the current employment scene, note the following SBA statement:

> Most recently, between December 1993 and December 1994, employment in small-business-dominated industries increased 4.7 percent, generating 2.03 million new jobs. During the 1990-1991 recession, small firms helped stabilize the economy by generating jobs in the service sector. Most of the job losses during this period came from contractions of large firms which have lost over 4 million jobs since the mid-1980's.7

Despite the fact the thousands of "Main Street" merchants with 10 or more years of business experience have closed down in a losing fight with mega-retail discount chains, located in urban sprawl in obsolete, and battered and declining "Main Streets," strip malls, out-moded malls or free standing stores; nevertheless retailing still attracts those with limited capital who still want to be self-employed. These entrepreneurs large and small still employ almost 20 million workers in retail establishments.

It is imperative that the nation save the small retailer. In a national report on "County Business Patterns" in 1993 for the United States, there were 19,777,219 workers engaged in retail activities or 21% of the entire non-agricultural work force of 94,807,076. Of the total of 19,777,219 retail employees, 6,953,455 or 35% worked for small retailers with less than 19 employees.

For small retailers with 29 to 49 employees, there were 4,825,666 retail employees. In other words 11,778,000 retail employees worked for firms with under 50 employees; or 60% of the total.

Despite the developing dominance of the mega-retail discount chains, retailers who are relatively large have a combined total retail employment of only 40% or about 8 million jobs in the category of 50 employees and greater.

To insure the dominance of "small business" in retail activities the County Dalton report of the U.S. Department of Commerce for 1993 showed a grand total of 1,551,510 retail establishments--large and small. The ultimate possible impact of more and more powerful mega-retail discount chains will be to displace tens of thousands of small business entities and make millions of retail employees "redundant," something that automation failed to accomplish. In the job category of 0-10 employees, there were 1,317,122 retail establishments or 85% of the total.

The SBA also lauded the new job creation of small businesses as follows:

> "During the entire 1976-1990 period, small firms provided 53 percent of total employment and 65 percent of net new jobs. From 1989-1991, the latest Census data available produced under contract for SBA, indicated that small firms with 0-4 employees created 95 percent of the new jobs. Of the 2.6 million new jobs created, 1.5 million came from expansions of new small firms with 0-4 employees which moved into the 5-19 firm size category. The remaining jobs came from births of new small firms."8

While small retailers struggle to stay in business against major odds both with national competitors who buy direct with mass purchasing and resultant discounts, small and large manufacturers appear to be giving up. The U.S. employment sector showing the greatest decrease is the manufacturing sector. Joblessness in this sector has to be made up in service or retail industries.

In 1985, there were 19.2 million manufacturing jobs in the United States. By 1995, this had dropped to 18.2 million, a loss of one million jobs during a time in which population had grown by 22 million and the civilian work force by 18 million.9

Small manufacturers have been put out of business as the US free trade policy encouraged imports first from Japan, then later from Taiwan, Hong Kong, India, Pakistan, South Korea, China, Singapore and numerous other nations. This policy also negatively affected the American small retailers who did not have the ability to contract for mass purchases from overseas, low-labor cost areas as did major retail chains and mega-retail discount chains (as evidenced by the media's preoccupation with Kathy Lee Gifford and Michael Jordan and their association, no matter how remote, problems with child labor in manufacturing plants where products with their names on them are produced).

Small businesses appeared to be most successful in the past 22 years in creating jobs in service and retail industries, particularly in information systems, computers, health care, etc.

Now a reversal is being observed in the major metropolitan areas, such as Philadelphia, New York City, Chicago, Los Angeles, San Francisco, Miami as well as in suburban and even rural areas of the United States where small retailers are closing in downtown and "Main Street" areas unable to compete with because of the arrival of the huge mega-retail chains. These "mega-stores" now include among others, Kmart, Wal-Mart, Sears, Montgomery Ward, J.C. Penney, Dillards, Target, Home Depot and other powerful retail chains. These chains have succeeded in eroding regional wholesalers who supply the local retailers and the retail base of cities, suburbs, rural areas and small towns are suffering with job loss and urban sprawl.

Wholesalers are being eliminated rapidly as manufacturers become captive to major mega-retailers and the manufacturers are beginning to take on wholesale service functions such as interactive information systems, warehousing inventory and just-in-time delivery. Furthermore, mega-retail discount chains have their own quasi-wholesale/retail firms such as Sam's Clubs, to which some retailers must go to purchase merchandise in the growing absence of the traditional wholesalers. In fact, Wal-Mart has invested heavily in interactive systems to the point where the company only carries about two weeks' supply of stock and gets it to the stores prior to their being in an out of stock situation.10

As an academician and small business consultant, the writer became concerned in late 1993 and early 1994 about not only the economic impact of the mega-retail discount chains on jobs and joblessness in America, but also the sociological impact of these changes.

In the city, loss of retail stores creates social instability. Many of the eastern cities, historically consisted of ethnic enclaves. The ethnic and minority population had depended on the pharmacies, groceries, shoe stores, apparel stores, variety stores, bookstores, not only to meet consumer needs, but to supply jobs for teenagers and adults.

As the mega-retail discount chains such as Target, Home Depot, Kmart and Wal-Mart entered the urban and suburban areas, job opportunities in small retail establishments began to disappear as small retailers, wholesalers and service activities began to suffer and eventually closed, not being able to compete with the "giants" on a basis of price, national brands and almost 24 hours of open store service, often on a seven day basis.

As stores closed in the city enclaves, as well as in suburban and rural malls, the result has been in part to create further "ghettotization." Retail stores are boarded up, marked with graffiti and as jobs are lost in the neighborhood, even neighborhood housing also begins to decay. Welfare rolls rise, crime and violence increase and unemployed youth often turn to underground employment, drugs, crime, school truancy and eventual "drop outs" from both school and society. Traditionally, there were always jobs in the neighborhood stores; in the grocery, butcher shop, shoe store, apparel store, pharmacy, and there existed a close kinsman ship between the local store owners and the community. The store owners knew the names of the "kids," saw them "grow up" and helped them with full and part-time employment as they advanced in their school and college pursuits.

To combat the new arrival of mega-stores, communities have turned to the law (zoning, council manic ordinances) in hopes of deterring the proliferation of the mega-retail discount chains, who often contribute to pollution, highway congestion near public schools and who often are subsidized with tax abatements and other incentives to build and grow which are not available to small businesses. Communities have attempted to maintain their traditional social and economic cultures. Nevertheless, the force of these mega chain stores continues to influence and dominate the "Main Street" culture. The strength of these mega chains has made it difficult for local merchants and less strong competitors to confront and restrain the inevitable construction of the "Big Boxes." Restraining the rise of the mega-stores by protests or setting up opposition groups is a difficult task indeed: there have been some failures, nevertheless, there have also been considerable successes where communities and community groups have organized effectively. Opposing the giant mega-retail chains with their huge financial resources is often cost prohibitive for neighborhood groups. A desire to survive requires new marketing strategies to be

formed and implemented by local and regional store owners. Many of these strategies have been selected by hundreds of respondents found in the tables and charts in Chapter III of this study.

This portrait of the "free" retail market is not a happy picture. However, one can say, "The cities of the United States are turning into ghettos, so what's the difference?" Things are expected to be better in suburbia, in rural areas and in America's small towns located in New England, the South, the Midwest and the Far West. However, urban decay, stimulated in part by the movement into "Main Street" avenues and to the suburban and rural malls, has now spread throughout America in almost every state and region and has created cemetery-like sprawls in towns and malls, once pleasant and inviting to local citizens and travelers.

Earlier entrance of the mega-discount chains into mid-town America (the small towns) struck a cheery note with promises of jobs and services by the new retail discount "giants." However soon the "Main Streets" of these towns were decimated, by repeated small store closings, unable to compete with the new American retail "giants." Moreover the effect on the remaining retailers by the "moving out" of a mega-discount store after several years, becomes particularly destructive to the survival of the remaining small retailers in malls formerly dominated by a retail "giant."

The free wheeling race between mega-retail discount chains such as Wal-Mart, Target, Kmart and others is best exemplified by Wal-Mart's planning strategy promulgated by its Chairman at the June 7, 1996 annual stockholders' meeting. In discussing Wal-Mart's future growth and expansion plans, David D. Glass, Chief Executive Officer, said: **"We're going to dominate North America."**11(Emphasis added.)

Obviously, conquering the retail market in North America is Wal-Mart's agenda and this is further evidenced by the strategy of placing urban stores in a manner which creates a 10 mile radius and rural stores with a 35 mile radius. In a 1993 *New York Times* article quoting Kenneth Stone, a noted academician who has become an expert on Wal-Mart, he said:

> "What happens is that Wal-Mart has a saturation strategy. They come in with stores 60 miles apart and then they are 10 to 12 miles apart. About three years after a Wal-Mart opens, stores near it begin to close."12

What chance could a smaller, less aggressive enterprise, successful in the "Main Street" tradition, have against a multi-billion dollar company proudly advocating dominance. The chances for a free market on a level playing field is disappearing year by year, month by month.

The writer's interest in the mega-retail discount chain project and its sociological and economic impact on America led first to Eastern Pennsylvania (including Philadelphia). Following were visits to Southern California, mainly the San Diego area, including such communities as Chula Vista, Poway, Oceanside, Mira Mesa. Then the impact of the mega-retail discount chains in suburban and rural areas in Chicago, Illinois, including Chicago, Kanakee and Des Plains were studied. Later, visits and observations were made in New York's Finger Lakes region, including the Geneva, Auburn and Syracuse areas.

In all these areas, profound changes were found both in joblessness and socialization. Where many jobs were promised by the mega-retail discount chains, they often turned out to be low paying jobs, without medical benefits and customary fringes. These new stores replaced the traditional "Main Street" retailers, eliminating thousands of jobs formerly in stores employing

one to ten persons (see the typical small retailer profile in Chapter III). These were family type enterprises and usually provided family income and wages that assisted family members to continue their education by enrolling in colleges and universities and often medical and insurance benefits. In studies, such as one completed in the Lake Placid, New York area, the conclusion was reached that in exchange for 1 new part-time job in a mega-discount chain, about 1_ full-time jobs were eliminated in smaller stores.13 This was also observed by the author after interviews with surviving small retailers in areas invaded by the major chains. This was quite different from the rosy picture painted before Zoning Boards and City Councils about substantial increases in jobs to be expected in the community as a result of constructing Superstores and Power Centers.

Also observed in Philadelphia, Pennsylvania, the French retailer, Carrefour, received a five year tax abatement and opened a 260,000 square foot store. After 4 and one-half years, they left the city without paying any taxes. Furthermore, they had promised City Council that 600 - 800 new jobs were to be created when in reality, only 250 were produced. At the same time, five independent food stores and one non-food store, a number of apparel stores and various other small businesses were forced out of business during the years Carrefour was open. This occurred prior to the opening of the Franklin Mills Mall in the same area. It has also been estimated that the net effect was a loss of 1,000 jobs. Job loss in a neighborhood leads to social and economic disintegration. This has become a recurring theme of this study.

In travels and interviews, the writer also noted that the degradation and "ghettotization" of the cities and towns were gradually being transferred nationally to the suburban and rural areas of the United States, almost as infectious diseases run rampant, without community concern and medical care.

When a developer in East Aurora, Arkansas, proposed a 47.8 acre retail mall with 263,000 square feet of retail space at an industrial park a scarce mile away from the town's traditional downtown center, citizens immediately began organizing protest groups. They were ready to fight to protect their way of life from what they viewed as an invasion.

Gerry Kermouch, in a 1994 article in *Brandweek Magazine*, quotes Peter Pitegoff, a law professor and president of the Villagers for Responsible Planning, "We are afraid that a discounter would undermine local retailers, create traffic problems and undermine the historic character of East Aurora."14

The citizens of East Aurora, Arkansas were not the only people who voiced outrage at prospective entrance of behemoth retailers into their "Main Street" cultures. Towns throughout the nation have expressed their discord with the invasion of these "Big Boxes," the large warehouse-like structures which threaten the survival of the small retailers. Community groups have developed conferences and seminars throughout the United States on how to confront the almost daily arrival of these mega-stores. Often citizen groups, by petitioning their elected officials have prevented the major retail discount chains from beginning warehouse-like shopping sites. However, closer analysis of the retail industry, its strategies, and the trends that perpetuate the industry's growth suggest that the inevitable will occur; unless small, less leveraged retailers and "Mom-and-Pop" stores can create new strategies to survive against the new competition. Enlightened governmental leadership, both local and national should provide support and encouragement for small business leadership to execute survival strategies. The American economy will require a balance of large and small retail businesses in order to provide

millions of well paid positions necessary to provide goods and services in a growing national economy.

As the history of retailing in America was studied, the writer noted that from the traditional small size retail chain there emerged the department stores. These examples of grandeur were generally found in municipalities with substantial populations, such as the large city. Later, as retail discount chains came into existence, the department store had hard sailing, and despite the development of branch stores in suburban areas, the record of the department stores suffered along with the small retailer. Employment in the department stores also became downsized as personnel costs were cut in the face of competition from the Kmarts, Wal-Marts, Targets and J.C. Penney's.

Although discount retail chains were first noticed in the 1950's, America watched one creative and fantastically managed company develop from a five-and-ten store into a company with $82 billion in sales in fiscal 1995 and fiscal 1996 sales over $93 billion and projected sales over $105 billion in fiscal 1997. (Most of these major retailers have fiscal years ending January 31st or very close to that date). Wal-Mart Stores, Inc., this formidable retail chain in one year opened 147 new Wal-Marts, and 163 Sam's Clubs in the United States alone.15 Although Wal-Mart was not the first in the market, it influenced the marketing and planning of its competitors and exercised a major impact upon the growth of the entire discount retail chain business.

According to Edward O. Welles, "From 1960 to 1985, annual sales by discount stores in the United States exploded from $2 billion to $68 billion, with Wal-Mart responsible for igniting much of that growth."16

Discount retail chain stores, such as Kmarts and Wal-Marts have recognized the need for sites which supply a variety of brands and products at a reasonable value. Wal-Mart achieved success by first providing products that "were up to 15% cheaper than those available in 'Mom-and-Pop' stores," according to the *Harvard Business Review*.17 Its competitors also followed with similar marketing strategies.

Large discount retail chains and similar mega-stores have continued to grow and expand in the United States. In addition, barriers of entry have developed, preventing increased competition. Their strategies and decisions have been able to influence the entire nation's economy, basically because of their strong leverage on both suppliers and customers. "When the original Wal-Mart locations could support one store, the customer population was large enough to maintain two rival discounters. Thus, once Wal-Mart established a store in a particular area and had prevailed over the small local retailers, it was seldom threatened with future local competition from other discounters, including Kmart."18 By excelling over its competitors, the growing strength of Wal-Mart caused a shifting in the market. Economies of scale were definitely in favor of operations of the growing mega-retail discount chains. The larger discount retailers developed their own "hub-and-spoke" distribution systems, which permitted them to purchase from suppliers for all their locations, thus lowering the costs of doing business substantially compared to that of the traditional stores and the regional retailers. Since price has consistently become a more significant factor for consumers, local competition would repeatedly lose the price wars and leave the market to the mega-retail discount chains.

Today, the advent of the mega-discount chain has not only undermined the survival ability of the traditional department store and the "Main Street" retailer, but also has begun to disfigure and

transform former grandiose retail malls into replicas of the city ghettos. Furthermore, the jobs that are lost in "Main Street" types of small businesses do not provide the full picture of what a community loses in terms of gross domestic product. In fact, the House Committee on Small Business has published the positive impacts that a new small business entering a community can have. The data in the following quote lends considerable additional weight to the multiplier effect on wages and the sociological effects a small business can have on a community as described throughout this study:

> "The establishment of a small business has a large, positive effect on the local economy. A small business with 100 employees in a town adds: 351 more people; 79 more school children; 97 more families; $490,000 more bank deposits; one more retail establishment; $565,000 more retail sales per year and $1,036,000 more personal income per year."
>
> "Small businesses also seem to be more community minded. They give more in charity to community service organizations per employee than do large businesses, according to the SBA's Office of Advocacy. In addition, small firms tend to target their donations to direct service providers."19

On visits to California, New York, Illinois and Pennsylvania, the staff witnessed the increasing decay, both physically and morally of the stores and their environment in malls that had been in their ascendancy in the 80's and 90's. Typically these malls might have had a normal sized mega-retail discount chain store (60,000 square feet) as an anchor. Conceivably, a major rival might then construct a supercenter (200,000 square feet) which would then be opened one half mile away from the older mall, with a new parking area and an invitation for new stores to open in the area. After 6 months to a year, the smaller discounter surrenders, and the store becomes vacant. Traffic density in the older mall begins to die as shoppers go to the newer and larger mega-retail discount store whether it be a Target, Kmart or Wal-Mart. Within a year, every second or third retail store is closed. These stores then take on a ghettoized boarded-up appearance. Graffiti, iron grills, unsightly signs then appear and what five to ten years earlier was a handsome mall in harmony with the countryside, now resembles an urban ghetto. The National Trust for Historic Preservation in Washington, DC describes these developments as "Urban Sprawl." What was witnessed was not "urban sprawl," but "suburban" as well as "rural sprawl."

These mega-retail discount chains, in their race for demographic and marketing supremacy in each region, after influencing the closing of small retailers in the area, then compete over the leftover consumer "bones." Ultimately, one major chain opening in an adjacent area destroys the competition, leaving the formerly successful mall appearing like a giant, desolate unkempt cemetery.

Factors determining consumer buying clearly favor large retailers, since they have been able to maintain the consumers' needs for low prices and convenience by having "one-stop shopping." In addition, these giants with stronger leverage have been able to maintain lower prices because of lower costs. Price competition still remains in the industry, despite the numerous closings of the small retailer, but the large discounters among themselves continue to fight price wars. A recent example was Dallas, Texas where Wal-Mart, Kmart and Target competed head-on with energetic promotions while maintaining costs so low that products were priced so competitively that the differences were usually within pennies.20

As the price wars go on between the large and small retailer and indeed among the major discounters themselves, not only do retail jobs disappear, but also the traditional harmony of the

rural and suburban areas is invaded and the results are ugly both from an economic and a sociological point of view.

One recalls a powerful Latin phrase by Plautus, which when translated is *"The soldiers laid waste to the town."* This is certainly an apt description of the continuing decimation of the "Main Streets" of historic towns, cities and yes, rural malls.

Were one fortunate enough to be alive in the United States, say in the year 2100, he or she and fellow survivors would wonder what caused the entrepreneurs of the late twentieth century to bequeath to subsequent generations, these rapidly developing monstrous national "cemeteries," formerly grandiose malls and attractive "Main Streets."

With present prospects facing developers these days in the United States, these destroyed and abandoned malls will be with us for many generations, since the financial challenge for their correction seems impossible to meet.

During travels on this study, the staff also visited many formerly prosperous "strip centers." These were generally the work of small developers and attracted the boutique or unique retailer, also traditionally found in the old "Main Street" stores.

Strip stores within a mile or two of a new Supercenter, constructed by a major discount chain appeared likewise to be endangered by the newest major competition. Even when a florist, indicated to our interviewers that because of her long experience, "superior knowledge" and the fact that her store purchased merchandise more frequently than did the Supercenters, that she would survive; nevertheless she evidenced concern about the vacancies on her left or right. Interviews with courageous owners of florist shops, apparel stores, pet food stores, automotive stores, pharmacies and others all ended with a typically sad statement: "No matter how effectively I can compete, if the store next door becomes vacant, traffic density diminishes, and my store will have to close as well as the one next door."21 These courageous retailers cooperate in securing new tenants for the vacant stores, but it is a sad and losing fight. In some of the huge malls visited, as much as a 33% vacancy rate within six months to one year of a new "mega box" being completed in the area was observed.

Additional business from these new chain stores has always been considered a benefit, but the chaos that developed from entering and leaving suburban areas created havoc to their economies and to the aesthetics and milieu of the former prosperous malls. Discount stores that enter towns take a wedge of land and build massive structures. The new Superstores be they Target, Kmart or Wal-Mart or other chain structures tend to be newer and ever increasing in size. And recently, the entrance of Power Centers, shopping centers with multiple "Big Box" structures and other discounters and retail space totaling at least 1 million square feet.

Notable has been the rapid and continuous expansion of the Super Kmarts, the Wal-Mart Supercenters and the Sam's Clubs. Because these stores have moved into or near towns, cities and suburbs, and have contributed to the economy with force, if they decide to leave, as many stores do, a shakeup on less stable economies causes devastation.

Examples of the losses caused by the pullouts of such giants can be aptly illustrated by Glendora, Ventura and Hesperia, California where hundreds of thousands of dollars were lost by

communities in infrastructure development, land development and environmental impact reports, not to mention foregone taxes. Collectively the losses total in the millions.

Our national study of the social and economic impact of mega-retail discount chains upon areas in Pennsylvania, California, Delaware and New York included visits and interviews in each area. Visits were preceded by sending out 6,000 questionnaires to retailers in each of the four states requesting such information as their sales volume; number of employees; potential impact on sales, profits and employment by the arrival of mega-retail discount chains near their businesses. They were also asked to describe their survival strategies which would enable them to compete profitably.

Of the six thousand questionnaires sent to retailers in these four states, almost 10% were completed fully and returned with both detailed quantitative and qualitative data. The quantitative results are set forth in Chapter III with tabular and graphic charts plus a *research* analysis. Information provided by these store owners was computerized and the staff was able to forecast the loss of jobs, impact on store volume, employment, profitability and other significant data for each state in the study. Each questionnaire also contained subjective comments on how the small retailer visualized his/her future and what alternatives could be followed in order to save their firms. All of the subjective narrative data will be found in Chapter IV.

The data received from each of the four states could be extrapolated in order to estimate the collective impact on community employment and local and state tax revenues. However these forecasts would be based upon the expectations of the respondents as to whether they could weather the competition of the mega-discount retailer moving into their neighborhood. Would they survive or would they possibly liquidate or go into bankruptcy? Generally there was extreme pessimism expressed; rarely was there optimism conveyed by the respondents.

One of the questions posed this concern: Are wholesalers still available for retailers to buy from? The answer showed the increasing fears of retailers that wholesalers were disappearing because major suppliers were selling direct to the Kmarts, Home Depots, Targets, Wal-Marts and J.C. Penney's and had no time or inclination to sell to wholesalers or small retailers. Strange as it may seem, many small grocers, meat markets, etc. often shop at Sam's Clubs, a subsidiary of Wal-Mart in order to be able to have anything on their shelves to be sold.

As retail giants rule the marketplace, they have the buying power to negotiate the lowest prices with their suppliers. In a sense, suppliers become part of a "partnering" network in which their principal capacity is contracted for by the major retail discount chains.

"It all adds up to a power shift to a privileged circle of merchants," state Zellner and Benedict.[22] Suppliers and manufacturers work diligently to secure the right to supply the large bulk retailers, in hopes that the low profit margins in the business can be countered by larger sales volumes. The retail "giants" in the discount field have been able to develop a barrier to entry for other less influential retailers, resulting in a reduction in competition. Manufacturers and suppliers to the chains, in hope of selling more, unfortunately have not realized the unceasing barrage of demands from retailers, who want everything from discounts for new-store openings to penalties for shipment errors, to an increasing volume of requests for free samples. As the retailers gain more leverage, they become more demanding in the manufacturing of specific goods, deciding on colors, and sizes, how much to ship, when to ship and where to "drop ship."

Although low prices do benefit consumers, suppliers and manufacturers are being squeezed to be leaner and more flexible with respect to chain retailers' demands. In addition, smaller suppliers are less likely to have the ability to accommodate, increasing the likelihood of being removed from the market. Chains utilize interactive information systems (EDI) in a most dominant way through "partnering" with suppliers and manufacturers. Regional wholesalers are less likely to possess sophisticated business and information systems required to meet the needs of the mega-retail discount chains, hence wholesalers are apt to disappear and harm the remaining small retailers.

While the author believes in a free market and is a devoted supporter of the free entrepreneurial system, the "free" market means different things to different people. Inasmuch as the principal method of the mega-discount retail chains in competing with the smaller retail store and the traditional department store is pricing; this pricing pressure could very well include possibilities of predatory pricing, as defined in both state and federal laws. Concern over the likelihood of predatory pricing as defined by the Robinson-Patman Act as well as various state laws will be reviewed in Chapter V.

The economic and social impact made by the mega-retail discount chains needs to be measured by a large variety of criteria. In the next decade the nation, state, cities, towns and villages will be able to see whether the promises made by the mega-discount retailers have materialized. Did the municipality make mistakes in judgment by encouraging the free entries of these giant discount retailers into the areas? Did the promised additional employment take place? How long were these jobs viable? Were there subsequent reductions in personnel in the chains? Did the new chain discounter close and move away? What was the impact on the viability of the "Main Street" stores? Was pollution increasing by the presence of the "Big Box?" Did traffic congestion increase highways abutting on public schools? Were the chains subsidized by tax abatements, right to retain sales taxes to pay off the new building and given other incentives not available to the small retailer? Did the surviving "Main Street" retailer learn new techniques in marketing, inventory control, and other modern business practices in order to survive? In the economic jungle where "survival of the fittest" can almost be analogous to economic and social viability, prey might still remain alive by developing skills that protect it from predators.

Equally important as a contributor to the lack of social and economic planning is the real estate developer. The developer, often in concert with the mega-retail discount chain, comes up with ideas for new real estate developments; malls, Power Centers and the like; and, at times is irresponsible when it comes to tying in his project to help the economic planning for both the community and the nation. The importance in maintaining economic and sociological liability is long--range planning. Real estate developers have been notorious in short-range planning, in which they plan many projects where their gains and recoveries are based upon a five-year return on investments leaving the long-term problem to the community at large. This lack of integration into good long-range planning shows it is not only the mega-retail discount chain that can be cited, but also the developers. Additional review of this problem community by community would show that when communities make their long range plans often they are susceptible to almost periodic amendments as a result of the pressures of chains and developers.

The following chapters will attempt to answer such questions: Is there a possibility of co-existence between small retailers and the mega-retail discount chains? What strategies are possible for small retailers to survive? Is the entry of the large discount retailer inevitable? Can community groups concerned with urban sprawl develop strong and effective opportunities to

stop entries of the super "boxes" in given locations where traffic density, pollution, neighborhood schools, etc. are threatened? In some cases states have implemented laws to put ceilings on the amount of retail space that can be allotted to a supercenter for its commercial and parking activities.

Retailers large and small are beginning to understand that marketing has become more complex than in the past. Instead of just maintaining low costs and putting products on the shelves, both chains and local traditional retailers need to strategically look at themselves versus all other competitors in the area. Image remains important, as well as the unique products that are marketed. Retailers now need to consider other new forms of shopping. Besides discount stores, outlet and direct mail shopping have also become popular.

As "Main Street" stores realize the threat they face in competing against mega-stores, buying groups, "co-ops" and coalitions might be formed. These groups need not be designed to prevent the entry of competitors, but to coordinate organized marketing strategies for the "Main Street" area of shopping. According to Erica Price, "Defining and implementing annual work programs, producing print pieces, such as business directories and maps to promote the business district; providing design assistance to downtown business and property owners; hiring a full-time downtown director to manage an economic enhancement effort,"23 are all coordinated efforts in the right direction. Business communities can also coordinate activities to open stores at hours convenient to the busy consumer. Since Americans appear to have less time; since many hold two jobs, often evenings are allocated to taking care of errands.

Besides the need to prepare for possible entry of large competitors, "Main Street" cities, counties and towns should prepare for the possible moving out of these enormous influences of business. By understanding the implications that such a move might have on a local economy, agreements could be made with businesses entering the community. As previously mentioned, the French firm, Carrefour, after building a major "box" of over 260,000 square feet in the Northeast community of Philadelphia moved out four and one half years later, leaving an unsightly "box" which demoralized the adjacent business community. A few years later a mega-outlet Mall, Franklin Mill s was built on an adjacent property. Moreover, the City of Philadelphia had mistakenly provided 5 years of tax abatements. During this time all Philadelphia municipal services were available at no cost. When approving the construction of a "Big Box," economic plans should also be included, well before the actual moving out happens. Various estimates indicate that the loss to the City was over $5 million, this aside from the cost to the State of Pennsylvania for road construction, etc. The vacated mega-retail discount firm should retain a continuing financial responsibility for specific plans such as converting the newly vacated warehouse-like stores into another more acceptable form of shopping area. Plans should be made by the urban authority ahead of time on the disposing or recycling of the vacated structures.

Kenneth Stone, previously mentioned, a specialist in retail trade and Wal-Mart activities, has realized that "the only hope small merchants had [is] to niche around them."24 By specializing in unique products, local merchants can separate themselves from the usual discount products sold in retail chains. Local merchants need to prevent themselves from entering in a perfectly competitive situation, competing solely on price and marginal cost. The low pricing strategies must be left to the mega-discount retail chains. The small retailers, to survive, must create their own image and differentiate themselves as unique, rather than "me-too." There is a very slim chance that unique boutique type retailers, not depending on price rivalry but on service and product differentiation might survive in the presence of the major discount "Big Box."

With unique, individualistic strategies and by maintaining less inventory, the surviving smaller retailers must take advantage of flexibility in rapidly changing inventories; an advantage not generally available to the large corporate retailers with more complicated supplier-retailer distribution methods.

In later chapters, this study will attempt to balance and explore the experiences of the many communities who battled the entry of the mega-retail discount chains as compared to those states and communities who offered tax abatements, building subsidies, reduction of sales taxes to defray costs of capital outlay and debt service and various types of what recently has been described as state and federal "Corporate Welfare."

One state that has refused to accept the large "mega-boxes" has been Vermont. The state has maintained a "keep Vermont green" force which has kept Wal-Mart and other major chains from easy entry. The state has made enough noise that the anti-sprawl National Trust for Historic Preservation placed the entire state on its June 1993 "America's 11 Most Endangered Historic Places" List which is prepared annually.25 More recently, Vermont has modified its anti-Wal-Mart position by permitting their entrance by capping the size of the building.

The National Trust for Historic Preservation has led the fight to prevent "Superstore Sprawl." In a major book released in May, 1994 the Trust launched an attack on the latest phase in America's retail race. The Trust does not appear to oppose job creation. It is against job forecasts that do not materialize and is against negative impacts on the environment; increased traffic congestion and the sapping of the viability of traditional businesses which lead to weakening civic vitality. The following statement is taken from the "Preface" of the recent Trust publication entitled, How Superstore Sprawl Can Harm Communities.....26

> "(1) The American retailing industry entered a new phase at some point during the last decade. Whereas the sixties and seventies had witnessed an proliferation of regional shopping malls in the suburbs, the late eighties and nineties have seen a rapid growth in sprawling discount superstores near the interchanges of major highways."
>
> "(2) On the one hand, it is clear that these superstores are delivering something many Americans want: good products at low prices. Indeed, these operations could not succeed otherwise. People want and need the jobs they provide. Local governments want property taxes and sales tax revenues they generate. To the extent that the discount superstores deliver affordable prices, create jobs, and strengthen local tax bases, the National Trust applauds them. They are filling a major market demand and doing so very well indeed."
>
> "(3) On the other hand, it is clear that the low prices offered by many superstores include hidden costs. Having worked with local communities across the country on downtown revitalization efforts, the Trust has come to recognize that the scale, location, and design of these stores create major problems. These include:"
>
> - "sapping the economic vitality of downtowns and "Main Streets" by shifting the retail center of gravity out to highway interchanges on the edge of town."
> - "displacing existing businesses, especially independently owned small businesses that contribute significantly to local civic life, by building stores vastly out of scale with a town's ability to absorb them."

- "setting the stage for higher property and state income taxes by creating developments that are costly to serve and require new roads, water and sewer lines, police protection and other public services."
- "causing the waste or abandonment of previous public and private investments in existing buildings, streets, parks and other community assets."
- "homogenizing America by building stores that have no relation to their surroundings."

The National Trust for Historic Preservation asks the mega-retail discount chains to answer the following challenge:

> "But can the consumer benefits provided by the superstores be achieved only through the creation of more urban sprawl and all the sprawl brings: traffic congestion, automobile dependence, air pollution, dispirited or dead downtowns, despoiled country sides, and weakened community ties? Or could some of the benefits be provided without so much damage to the environment and local communities? We think these are questions that should be asked."27

The Trust also poses an equally important challenge to the many communities facing the invasion of the super "Boxes":

> "And communities have choices. They can encourage or discourage certain types of development. If a community doesn't want superstore sprawl, it can take steps to prevent it. If a community wants a superstore, it faces a whole host of other questions relating to whether the store comes in on the community's terms. Where should the store be located? How big should it be? How much new retail space can the local economy absorb without suffering the negative fiscal and economic impacts created by a commercial glut? Can the store be designed to help preserve the community's livability and attractiveness? How can the store minimize negative environmental, cultural, scenic, fiscal and economic effects? Above all, what is the long-term impact of the decision?"28

One of the major recommendations of the 1995 White House Conference on Small Business was designed to a reverse the financial plight of the declining "Main Street" establishments. The recommendation follows:

> "139. Congress should legislate the creation of a Small Business Relief Fund to economically assist small businesses that are displaced by the establishment of a big business in their localities where the big business will contribute an annual fee for the fund."29

This author will attempt to analyze, in succeeding chapters, the responses to the challenges posed to both the mega-retail discount chains and the communities they wish to enter.

CHAPTER II

WHO ARE THE MEGA-RETAIL DISCOUNT CHAINS - HOW DID THEY EVOLVE? WHAT ARE THE LATEST DEVELOPMENTS AND EXPECTED TRENDS?

Chapter I generally described the concerns of small business about the creation of the mega-retail discount chains and what can happen in the future of American retailing as these chains continue to grow and displace not only small retailers, but department stores, chain grocers, pharmacies, regional supermarket chains and ultimately an almost unbelievable list of retail and service activities. With serious displacement, what will be the impact on the social stability of the neighborhoods and enclaves? How will the environment, aesthetics and natural beauty of the landscape and terrain be affected? What effect will the arrival of the mega-discount chains have on local retail unemployment and joblessness which breeds crime, as well as other community negative events?

One begins with the traditional small retailers and progresses through the department store period; the Sears, Roebuck and Montgomery Ward era; the Woolworth's and J.C. Penney stores; factory stores, chain grocers such as A&P; supermarkets chains such as Kroger's and more recently the formidable power of the mega-retail discount chains, including the rise of Kmart, Target, Wal-Mart and their thousands of stores; then the Warehouse Clubs such as Sam's Clubs, Price/Costco and such new major arrivals in the home improvement field as Home Depot and Builder's Square.

BACKGROUND OF RETAIL MERCHANDISING IN THE UNITED STATES THE EVOLUTION OF THE INDEPENDENT RETAILER AND "MAIN STREET"

In the 19th and early 20th Centuries, small entrepreneurs opened thousands of retail shops in enclaves or neighborhoods of the nation's large cities. Most of these enclaves were populated by immigrant families and represented the ethnic, religious and racial diversities that was popularly described as America's "melting pot."

Similarly the nation's rural areas, towns and villages grew into small urban areas and the small retailers collectively developed the nation's traditional "Main Street." "Main Street" America, particularly in New England, the South and the Midwest created a charming traditional set-up of groceries, drug stores, gift shops, bookstores, men's, women's and children's apparel stores, hardware stores, bicycle shops, general merchandise stores, and later special "niche" boutiques. This period is best described in Constance Beaumont's 1994 publication How Superstore Sprawl Can Harm Communities.1

THE EARLY PART OF THE 20TH CENTURY FEATURED DEPARTMENT STORES AND GIANT RETAIL CHAINS

Each metropolitan area of the United States saw the rise of the aristocratic department stores, such as John Wanamaker's in Philadelphia, Macy's in New York, Filene's in Boston, etc. These stores, were built in a grandiose style similar to the moving picture theaters of that period. The department stores were architectural gems, often featuring organs, art, and catering to family culture of a rising middle class. They provided a tremendous variety of goods and services. Most

products were nationally branded. Shopping and dining in fabulous restaurants in the department store was a pleasure for the entire family. Children had the toy department; men had a sports department and a rich offering of men's apparel. Women had a range of popular priced merchandise to the exclusive designer lines. Personnel served the customer almost on a one-to-one basis. Soon department stores chains such as Federated, Filene's and Hechingers followed. These stores were so designed that they complemented the smaller stores in the large cities as well as the stores on the typical "Main Street" in the smaller towns and urban areas. The small retailer was not pressured by serious discount price competition and for the most part, large and small retailers dwelled in harmony.

Also the first half of the 20th Century saw the rise of three major retail giants; J.C. Penney, Montgomery Ward and Sears, Roebuck. These stores rapidly developed into mature chains rivaling each other on price and product, and in a sense were the forerunners of the current mega-retail discount chains.

Also during the period such chains that harmonized without creating chaos on "Main Street," were Woolworth's, Grant's, S.S. Kresge, Mattingly's, etc. They were earlier referred to as "Five-and-Dime" stores, but evolved into more sophisticated types of merchandisers. Their prices were generally lower than in the department stores. However, they seemed to harmonize with the rest of "Main Street," and the competitive environment had little in common with today's competitive "attack and destroy" environment.

1966 - 1995 THE RISE OF THE RETAIL CHAINS

The 1960's were impacted competition-wise in retail by the entry of chains who would become the ultimate discounters; i.e., S.S. Kresge's, Kmart, Dayton-Hudson's Target, Wal-Mart, Woolworth's, "Woolco" among others. These stores began to emphasize discounting, broader inventories and advertised and promoted unusual values.

All experienced steady growth from the sixties to the eighties. While Wal-Mart had a strong start in the Midwest, it opened only about 500 stores in the sixties and seventies.

These discounters had vigorous rivalries over price competition, but more on a regional basis than national one. Sears continued to maintain a very strong national position. In the early eighties Wal-Mart was still best known in the small towns and cities in the Midwest.

In the 1970's, there were a number of specialized or "category" retailers who entered the retail market. They included Toys "R" Us, Walgreen's Drugs and Home Depot.

RISE OF THE WHOLESALE "CLUBS" IN THE 1970'S

In the 1970's, the wholesale clubs began to make an impact. The first was the Price Club Wholesalers in 1976. Then, in 1983 the Costco Wholesale Corporation opened. The two were later to merge in 1993.

The "Clubs" currently include in their memberships large numbers of legitimate smaller retailers who are limited in buying from wholesalers because of the "direct" mass purchases of the mega-retail discount chains. The smaller retailers take advantage of purchasing from Price/Costco and Sam's Clubs at low prices and thus are able to stock their stores with inventory. This is not a

solution to the inability of the small retailer to survive permanently, but it gives them a chance to stay in business at least temporarily.

Price/Costco and Sam's Clubs generally sell a limited line of products, based upon the concepts of a "good buy." Suppliers often consider themselves as having excessive inventories and therefore at times are anxious to unload at reduced prices. The Warehouse Clubs qualify as "Big Boxes" and may average 120,000 square feet in size. These are like traditional warehouses with little or few sophistications or frills.

Price/Costco operated over 200 stores in the United States, Canada and Mexico with sales in 1995 of $18.6 billion. In most Clubs members pay a dues of approximately $35 each and are able to buy at what might be described as "wholesale" prices.

Sam's Clubs parallel the Price/Costco facilities. Sam's Clubs were opened by Wal-Mart in 1983. Wal-Mart operated over 400 Sam's Clubs stores by early 1996. In 1994, Wal-Mart acquired 99 PACE club stores which have been converted to Sam's Clubs. Sam's Club sales exceeded $19 billion in fiscal 1996.2

Both Sam's Clubs and Price/Costco set up warehouse type facilities, generally on "industrial" land, much cheaper by the acre than commercially zoned land. The Clubs generally do not buy from distributors but generally only buy "direct" from suppliers and manufacturers. As might be expected they have very low labor costs and do little advertising.

SELLING DIRECT TO THE PUBLIC (FACTORY STORES)

Many manufacturers have their own factory outlets in malls throughout the United States. Hundreds of such factory outlet malls exist in the nation; and retail sales are estimated to be $8 to $10 billion per year and rising.

THE IMPACT OF THE AUTOMOBILE AND SUPER HIGHWAYS ON TRADITIONAL RETAILING

"Main Street" merchants have been severely handicapped in retaining customers during the past 20 years because of improved highways and the development of malls and mega-retail chain operations in areas outside the perimeter of the traditional urban "Main Street." Free parking areas have been set up near the "Big Boxes" and Supercenters constructed by the Kmarts, Wal-Marts and other mega-retail discount chains. Parking spaces (blacktopped) are ample, compared to the restricted and expensive parking in the central downtown areas.

The mega-retailers, discounters and manufacturer outlets offered free parking, low prices, wide product lines and impressive merchandising, promotion and advertising. Because of the huge buying power represented by mass purchasing, the traditional independent retailers began to lose influence with their suppliers, who in a non-financial sense began "partnering" with the mass purchasers represented by the mega-retail discount chains. "Partnering" also included interactive information systems (EDI) and other cost savings and benefit items for the major mega-discount retailers. Significant market share formerly possessed by small retailers collectively began to be lost to the mega-discount retailers.

Aside from the history of improved highways and the mobility of shoppers and the desire for a one-stop shopping location, Wal-Mart, Super Kmart and others employ a current strategy of "destination" stores. The "enveloping" area is a strategy to locate within a 5 mile radius in urban areas and 25 mile radius in rural areas. The objective of these stores is to attract customers directly and purposely to their location as a "one-stop," sole destination. The ability of the traditional retailer to survive is seriously threatened unless there is reasonable zoning regulation by state and local governments to protect the traditional "Main Street."

A later chapter in this study will describe the history of the Fair Trade legislation in the United States with the Sherman Act going on to the Federal Trade Commission Act, the Clayton Act and the Robinson-Patman Act. These pro-competitive acts will be discussed as to whether the "enveloping" theory is an intrusion in a free and fair market and what needs to be done to counteract it.

Mobility in driving to the "Big Box" to or from work has become a way of life for many consumers. Also driving to the "Big Box" at night or on Sundays when the small retailers might be closed further directs sales away from "Main Street."

THE RISE AND INCREASED IMPACT OF THE MEGA-DISCOUNT RETAILERS ON THE SMALL RETAILER (AS WELL AS THE "BIG BOX" APPROACH)

Starting in 1962 no one could have foreseen the startling developments in retailing to take place during the next 30 years. In 1995, combined sales of Kmart, Target and Wal-Mart were over $150 billion. Discussions of these major discount retail chains follow:

(1) Wal-Mart

Wal-Mart has had the most meteoric growth during the past 15 years growing from about 275 stores in 1980 to 2,157 stores in January 1995, with 160 more scheduled to be built by January 1996. 3 Actually in 1995, 117 new stores were built giving them a total number of stores of 2,230 in January 1996. In 1990, Wal-Mart became the Number 1 retailer passing both Sears and Kmart that year.

Wal-Mart was the initiator of the concept of Supercenters. It first introduced this concept which includes groceries, special services and food courts in 1988. It was planning almost 150 Supercenters, of which 80 were to be built in 1993. 4 As of January 1996, 154 Supercenters were operated by Wal-Mart. Their high quality management, modern business systems and inspired executive leadership helped total operations reach a sales volume of approximately $93 billion in fiscal 1996 with double-digit increases in growth expected during the next decade.

(2) Kmart

Kmart was a new venture of S.S. Kresge Co. in 1962. At that time, Kresge had been in business 63 years and was well supplied with corporate and managerial talent. By 1981, Kmart had grown to 2,000 stores. Since that time, Kmart experienced both growth and later downsizing. By the end of fiscal 1995, sales volume reached $34.3 billion.

In the 1980's, Kmart purchased Builders Square and Walden Books. Further development followed with the purchases of Pay Less Drug in 1985. In 1991, Kmart acquired Pace

Membership Warehouse, Inc., Marko, Inc., OfficeMax and Sports Authority. In 1992, it purchased the Borders Bookstore Chain. Despite Kmart's early growth and profitability, it failed to match the aggressive leadership enjoyed by Wal-Mart and others in the early 1990's.

Kmart's more recent plan was to concentrate on its principal mission; general merchandise plus a new Supercenter concept involving discount groceries. The company's Super Kmarts were designed to rival Wal-Mart's newest Supercenters.

Recently, Kmart began to downsize, and to make decisive changes in top management. Joseph E. Antonini was ousted as chairman and outside director Donald S. Perkins was named as his successor. Currently, Floyd Hall is Chairman, CEO and President. Kmart had eight consecutive quarters of disappointing earnings. Personnel moves were in concert with the disappointing earnings and finally posted a 4th quarter loss of $420 million ending January 1996. Much of this loss dealt with the write-off of its investment of the Builders Square chain. The Builders Square write-off followed a spin-off of 3 non-core businesses; Office Max, Borders and Sports Authority. Kmart appeared to be learning the hard way that its best strategy is to go back to its discounting roots. In early 1997, after a further write down of Builders Square by over $350 million, Kmart is entertaining merging this division with Waban's HomeBase division to move into the number 3 spot in home improvement chains behind Home Depot and Lowe's. 5

In 1994, close to 175 Walden Book Stores were closed and to discontinue operations in about 70 smaller Kmart stores were discontinued. In 1995, after news of the change in the chairman's position, the drastic change in top executives was followed by an announcement that 73 additional Kmarts would be closed. Further actions to sell or spin off Office Max, Inc., the Borders Group and Sports Authority Inc. have aided in Kmart's financial recovery.

(3) The Target Chain

The Target Chain was derived from the Dayton-Hudson Corporation. Dayton-Hudson opened the first of its current 500 plus stores in 1962. Target is also in the "Big Box" business, creating the "Great Lands" stores. They are often as large as 125,000 square feet. They were among the first of the non-drug chains to install pharmacies which are now important adjuncts in the other major Supercenters. For the fiscal year ended February 3, 1996, Target posted annual sales of $23.5 billion.

(4) Bradlees, a Regional Northeastern Chain Seeks Bankruptcy Protection

In 1995, a Northeastern regional discounter, Bradlees, Inc. filed for Chapter 11 reorganization protection in the bankruptcy court saying some suppliers refused to ship merchandise because they feared the struggling retailer would be unable to pay them. Since the filing, they have closed 12 stores and in August 1996, Bradlee's received approval to close an additional 14 stores which will leave them with 124 stores in operation.

Filing for Chapter 11 protection, Bradlees became the hardest hit of Northeastern regional discounters. These retailers have felt the pinch as the national mega-retail discount chains became stronger factors in their regional markets. In addition to the strong entry of Wal-Mart, Kmart slashed prices in the Bradlees' area and consumers grew more and more price conscious in their buying.

"They have a Kmart in basically every one of their backyards. Wal-Mart has moved into their territory in a very big way," said Kurt Barnard, publisher of Barnard's Retail Marketing Report.

Bradlees opened 16 stores in the greater Philadelphia area in 1985 and 1986. It's 17th area store, at Franklin Mills in Northeast Philadelphia, opened in 1994. In all, there were 136 Bradlees stores in the Northeast and Mid-Atlantic states.

The company announced that its stores would continue normal operations, and that employees' wages, salaries and benefits would not be interrupted. Bradlees also announced the resignation of its President, Samuel Mandell, as well as two key vice presidents. Peter Thorner, vice chairman, was then named to succeed Mandell as President and Chief Operating Officer.

Analysts agree that the worries of suppliers and factors - who pay suppliers up front and collect from the retailer - triggered the Bradlees bankruptcy filing. "If not for the factors pulling the plug, the company seemed to be in decent shape," said Jack Hersch, a bankruptcy analyst with Donaldson, Lufkin & Jenrette Securities Corp. "This is the sort of thing that's self fulfilling," according to Kurt Barnard, of Barnard's Retail Marketing.

The Bradlees debacle illustrates the point that jobs are being lost and firms are going out of business--not only the small retailers but also the regional chains all are threatened by the formidable financial and buying powers of the mega-retail discount chains.

Recently Kmart's decision to close numerous stores and to shake up its management, as well as sharp declines in profits indicate that no firm, large or small, is immune to the results of the feverish desire by mega-retail discount chains to cover every acre in America with a "Big Box." Ultimately as stores get older and populations shift, the nation is left with urban and rural sprawl, boarded up stores and terrain that looks like the "bombed out" area in Italy after the Battle of Cassino in World War II.

RISE OF SPECIALTY CHAINS: HOME IMPROVEMENT; DRUGS; TOYS; ETC.

(1) Home Depot, Inc.

Home Depot, Inc. competes with many products that appear in Supercenters and more specifically with Kmart's Builders' Square. Today, Home Depot is the largest and most powerful player in home improvement retail activities. Their sales in fiscal 1995 were over $15 billion. Their staff appears to be much more highly professional than that generally found in most of the mega-retail discount chains. hardware retailers and lumberyards. Home Depot has approximately 300 stores and plans to build a great many more. Its average square foot building runs in excess of 100,000 square feet and many of the newer ones appear to be in the "Big Box" classification of over 150,000 square feet. The home improvement market grows constantly, with a major emphasis on "do it yourself." This is resulting in a strong negative impact on the fortunes of the local hardware stores and the regional lumberyards. In the San Diego area, for example, where there was formerly a large number of small hardware retailers, the number has precipitously declined to two since Home Depot has entered the market. Home Depot and a smaller chain competitor, Best Buy, appear to be more dedicated to professional service to meet the needs of the customer. Wages are higher than in the major discount chains and more opportunities are available for full-time positions and promotions; than that what was in the mega-retail discount chains.

(2) Walgreen's and Other Drugstore Chains

Drugstore chains are growing more powerful and the numbers of independent pharmacists and "Main Street" drugstores are sharply decreasing and may soon appear to be a thing of the past. The leading national chain is Walgreen's. Other national and regional chains include Rite Aid, Thrift Drug, Revco, Payless, Eckerd and Osco.

A new national pharmaceutical trade association is forming and for the first time is enlisting the aid of both independents and chains to fight the major mail order drug firms now growing strongly through "managed care." 6 In the Philadelphia, Pennsylvania area during the last decade the number of independent neighborhood pharmacists or drugstores has fallen from over 2,000 to less than 1,000.

Walgreen's had over $10 billion in sales in 1994-1995 and operated over 1,900 stores. This chain has a long history, having opened its first store in 1901. Walgreen has accepted the latest in management techniques in the planning, building, design and operations of the contemporary pharmacy. Most of the chain stores are very modern.

Since 1993, Walgreen's national plan has been to add about 150 stores annually until the year 2000 when they are expected to have between 2,500 and 3,000 drugstores. Needless to say, Walgreen's rapid growth and the rise of many other smaller drug chains have created hostile attitudes on the part of independent pharmacists toward the chains, in some cases leading to litigation. As of Fall 1996, Walgreen's has over 2,100 locations.

Rite Aid is quickly gaining momentum on Walgreen's number 1 position. In late 1996, Rite Aid announced the purchase of the Thrifty Payless drugstores which gave Rite Aid the lead in the number of locations at over 3,500 stores. This purchase was after Rite Aid had abandoned its 5 month pursuit of the Revco drugstore chain amid troubles with the Federal Trade Commission and allegations of antitrust problems due to geographical conflicts. The Thrifty Payless acquisition is free of that concern as the majority of their locations will complement Rite Aid's already existing stores.

Recently, such litigation alleging "predatory pricing," under Arkansas State law took place between the independent pharmacists and Wal-Mart in Arkansas, with Wal-Mart eventually becoming the winner at the State Supreme Court level. This litigation will be discussed in greater detail in Chapters IV and V.

(3) Toys "R" Us, Inc.

Toys "R" Us, Inc. went public in 1979 and has had phenomenal growth, opening about 100 stores in 1993. There are now over 1,000 stores in the chain principally selling children's toys. Sales volume soared to over $9 billion in 1995.

The chain has diversified its product line and several hundred of the newer stores now sell children's clothing as well as children's books. In fact, separate facilities known as Kids "R" Us are often built directly adjacent to the toy store. This firm is exporting its merchandising philosophy internationally having opened up about 175 locations in Asia and Europe in the past few years.

The phenomenal growth of Toys "R" Us has stimulated an FTC investigation of the toy industry and according to a recent article in The Wall Street Journal, the FTC is accusing Toys "R" Us, Inc. of illegally boosting prices by pressuring manufacturers into harming other discount retailers' ability to compete. The impact of this anti-trust action should provide precedent for a similar review by the FTC of other alleged influences by mega-retail discount chains on the pricing practices of suppliers and manufacturers. See further discussion of the Toys "R" Us case in Chapter VII-A on Predatory Pricing.

THE PRINCIPAL ADVANTAGES THAT MEGA-RETAIL DISCOUNT CHAINS POSSESS AS COMPARED TO THE SMALL RETAILERS

The chains have many advantages and services that are difficult for the small retailers to match, with their limited capital, smaller staffs and other limited resources. The strengths of these mega-retail discount chains may be observed by viewing the following characteristics:

(1) Lower prices, resulting in great part, from direct mass purchasing of the manufacturers' or suppliers' products. This is the epitome of direct buying. It ultimately leads to the elimination of the small wholesaler and the consolidation of national wholesalers who traditionally supplied the small retailer. Small wholesalers have been forced out of business or have been purchased by national wholesalers. There appears to be a gradual disappearance in America of the middleman function. Low prices for good products create value in the minds of the shoppers. This is a strong point, indeed.

In the short term, the customer wins with lower prices but in the long term, they will lose. While the obvious advantage in the short run is lower prices, this market control can lead toward monopolistic practices, if unregulated, putting the consumer at risk and eliminating price advantages. Quality and selection will decrease because there will be only a few large corporations controlling selection and price.

(2) Aggressive pricing policies in which small retailers lack sophistication and information. The major discounters quickly alter prices by lowering or raising them as the circumstances dictate.

(3) Strong promotion and advertising budgets managed by professionals that can put the small retailer out of the game.

(4) A tremendous line of products, which, of course, widens consumer choices.

(5) Constant investments in closing old stores, renovating and enlarging new ones and building challenging and imaginative Supercenters. Aggressive design, both externally and internally, creates curiosity in the mind of the shopper who appreciates "newness."

(6) Use of automobile-ease of access and free parking facilities. The mega-retail discount chains choose locations which are close to major highways and generally located away from the traditional "Main Street," where one finds parking meters, regular police review, and expensive garage or lot parking. However, the multi-retail discount chains have created in many cases major traffic problems and congestion in these out of town areas. Also, there have been extensive investments by county and state governments in highways and other required infrastructure improvements. All of these costs are borne by the taxpayer who is also the consumer and who is supposedly benefiting by lower prices.

(7) Product lines that replicate or expand on product lines that can be found in all the traditional and specialty "Main Street" Stores; i.e. men's, women's, children's and infants

clothing; sportswear; fishing and hunting items; pet food; groceries; meats and poultry; frozen foods; electronics; games and hobbies; furniture; paper products; health and beauty products; domestic products, home improvement and building supplies; auto equipment; books; jewelry; optometry; photography; pharmacies and drug stores; hair salons; dry cleaning and many others.

(8) Mega-chains are generally open on a 7 day 24 hour basis. More and more Americans are holding more than one job in order to survive and perhaps working for two employers on two different shifts. Shopping style is now different from the old 9 to 5, six day per week old "Main Street" pattern. Drivers now pull into their "mega box," parking lots, day or night, at any hour. The flexibility of the 7-11 chain is illustrative. Shop, and get a cup of coffee and a doughnut. Even now, one will be able to shop at a chain, and procure a snack while filling up one's gas tanks.

(9) Shopping, eating, buying groceries, meat, apparel, drugs, filling prescriptions all offer "one stop" shopping that is convenient. What is often lacking, however, is the long, traditional and harmonious relationships which existed between consumers and owners or full-time sales persons. There appears to be a great deal more impersonality and anonymity in shopping in a mega-retail discount chain operation; particularly when employees do not work the traditional full-time 40 hour week. Some chains provide between 20 and 28 hours of work. Having greeters at the front of a large "mega box," such as in Kmart or Wal-Mart is helpful--but that in itself does not make up for the continuity in personal relationships that has been found between shoppers, owners and sales personnel in the traditional "Main Street" retail store.

(10) Generally, the inventory policies and mass purchasing of the large chains eliminate back orders. Inventories are purchased on a mass, huge discount basis and items are generally in stock and available. (This has been described as Efficient Customer Response (ECR)). The lack of capital on the part of the small retailer often requires frequent back orders and reorders, and hence delay to the customer.

THE SUPERMARKET CHAINS (KROGER) VERSUS KMART AND WAL-MART

On May 26, 1994, newspaper readers in Buffalo, New York were told that Wal-Mart planned to locate its first New York State discount store and Supercenter in Springville, New York, going head to head with Erie County's dominant supermarket chain, Tops Friendly Market. 7

Banking on their successful experiences with Supercenter concepts in the Midwest, Wal-Mart appeared ready to apply the same successful concepts in the Northeast according to newsman Rick Stauffer, who reported his interview with Don Spindel, a retail analyst with the national brokerage firm, A.G. Edwards & Son, in St. Louis, who stated: "People on average, shop for food two to four times per week. They (Wal-Mart) use food to drive their general merchandise business, and, unlike a regular supermarket, Wal-Mart does not have to make money on food--but they do." 8

In the same article, Wal-Mart spokesperson Betsy Reithermeyer said: "Most of our Supercenters will be in relocated or expanded in existing Wal-Marts." 9

Stauffer also interviewed Janet J. Mangano, a retail analyst employed at Burnham Securities in New York City who added: "It (the Supercenter) is the most profitable store they have and when a Supercenter replaces a regular Wal-Mart, it does much better (from a sales standpoint)." 10

The Buffalo News also reported that from 1988 to 1994, Wal-Mart had opened 79 such Supercenters and that the company announced in January 1994, that 65 additional Supercenters would be opened during the year. 11 Actually in 1994, one new Supercenter was opened and 37 Wal-Marts were relocated or expanded to Supercenters. In 1995, 6 new Supercenters were opened and 69 were relocated or expanded to Supercenters. In their 1995 Annual Report, Wal-Mart announced their plan to accelerate Supercenter growth, opening 90 to 100 in each year, 1996 and 1997. 12

The major concern these Supercenters, both those of Wal-Mart and Kmart, bring to the traditional grocery chain is the use of an entire industry, food, as a "loss leader." David Rogers, a supermarket consultant with DSR Marketing Systems (Deerfield, IL) stated: "The danger for supermarkets is that Wal-Mart is turning their business virtually into a loss leader." 13 Rogers questions how traditional supermarkets can compete with Wal-Mart which can sell groceries at close to cost and recoup on general merchandise with higher margins.

Wal-Mart's "dominance" strategy certainly applies to the food industry. At the Annual Stockholder's meeting on June 7, 1996, John Menzer, CFO, said that Wal-Mart is aiming to snare a similar market penetration in food as it has already achieved in hard- and soft-line goods. In 1995, Wal-Mart's market share of the retail food industry was 3.16% with $13.5 billion in sales. It is projected to rise to 8.67% by the year 2000. 14 In fact, by 2010, it is believed that nearly all of the currently existing 2,000 stores will carry food. 15

The legal discussion of the "market basket" approach versus the "single product" approach will be discussed in Chapter V in greater detail. In an Arkansas case and the subsequent appeal in a Mart and three local pharmacies, both sides were argued. The dissenting judges argued that the market basket approach could not be used and that a single product approach indicated predatory pricing practices. With the mega-retail discount chains now entering the food industry competitively and indicating that they will use food as a "loss leader," it is believed that this issue will be contested more than once.

SUPERMARKETING AND THE KROGER STORY

Paine Webber reviewed Kroger's prospects for continued dominance and continued profits in the food industry in a brochure released in May 1994. 16 The review was for investors and Wall Street and was based upon a companion research report also issued in May 1994 entitled "Supercenters are no big threat." The conclusions in the research reports were that "Alternative format food retailers have consistently fallen short and quasi-Supercenters formats have failed. Supermarkets have proven expert in adapting." 17

The PaineWebber conclusion about expected weaknesses in Supercenters' growth and profits appears faulty to the authors of this study. It is based on part that warehouse "clubs," which in the 1980's appeared at first to threaten core supermarket operations, by late 1993 however, these clubs, according to PaineWebber, had "clearly shaken out as a format and begun leveling off in food share, with supermarkets correspondingly regaining sales momentum." 18

PaineWebber also justified its cautious endorsement of Supercenters, in great part, because of its evaluation of Kmart's performance and activities in the 1960's, as well as in more recent years.

PaineWebber's mostly negative report on Supercenters' combining food with non-food items such as apparel and house wares, appeared largely influenced by what their research showed as a failure in "one stop shopping." PaineWebber stated that the Chicago Super Kmart's displayed "tomatoes with tires, lettuce and light bulbs." Further, they displayed food together with non-food in the entry foyer. They apparently did not care for alternative advertising and promotion with an additional example from Kmart's ads such as "We've got juice, jumper cable and jeans" and "Shop here for carrots and car mats." PaineWebber may have mistakenly believed that only a small minority of Supercenters customers would "shop both sides of the store."

In the same 1994 study, PaineWebber study described several major disadvantages that Kmart would have with Supercenters. PaineWebber stated: "Kmart's well-known corporate problems give it a negative image among consumers as well as developers."19

The PaineWebber study also reported that Kmart's decision to use third party food wholesalers saved much needed capital by lowering overhead, but put Super Kmart at a substantial disadvantage in fulfilling Supercenters' low price positioning. If Kmart continues using third party wholesalers, it will put them at a substantial disadvantage to Wal-Mart and Target.

The author of this study does not accept the premise that Wal-Mart will have similar problems as did Kmart in executing the Supercenter program. Wal-Mart's national management and store management appears quite strong. Wal-Mart, unlike several major supermarket chains, is unconstrained by corporate problems and appears to be going with 100% self-distribution thus minimizing overhead.

Most supermarket chains self-procure and self-distribute. Apparently, when Kmart opened new Super Kmart's, utilization of outside food wholesalers strained Kmart's staff resources in opening new locations, with intense travel required as well as essential staff training requirements.

A major advantage for Wal-Mart's Supercenters, generally is its lower labor costs as compared to both the unionized and non-unionized supermarkets. Wal-Mart is presently non-union. Kroger, the dominant supermarket chain, is unionized, but, nevertheless, it, unlike many supermarkets, continues to be strongly managed, effective and highly profitable.

The excellent management of Kroger is illustrated by a PaineWebber survey done during March, 1994 in Rosenberg, Texas, where Kroger's union labor gap would be wide relative to other regions. Nevertheless, Kroger came within 4% of the Super Kmart's pricing which was enough to neutralize price as a shopper issue. This, despite the fact that Kroger was unionized. The total pricing on a 46 item "market basket" was $83.19 or 104 indexed to Super Kmart, where the price was $80.04 indexed at 100. 20

Kroger, among all supermarket operators has experienced the heaviest overlap with Supercenters and, normally, would be expected to be most vulnerable because of its mature (seniority) unionized labor force.

Kroger is the largest and most powerful U.S. supermarket chain and retains unusual flexibility to subsidize tough competitive regions with easier ones. Further, PaineWebber reported in March

1994, that; "In total, Kroger's results have not been substantially impacted by Supercenter competition." 21

Kroger combats low price Supercenters in the following manner: 22

(1) "A particularly well-developed private label line, supported by unusually extensive manufacturing and processing facilities." (21% compared to an average of 15% for the supermarket industry.)

(2) "Zone pricing downward, only those stores close to Supercenters."

(3) "Cost reduction through changing some perishable to self-service, expanding private label."

(4) "Emphasizing its superior perishables and overall assortment."

(5) "Jawboning successfully with unions about potential contract adjustments toward parity with Supercenters (generally non-union) labor costs."

Kroger's is one of the leading chains in the United States with 1995 sales of $23.9 billion and continues to compete successfully with Meijer, a very private and successful Supercenter and non-Supercenter operator. Meijer's private label line was relatively underdeveloped compared to Kroger. Kroger continues to be successful against A&P, Big Star (Grand Union), Bruno's, Food Lion, Publex, Kmart's Supercenters, etc.

This writer believes, however, that Wal-Mart's capitalization and managerial expertise, plus its mass purchasing, advertising and promotion budgets will prove it to be a formidable rival for Kroger and other supermarket chains in the next few years. It appears to be drawing further and further away from its old rival Kmart in terms of profits and volume. Kmart said it will conduct another strategic review of its business, including merchandising, leadership, financial policies and operational execution. That is in addition to the company's recent plan to slice $800 million in expenses.

But investors and Standard & Poors, which lowered its ratings on Kmart's $3.7 billion in debt, point out that Kmart is in a defensive position against competitors like industry leader Wal-Mart Stores, Inc. For example, Kmart reduced its original capital spending, while Wal-Mart planned to boost its capital spending.

Mr. Antonini, who was removed in March, 1995 as head of Kmart had a relatively unsuccessful tenure, marred by flat-to-down earnings, inventory troubles, and loss of market share. Best known in Kmart's television commercials for his promise, "It's our job to make sure no one has a lower price than Kmart." Mr. Antonini had been criticized by industry experts for failing to stock the right merchandise, improve inventory control systems and adequately cut costs.

Until now the small retailer has been threatened by the power of the mega-retail chains--now it appears that the same thing will be true of the regional and in some cases, mature supermarket chains. What will this mean for joblessness and the U.S. retail employment picture in the next five years?

CHAPTER III

THE PENDING IMPACT OF THE ARRIVAL OF LARGE NATIONAL DISCOUNT CHAINS ON SMALL RETAILERS IN PENNSYLVANIA, CALIFORNIA, ILLINOIS AND NEW YORK STATE WITH RESPECT TO WAGES, EMPLOYMENT, PROFITABILITY, ETC. OF AFFECTED SMALL BUSINESSES

In October 1993, the researcher determined to measure the economic and sociological impact of the pending arrival of mega-retail discount chains on small retail businesses in four states: Pennsylvania; California; Illinois and New York.

The first study began with the mailing of a questionnaire to retailers in the Greater Philadelphia Metropolitan area. Seventeen of the questions were designed to elicit quantitative results, analyzing opinions as to the economic and sociological impact of the arrival of mega-retail discount chains in the Southeastern Pennsylvania (including Philadelphia). One question, the 18th, was designed to secure subjective detailed opinions in a narrative style (see Chapter IV). The questionnaire itself is available in the Appendix section of this study and is listed as Appendix 1.

After reviewing the results obtained in the Pennsylvania study, the researcher then determined to compare Pennsylvania's (Philadelphia's) results with mailings to retailers in Southern California, in the San Diego area. The respondents were to be retailers in San Diego, Oceanside, Chula Vista, Mira Mesa and Poway. Following this, the study was to add Illinois (including Chicago, Des Plains and Kanakee). Finally, New York State was to be studied, primarily in the Finger Lakes area, including such urban areas as Geneva, Auburn, Syracuse, etc.).

In each of the four states, the questions were identical and the results comprise the basis of Chapter III. The subjective, narrative data derived from Question 18 forms the basis of the findings in Chapter IV.

The Philadelphia or Southeastern Pennsylvania study was preceded by several meetings with selective focus groups of small retailers representing the types of retail products sold by discount chains such as Kmart, Wal-Mart, Home Depot, Target, Pace, Sam's Clubs, etc.

The research staff was involved in the computerization of the data from the inception of the study in Pennsylvania in October 1993, through the final analysis of data in the four states by August 1995. Since August 1995, the staff has been involved in further interviews in the four states to confirm the opinions which were quantified from almost 600 responses received where possible. Furthermore, the staff has spent considerable time in the last six months drafting and preparing the report on the survey.

The retailers selected for the opinion survey were procured through Dalton Directories and other similar sources for Pennsylvania, California, Illinois and New York State. Selections were made by statistical sampling for various categories of retail businesses, i.e., Men's Apparel; Women's Apparel; Children's Apparel; Pets; Food and Grocery Products; Electronics; Games and Hobbies; Sports Products, Paper Products; Health and Beauty; Furniture; Domestic Products; Home

Improvement and Building Supplies; Auto Equipment and Supplies; Jewelry; Books; Professional Activities such as Pharmacy; Optometry; etc. These categories and the statistical responses will be found in Tables and Charts 13A and 13B of this chapter, as well as in Question 15 of Appendix 1.

Statistical sampling was based on mailings to approximately 20% to 40% of the universe in the various communities. Copies of the completed questionnaires from each state studied are available in the research files.

Not only did the researchers compute opinions from retailers by computerization of the returns from four states; but also the staff visited and interviewed retailers in each state, as well as visiting malls, strip shopping centers and major retailers and discount chains. Data was compiled from the hundreds of interviews which are useful in the presenting of overall opinions by the staff with respect to how small retailers see their future in view of the potential impact of the arrival of mega-retail discount chains.

TABLE 1
SUMMARY OF THE RESPONSE RATES FOR ALL FOUR STATES

Table 1, which follows, shows that the staff mailed out 6014 questionnaires to prospective retail respondents in Pennsylvania, California, Illinois and New York. Of this total, 570 were returned in completed good order or 9.4 percent.

Additionally, 321 were returned by the U.S. Post Office indicating that the addressees were no longer at the designated address. In a side study, the staff learned that the usual reasons generally for the returns were liquidation, bankruptcy or moving to an area away from a threatening mega-retail discount chain. Since Dalton and the other directories are updated annually, it can be presumed that there is a dynamic loss of small retail business firms, owing in great part to the arrival and price competition of the invading mega-discount chains.

Tabular data in Chapter III describes the fears and apprehensions of the respondents by means of quantitative data. Chapter IV will describe their fears and concerns in a narrative way detailing specific quotes made by the respondents.

Although it is early in this chapter to reveal the data, the writer points out that concerns and fears of small retailers in America about their inability to survive are almost uniform in the four states surveyed.

Completely usable returns, as indicated in Table 1 were 14% for New York State; 11% for Pennsylvania; 10% for California and 7% for Illinois.

A return of approximately 10% on a mailing of over 6,000 questionnaires provides substantial data to measure the small retailers' discouraging view of the prospective impact of the mega-discount retail chain upon chances for a business to survive and grow in a healthy fashion.

TABLE AND CHART 2A AND TABLE AND CHART 2B
DISTRIBUTION OF TYPES OF BUSINESS ENTITIES FROM PENNSYLVANIA, CALIFORNIA, ILLINOIS AND NEW YORK

Table and Chart 2A, which follow, show clearly that the 570 completed responses came primarily from sole proprietorships. Nationally, there were 465 returns or 86% of all returns who were identified as "sole proprietors." This was a response to Question 1 in the questionnaires provided as Appendix 1. Seven percent were franchisers; 3% were regional chain units. Three percent represented national chain units and 1% retail concessionaires. In using Dalton's Directories, it was impossible to know in advance whether a given location might turn out to be a chain unit.

Table and Chart 2B, which also follow, show graphically that the returns from Pennsylvania, California, Illinois and New York that were sole proprietorships (the essence of small business) represented between 80% and 91% of the respondents from four states. Typically, these were family-operated businesses, with children and other relatives working for decent wages (not near minimum wages). Young persons were able to save monies to prepare for college careers and enriched lifetimes.

TABLE AND CHART 3A AND TABLE AND CHART 3B
NUMBER OF YEARS RESPONDENTS HAVE BEEN IN BUSINESS

Contrary to the general impression that business "turn-over" among small retailers is frequent and excessive, it appears that the responding retailers who, in the main, consider their companies threatened by the arrival of mega-retail chains in their areas, have been in business a long time and are "solid" business citizens in their communities, regularly paying property, income and sales taxes to the state, county, city, town and school district. They do not receive tax abatements or governmental subsidies, "corporate welfare" of the sort often enjoyed by many of the retail chains who build the "Big Boxes" which eventually lead to the destruction of the traditional "Main Street," bringing on urban, suburban and often rural sprawl.

Table and Chart 3A which follow, provide an impressive national picture of longevity. Sixty-two percent of the respondents have been in business for more than 10 years. In fact, 33% of the respondents have been in business more than 20 years. The data also discloses the fact that, all in all, 82% of the respondents have been in business for more than 5 years. As their businesses begin to close on account of inability, in great part, to meet the price competition of the mega-chains; an observer can begin to see social as well as economic destruction in cities, towns, villages and in suburban areas. Small retail businesses have always served as cornerstones in the neighborhood enclave. Once the grocery store, candy store, bookstore, shoe store and pharmacy close along with the loss of jobs; then social disintegration occurs and ghettoization appears with all the usual costs of crime, violence, drugs, welfare and unemployment. With it arrives the consequent bitterness leading to racial, religious and ethnic disharmony as the unemployed struggle for the fewer remaining job opportunities.

Table and Chart 3B provides a more visual presentation of the differences in business longevity among the respondents in each of the four states under study.

In Pennsylvania, 58% of the respondents were in business over 20 years. Illinois was in second place, with 40% over 20 years, while New York State was in third position with 30%; and California was in fourth place with only 22% of the respondents in business over 20 years.

Much of the data for Pennsylvania and Illinois came from older commercial environments in the Philadelphia and Chicago metropolitan areas. New York's responses came from the "Finger Lakes" region, with more seasonality. California's respondents were from expanding populations in such Southern California locations as Oceanside, Chula Vista, Poway, Mira Mesa and San Diego.

In the San Diego area, 26% of the respondents were in business less than 5 years. Compare this with Illinois for the Chicago area, only 8% were in business less than 5 years.

The data on "years in business" was compiled from answers to question 2 in Appendix 1.

CHART 4
PHYSICAL BUSINESS SIZE

Much has been written about community social and economic dislocation as the mega-retail discount chains develop their "Big Boxes" and Superstores in areas formerly emphasizing small retail businesses, either in malls or strip malls or in the traditional "Main Street."

Overtures have been made by the discount chains to governmental leaders that a redesign of the larger stores could fit into the traditional style and enhance the chances for small firm survival, rather than destroy its longevity.

How is it possible to accommodate a "cheek by jowl" relationship between the "Big Boxes" and the small square feet areas reported by respondent small retailers located in the four states studied?

Chart 4 shows clearly that the typical retail respondent in all four states under study, California, Illinois, New York and Pennsylvania occupied stores generally, with only between 1,000 and 5,000 square feet.

Some retailers, particularly in lumber and home improvement products had footage in excess of 5,000 square feet, because their areas required storage of large inventory items.

About 49% of the California respondents were in the 1.000-5,000 square feet category; 48% of the Illinois respondents; 36% of the New York respondents and 33% for Pennsylvania's respondents. The data is derived from Question 3 in Appendix 1.

TABLE AND CHART 5A AND TABLE AND CHART 5B
ANTICIPATED EFFECT ON ECONOMIC HEALTH IF A LARGE MEGA-RETAIL DISCOUNT CHAIN OPENED NEAR THE RESPONDENT'S PRESENT BUSINESS LOCATION

The data in response to this question was derived from Question 4 in Appendix 1. The research was designed to elicit the attitudes, perspectives and opinions of the respondents about a move in the general area of the respondent's location by a mega-discount chain. While the results in Tables and Charts 5A and 5B have been converted to quantitative data, the subjective comments

to be found in Chapter IV embellish the fears and concerns of small retail businesses who see the "writing on the wall" with respect to the viability of their continued business existence.

The responses in Table and Chart 5A which follow, are overwhelmingly "very negative" and "negative." Thirty-three percent of the respondents voted "very negative" and an additional 40% as "negative." Thus 73% of the respondents in all four states studied saw a move into their location by a mega-retail discount store as more than threatening, i.e., "negative" or "very negative."

Only 8% of the respondents saw the arrival of the mega-retail discount chain as "positive" or "very positive."

The writer believes that the 19% of the respondents who answered "no effect," certainly were not inclined to be "positive" but simply as small business persons needing further documentation or data to make a selection. While readers may disagree with the writer's assumptions; it is clear that only 8% of the respondents were strongly inclined to view the arrival of a new "super" competitive chain store as "helping" their own small business to survive.

Thus, the writer believes that 92% of the returns indicated fear, indecisiveness or lack of knowledge. Certainly there was little to be positive about in view of the increased vacancy rate of the small retailers in malls resulting in great part because of the competitive dominance of the mega-retail discount chains settling in their areas.

Further, in advance of the writer's questionnaires, the small retailer had witnessed the decline or elimination of the traditional wholesaler. Many small grocers were reduced to joining Sam's Clubs or Price Clubs in order to buy products for their retail stores.

Table and Chart 5B which follow, show a consistency in "negative" and "very negative" responses in the four states studied. Pennsylvania retailers appear to be most discouraged with 41% voting "very negative"; followed by California with 34%; Illinois with 30% and New York State with 27%.

When the "very negative" and "negative" opinions are added together; Pennsylvania (Philadelphia area) shows the most discouragement and fear with 81%; followed by California with 73%; Illinois with 71%; and New York State with 63%.

Pennsylvania appeared most threatened and reported "no effect" in only 14% of the responses; New York State reported 18%, California 18%, with Illinois at 24%.

Upper New York State in the Finger Lakes areas reported 18% as being "very positive" or "positive." Possibly this was due to the relatively small number of returns from New York compared to the other three states.

Pennsylvania and Illinois were most discouraged with Pennsylvania reporting only 4% in the combined "positive" area, and Illinois only 5%. California again showed a mixed result with 9% being "very positive" or "positive."

The questions addressed to the potential respondents tend to show the need for careful quantitative analysis of the tables and charts in Chapter III. It is therefore suggested that the reader show patience in coming to conclusions until completing a review of the quantitative

analyses in Chapter III and then the subjective and narrative comments by small retailers in the four states studied to be found in Chapter IV on a state by state basis.

TABLE AND CHART 6A AND TABLE AND CHART 6B RESPONDING FIRMS BY SIZE OF EMPLOYMENT

The response to this national attitude survey, with respect to Table and Chart 6A which follow, concerned the impact of the mega-retail discount chains on the destiny and future health of the very small retail businesses. These small businesses generally have less than 20 employees.

The answers were derived from responses to Question 5 in Appendix 1. Fifty-two percent of the national respondents employed 5 persons or less. Seventy-four percent of the respondents had 10 employees or less. Only 26% of the respondents had more than 10 employees. Chart 6A shows that 402 employers, representing 74% of the total responses of 540 firms responding to this questionnaire were in the classification of "10 employees or less."

Table and Chart 6B which follow provides a more graphic review of the size of firms reporting in the four states studied; i.e., California, Illinois, New York and Pennsylvania.

Almost 60% of the respondents in California and New York had "5 employees or less"; with Illinois showing the average return to be somewhat larger with more returns in the "6-10" category than the other three states. Pennsylvania's returns were about 50% in the "0-5" category while their returns in the "6-10" category were also greater than California and New York.

The explanation as to why small retailers in Illinois and Pennsylvania had more employees on the average than California and New York can be clarified somewhat by once again reviewing Table and Chart 3B which showed an overwhelming preponderance of older firms in Pennsylvania (Philadelphia area), and Illinois (Chicago) compared to Southern California (San Diego area) and upper New York State, (the Finger Lakes area, with Syracuse, Auburn and Geneva, etc.)

For example, 57% of the respondents from Pennsylvania (the Philadelphia area) were in business over 20 years; and the same was true in Illinois with 40% of the returns. Compare this to Southern California with only 22% of the firms older than 20 years, and upper New York State with 30% in this category.

TABLE AND CHART 7A AND TABLE AND CHART 7B PENDING IMPACT ON RESPONDENT EMPLOYMENT BY VIRTUE OF A NATIONAL RETAIL DISCOUNT CHAIN OPENING NEAR THE RESPONDENT'S LOCATION

Question 6 in Appendix 1 provided the responses presented in Table and Chart 7A by respondents of estimates of losses or gains in employment by virtue of having a new mega-discount retailer selling similar products in their area.

This type of question requires more than an educated guess - - it requires some serious quantitative modeling. Hence, it's not surprising that 37% of the respondents were not able to report an opinion as to a gain or loss in employment. However, again the writer views this

indecision as being "negative." Certainly they do not see the arrival of a "Big Box" mega-retail discount chain store as being "positive."

Only 4% of the respondents saw their employment rising as a result of a new "chain" neighbor; while 59% predicted serious losses in employment after a mega-chain unit moved in selling similar products.

The question resulted in strong negative opinions. Eighteen percent of the respondent firms predicted losing 50% or more of their employees during the battle for survival. Forty percent of the respondents saw their retail ventures losing from 5% to 35% of their employees.

Imagine! Ninety-six percent of all respondents predicted losses in employment, while 37% saw no gain, but were unable to predict losses. As indicated only 4% saw benefits in employment by virtue of a new chain becoming a competitive neighbor.

Table and Chart 7B which follow, show a respondent breakdown by states. All four states, i.e., California, Illinois, New York and Pennsylvania were quite certain that the gains in employment in their enterprises would be trivial, indeed, with only 4% to 5% responding as to gains in employment. Sixty-two percent of the Pennsylvania respondents estimated loses in employment, with 18% of those predicting losses that more than 50% would lose their jobs.

Sixty percent of the California respondents predicted serious losses in employment, with 21% of those predicting losses visualizing 50% or more in job losses. Forty-eight percent of the Illinois respondents predicted job losses with a 13% job loss of 50% or more. Sixty-two percent of the Pennsylvania respondents predicted job losses, with 18% concerned about a 50% or more job loss. In New York, 57% of the respondents predicted job losses with 16% estimating 50% or more.

Thirty-five percent of the Pennsylvania respondents anticipated "no effect"; Thirty-six percent was a similar result for California. Thirty-nine percent reported "no effect" for New York and 46% of the Illinois returns predicted "no effect." Again, the authors believe a vote for "no effect" was primarily a lack of ability to make a "judgment."

In summary, there appears to be strong concern and worry from small retailers in all four states; California, Illinois, New York and Pennsylvania, that contemplated entry into their neighborhoods by mega-chains will drastically cut their ability to retain employees.

Since Tables and Charts 6A and 6B disclosed that retailers are typically small businesses with "less than 10 employees"; one can assume that there is a substantial percentage of family members who are employed by these small retailers. Their firms offer younger family members the opportunity of earning substantially higher wages than the near minimum hourly rates offered by many of the super-mega-chain stores. Hence, retail stores that "go under" prejudice the chances for continued neighborhood social stability and reduce opportunities for the retailers' family members and other local youth employed by small retailers to have the opportunity to attend college either part-time or full time. Weakening of the small business retail structure threatens the social stability of the neighborhoods in urban, suburban and rural areas.

TABLE AND CHART 8A AND TABLE AND CHART 8B
ANNUAL SALES VOLUME AS REPORTED BY RESPONDENTS

Data here was derived from quantitative answers to Question 7 in Appendix 1.

It was necessary to secure sales volume data from respondents in order to have them calculate the "negative" or "positive" impact on sales volume by the new competitive entries of mega-discount retailers near their current locations.

Again it is evident that the respondents are essentially small businesses. The four state results disclosed in Table and Chart 8A show 77% of the respondents with sales volumes of $1,000,000 or less. Fourteen percent of the respondents report volume of $1,000,000 to $3,000,000. Five percent reported volumes of $3,000,000 to $10,000,000. Only 4% reported volumes of $10,000,000 or over. Approximately 20% are found in the category of $250,000 to $500,000; and finally about 20% are found in the category $500,000 to $1,000,000. Only 38% had sales volumes of $250,000 or less.

Table and Chart 8B which follow, reveals a vast majority of the respondent firms; namely 77%, report sales volumes in the 70% categories from $0 to $1,000,000. California has 83% of its returns in this category; Pennsylvania, 71%; New York State, 74% and Illinois, 69%. In the $1,000,000 to $3,000,000 category, Pennsylvania led with 19.2%; New York, 18.6%; Illinois 15.2%; and California 11.3%. Illinois had 8% of its respondents with over $10,000,000 compared to an average of only 2% to 4% in the other three states.

TABLE AND CHART 9A AND TABLE AND CHART 9B
ANTICIPATED EFFECT ON SALES VOLUME BY ENTRY INTO THE RESPONDENTS' LOCATION BY A MEGA-RETAIL DISCOUNT CHAIN SELLING COMPETITIVE PRODUCTS GENERALLY SOLD BY THE SMALL RETAILERS

The data in this analysis was secured by virtue to answers to question 8 in Appendix 1.

Table and chart 9A provide a dramatic visualization of the pessimistic views of the survey respondents with respect to diminished sales to be expected by incoming competition of the mega-retail discount chains.

Seventy-nine percent of the respondents nationally anticipate drastic reductions in sales volume, while only 14% anticipate no changes in sales volume. Nineteen percent anticipate a drastic reduction in sales volume of 50% or more. Only 6% see the possibility of increasing volume by having a superstore in the neighborhood.

Again, the writer believes that the 14% voting "no effect" are certainly not "positive" votes about having a new giant neighbor. They simply don't have strong numbers to rely on - - but we can assume that they are more pessimistic than optimistic about their company's future, otherwise they would have reported in a more positive frame of mind. Furthermore, "no effect" means no anticipated growth - which ultimately has a regressive effect.

Table and Chart 9B which follow, clearly show the opinion of respondents by states. Eighty-three percent of Pennsylvania's respondents see volume falling sharply. In California, it is 79%; New York, it is 80% and in Illinois, it is 78%. States showing greatest concern are California

with 21% of the respondents expecting sales to drop by 50% or more and Pennsylvania with 20% of the respondents expecting a reduction in sales of 50% or more. New York followed with 16% of the respondents predicting a loss in sales of 50% or more; while Illinois was the lowest with only 15% estimating sales to drop by 50% or more.

As indicated, Charts 9A and 9B are quite dramatic showing strong pessimism for retaining sales volume. As is noted later, lower volumes means reduced profits and reduced employment.

RELATIONSHIP OF JOB LOSS TO SALES VOLUME LOSSES TO LOWER PROFITS AND LOWERED EMPLOYMENT

There is consistency shown in the data to this point. For example, Tables and Charts 6A and 6B show the size of firm and number of employees, while Tables and Charts 7A and 7B show the anticipated gains or losses in employment based on the imminence of mega- retail discount chains moving near the proprietor's location.

Additionally, Tables and Charts 8A and 8B report on the annual sales volume of the respondents. This may then be compared to Tables 9A and 9B on the predicted impact on sales volume based upon mega-retail discount stores arriving in the area. Both the data on job loss and the data in sales volume loss combine to show overall concern by the respondents with respect to all the questions addressed to them by the research staff.

While it is true that the study had a total sample of 6,014 mailings and a 570 return of 9.4%; nevertheless, were these results extrapolated among 50 states and numerous cities rather than four states and a limited number of urban areas, it would appear that both the governmental authorities and the banking segment of the United States should be stunned and look to a serious down sizing of the total economy, affected in great part because of the growing weakness revealed by this study of small retail businesses. The small retailer for a long time has been an integral part of our balanced free market economy and appears about to disappear from the business "landscape."

TABLE AND CHART 10A AND TABLE AND CHART 10B WHAT DID THE RESPONDENTS BELIEVE WOULD BE THE IMPACT ON THE PROFITABILITY OF THEIR FIRMS AFTER THE ARRIVAL NEAR THEIR LOCATION OF A MEGA-RETAIL DISCOUNT CHAIN STORE

The data discussed here is derived from the responses to Question 9 in Appendix 1 and disclosed by Tables and Charts 10A and 10B which follow:

Seventy-six percent of the respondents located in the four states studied anticipated serious reductions in profitability. In fact, 24% of the firms believed that they would see their profits reduced by more than 50%.

The "no effect" answers (about 16%) to this question were quite small compared to other questions requiring a lot of external facts to make a judgment. Here the respondents were clearly convinced that profits would be lowered substantially. Many foresaw serious losses as well.

Only 8% of the firms saw an increase in profitability were the mega-retail discount chain to arrive. The positive expectations were quite conservative, indeed.

The data on reduced profits is quite consistent when compared to predictions on prior questions relating to reduced sales and reduced employment.

Table and Chart 10B breaks down the data by states in the study. The "no effect" is consistent among the four states; i.e., approximately 15%-16%.

All four states showed substantial majorities reporting imminent reductions in profits. Eighty-two percent of the respondents from Pennsylvania reported a prospective downturn in profits. Similarly the downturn in profits reported in California was 79%; in New York, 76% and in Illinois, 69%.

Twenty-seven percent of the California respondents expected a downturn of 50% or more, with New York showing 24%; Pennsylvania, 23% and Illinois only 17%.

TABLE AND CHART 11A AND TABLE AND CHART 11B
RISE OF THE MEGA-RETAIL DISCOUNT CHAINS HAS ADVERSELY AFFECTED THE EASE WITH WHICH SMALL RETAILERS WERE FORMERLY ABLE TO BUY FROM WHOLESALERS

Question 10 in Appendix 1 asked the following questions:

"There appears to be a trend on the part of the large, national discount retail chains to buy directly from manufacturers. As a result, middlemen or intermediate distributors seem to be disappearing. How will this affect your purchasing practices?"

The summary results as noted in Tables and Charts 11A and 11B for the four states collectively were as follows:

HOW ARE RETAILERS AFFECTED BY THE REDUCTION IN THE NUMBER OF WHOLESALERS?

Description	Respondents
Very Positive	2.48%
Positive	3.44%
No Effect	43.70%
Negative	26.34%
Very Negative	24.05%
	100.00%

It should be kept in mind that 50% of the respondents reported that the continuing reduction in the unavailability of wholesalers would affect their business futures adversely. Twenty-six percent saw it as "negative" while an additional 24% viewed it as "very negative."

Only 6% of the respondents saw it as "positive" or "very positive." Perhaps this small number of respondents (31) for the four states believe that their unique product lines would continue to permit them to buy "direct" from manufacturers or suppliers.

Forty-four percent voted "no effect." This vote often reflects the small retailer's lack of knowledge of what is happening in the national market. Chapter IV will quote verbatim the disenchantment of the small retailers who are aggravated by the fact that the giant mega-retail discount chains are generally buying "direct" from suppliers and manufacturers.

In a number of regions in the United States, small grocers are buying products from Sam's Clubs, Price Clubs/Costco, and this indicates a kind of hopelessness that precedes liquidation or bankruptcy.

Table and Chart 11B disclosed that approximately 55% of the firms reporting from Pennsylvania and Illinois see the reduction in the number of wholesalers as "negative" or "very negative." California appears somewhat less threatened with 48% in the "negative" grouping. New York is the lowest with a combined "negative" response of 45%.

RECENT MOVES BY KMART AND WAL-MART MAY FURTHER THREATEN THE SURVIVAL OF THE NEIGHBORHOOD GROCER OR MEDIUM-SIZED INDEPENDENT SUPERMARKET

Kmart's recent venture into the "Big Box" grocery and general merchandise field through the introduction of "Super Kmart" stores was intended to gain volume against the number one retailer, Wal-Mart. Kmart is attempting to convince customers that Kmart is not only a great purveyor of women's clothing, but that the "Superstores" are also a good place to buy meat, cold cuts, milk and lettuce. The Super Kmart is Kmart's version of the grocery supercenter and combines a discount merchandise store with a traditional supermarket under one giant roof.

In a recent Wall Street Journal article by Christina Duff, the reporter interviewed a Mrs. Brockman who stated she was keen on Kmart's grocery prices. To quote her, "The tenderloin she recently bought there cost $4.99 per pound, compared to $6.99 at the family-owned Acme Super-Center across the street from Super Kmart."1

Kmart, the nation's second largest retailer, is counting on these newly planned Super Kmarts to help stem the loss of customers to the industry leader, Wal-Mart Stores, Inc.

By the end of 1995, Wal-Mart had already opened 143 combination stores - called "Supercenters" and has 90 - 100 planned for both 1996 and 1997. Wal-Mart plans for Supercenters, generally in excess of 180,000 square feet would not only compete against Kmart but also would target all small and medium sized groceries in the market area, and place added pressure on such firms as Price Chopper, Shop 'n Save and Grand Union, particularly in the Northeast.

While both Kmart and Wal-Mart earlier were less than successful in efforts to sell groceries and merchandise in the same store, Wall Street and marketing analysts believe that both chains had learned from experience and were ready to take on the local groceries and food markets as well as regional grocery chains.

Mass merchandising involves giant warehouses as well as tremendous space to show food products that is not possible for the traditional grocery or grocery chain. Furthermore, buying direct from food processors and suppliers provides better margins than are available to small

retailers. Further, wholesalers are disappearing since the giant discount chains with mass merchandising are buying where possible "direct."

Wal-Mart's investment in villages and environs appeared to be tailor-made for Wal-Mart's supercenter concept according to an article by Rick Stouffer appearing in the Buffalo News on May 26, 1994.

> The article contained the following analysis by informed marketers and financial analysts:
> "Wal-Mart still is in the process of experimenting with the supercenter concept," said Don Spindel, a retail analyst who follows the Bentonville, Arkansas, retailer for A.G. Edwards & Son in St. Louis. "They know they have been very successful in the Midwest, but they want to put a few stores in the Northeast to see how they do. It sounds like the Springville area is ideal." 2

Under the supercenter concept, Spindel said, Wal-Mart uses to food to entice people to its adjacent discount store.

> "'People on average shop for food two to four times per week,' the analyst said. 'They (Wal-Mart) use food to drive their general merchandise business. And, unlike a regular supermarket, Wal-Mart does not have to make money on food-- but they do'." 3

Wal-Mart certainly is convinced the supercenter concept is a winner.

> "'I think the Supercenter is the wave of the future for Wal-Mart'," said Janet J. Mangano, a retail analyst for Burnham Securities in New York City. 'It's the most profitable store they have and when a Supercenter replaces a regular Wal-Mart, it does much better (from a sales standpoint)'." 4

TABLE 12
HOW DOES SMALL RETAIL BUSINESS GENERALLY PROMOTE ITS PRODUCTS AND ITS BUSINESS?

Part of the problem encountered by small retail businesses in their competition with the major retail discount chains is the lack of financial ability to devote substantial sums in their budgets for promotion.

Table 12, which follows, is derived from the answers to Question 11 in Appendix 1: "What methods do you use to promote your business?" "Please check off the methods that you rely on most." A review of the question shows there can be more than one response giving a total over 100%. National data for the four states studied follows:

Table 12
BUSINESS PROMOTION METHODS
Question 11 - Table 13

% of Sample Selecting Each Method	Possible Answer Choices
51.32%	Flyers/Leaflets/Brochures
9.21%	Canvas Personally

7.89%	Telemarketing
51.32%	Telephone Book/Yellow Pages
67.11%	Local Newspapers
2.63%	National Newspapers
11.84%	Magazines
19.74%	Radio
13.16%	T.V.

The research staff asked this question to get an idea as to what methods the sample population utilized to promote their businesses. This question provided an understanding of the type of business establishments the sample represented as well as to demonstrate the means and resources available for promoting their businesses. Of those polled nationally, 95% responded to the question.

Upon analysis of the data, the staff realizes that most of the sample were overwhelmingly made up of small businesses with little means and resources to invest in business promotion. One can see that the largest percentages were found in "flyers/leaflets/brochures, telephone books/yellow pages, and local newspapers." These are all low budget methods of business promotion. It will be extremely difficult for these small businesses to compete with mega-retail discount retailers who have extensive staff and financial resources and generally strong budgets for advertising and business promotion.

CAN THE SMALL RETAILER COMPETE WITH THE MEGA-RETAIL DISCOUNT CHAIN WHEN IT COMES TO A 24 HOUR DAY AND A 7 DAY PER WEEK OPERATION?

Question 12 in Appendix 1 asked the following question: "Please rate the days of the week as to which are your busiest and which are your slowest; also what days you are closed?"

Ninety-five percent of the respondents answered this question, which was in the form of a grid based on a 1 to 7 range from "slowest to busiest" as well as the days of the week that the store was closed. The findings were as follows:

(1) More than 50% of the respondents closed their businesses on Sunday; 8% closed on Saturday; with 1% on Wednesday and the balance kept their stores open seven days a week in some fashion or other.

(2) Interestingly enough, while over 50% closed on Sunday, some 40% of the total population selected Sunday as the busiest day of the week.

(3) Upon analysis of the responses, it seems that these small businesses are still keeping traditional work hours. They must be aware of the fact, that in order to survive, they will have to compete with the hours that the large mega-retail discount chains follow: namely making themselves available day or night to meet the needs of the local consumer market.

TABLE 13, TABLE AND CHART 13A AND TABLE AND CHART 13B A NATIONAL SUMMARY OF THOSE PRODUCTS SOLD BY SMALL RETAILERS

WHICH PARALLEL PRODUCTS AVAILABLE IN THE MEGA-RETAIL DISCOUNT CHAINS

Question 15 in Table 13 identifies the variety of trades, products and services of which the sample population is composed ninety-two percent of the respondents returning their data and provided detailed breakdowns of what they sold.

Table 13, and Tables and Charts 13A and 13B provide a national total of the data received from the four states and reveal that 570 of the completed returns, which represented 9.4% of the mailing were truly representative of retail business.

This question allowed the surveyors to analyze the heterogeneous nature of the variety of businesses evidenced in the respondent returns. When the sample was selected, great efforts were made to make sure there would be no heavy concentration of mailings to a particular sector of retail activities. This was done to keep the results as unbiased and objective as possible within the retail industry as a whole.

Table 13 and Tables and Charts 13A and 13B shows the heterogeneous nature of the responding retail firms. As in the case of the mega-retail chains, smaller retailers also sell more than one product line. For example, a retailer might sell women's, men's and children's apparel. Another retailer might sell sports products as well as electronics, i.e., video/equipment and audio/stereo. Question 15 was designed to procure where possible retail sales in every product line which might be found in a mega-retail chain. Hence the number of responses by categories far outweighed the number of respondents.

Table 13 provides product analyses for all four states as a whole, while Table 13A and Chart 13A provides a breakdown of the 570 respondent retailers in each of the four states under study. Table 13A showed total choices amounting to 1341 selections of retail activity by the 570 respondents in the four state study.

As might be expected, Table 13A shows heavy concentrations in "food products," 18%; "home improvement products," 15%; "other products," mainly jewelry and related items, 11%; "other services," such as Optometry, photography, 9%, and combined apparel, men's, women's and children's, 12%. The nature of these categories are such that the respondents in these businesses may have more serious concerns about survival than the other categories.

The subjective answers in Chapter IV which follow indicate concern and fear of the price competition from such chains such as Kmart, Wal-Mart, Home Depot, Target and Sam's Clubs.

As noted in Table 13A, the return from food product retailers overall was 18%. However, in Table 13B, the return from New York was 22%; from California, 19%; from Pennsylvania, 17%; and from Illinois, 13%.

With respect to home improvements and building supplies; Pennsylvania showed a return of 28%; Illinois 17%, California 11% and New York only 9% for an overall average of 15%.

In apparel with an overall response of 12%, California's combined total for men's, women's and children's was 15%; New York was second with 14%; Illinois was third with 7% and Pennsylvania lagged with 5%. The nature of the area often dictated the characteristics of the

responses. For example, Philadelphia and Chicago which are quite metropolitan and urban; and less inclined to buy fashionable "casual wear" appropriate to the warmer climate of the suburban and rural San Diego area. The Finger Lakes region of New York State was more rural than the Pennsylvania and Illinois experiences.

RETAIL PRODUCT CATEGORIES SELECTED BY RESPONDENTS FROM THE FOUR STATES

The retail product returns from each of the four states are categorized by product into subdivisions. There is quite a differentiation between the product mix in one state compared to another, as might be expected based on climate, environment, age of the average residents and style of life.

Table 13A covers 799 selections from Southern California (San Diego, Mira Mesa, Poway, Chula Vista and Oceanside.

Table 13A covers 186 selections from Illinois which includes Chicago, Kanakee and Des Plaines areas.

Table 13A covers 64 selections from the Finger Lakes region of New York State including such areas as Geneva, Auburn and Syracuse.

Table 13A includes 292 selections from the metropolitan area of Greater Philadelphia, Pennsylvania (South Philadelphia, Center City, Society Hill,, Northeast Philadelphia, Northwest Philadelphia and West Philadelphia).

California's response unlike the other three states studied, were numerous in apparel categories. Most of the retail stores selling men's and women's apparel classified as "casual wear" are found in the California returns. There were few returns in these categories from Illinois, New York and Pennsylvania. California, Illinois and Pennsylvania are quite representative on Home Improvement and building supplies.

New York and Pennsylvania showed a substantial percentage of food retail responses. California and Pennsylvania were strong on pets and pet supplies. California was strong in the sports products areas. California and Pennsylvania also had numerous returns in jewelry, watches and related products.

WHERE DO THE CUSTOMERS COME FROM? THE RISE OF MULTI-DISCOUNT RETAIL CHAINS HAS BENEFITTED IMMENSELY BY THE INFRASTRUCTURE CHANGES PROVIDED BY THE TAXPAYER (QUESTION 16)

Data received from all four states studied showed the influence that automobiles have on shopping habits. The retail responses showed that their customers came from different towns and counties depending on convenient highway facilities and parking availability.

Obviously the dependence on the automobile tends to favor the mega-retail discount chains. The mega-discount chains and "Big Boxes" have capitalized highways and automobiles to shift the retail center of gravity away from the smaller retailers in the neighborhoods. the enclaves and the traditional "Main Street." The mega centers have huge parking lots. while it has become more

and more costly to park in the central city without being "ticketed." Obviously, the "Big Boxes" have benefited from tremendous investments on the part of federal, state and local governments in highways, egress and access roads and other infrastructure improvements which have not been made available to the traditional retailers. (See section on parking)?

Since customers now have to employ their cars to shop, the sense of community is vanishing along with jobs and the tax revenues.

TABLE AND CHART 14A AND TABLE AND CHART 14B THE RETAIL RESPONDENTS WERE QUERIED AS TO WHAT METHODS THEY WOULD EMPLOY TO SURVIVE IN THE FACE OF IMMINENT COMPETITION BY MEGA-RETAIL DISCOUNT CHAINS

The data requested was in response to Question 17 in Appendix 1 which follows: "What methods would you employ in order to compete more effectively with a large retail discount chain that sells similar products/services; or, what decisions would you make to alter, survive or terminate your business? Please check off your alternatives from the list below. It is permissible to check off more than one."

Tables 14A and 14B which follow, describe the alternative strategies that small retailers are contemplating in order to survive the competition of the mega-retail discount chains.

Question 17 was asked in order to gain an awareness of the strategies (positive or negative) small businesses were planning to implement in order to compete with large, national discount retail chains. Eighty-four percent of those polled responded to this question. While the return was substantial, nevertheless, this was the lowest response rate for any given question on the questionnaire. The writer believes that many of those who answered the total survey were reluctant to deal with the subject of "competitive strategies," or possibly didn't answer because they had no idea how to deal with this issue.

Of the alternatives that were given as answer choices, the staff observed a natural classification of responses; as "positive" or "defensive." "Positive" choices demonstrated survival and aggressive competitive strategies. For example, if the respondents indicated choices such as "Increase Work Hours," "Increase Visibility," "Provide Fuller Service" or "Expand Product Line;" this indicates that the business owner is still in the "battle" and is willing to compete aggressively with the mega-retail discount chains for market share.

DATA PROVIDES NATIONAL RESULTS OF A FRAGMENTED NATURE INTO BOTH "POSITIVE" (MORE OPTIMISTIC) AND "DEFENSIVE" (MORE PESSIMISTIC) -- QUESTION 17

"Positive" Strategies	% of Total Responses on Each Alternative Strategy
Increase Work Hours	7.30%
Increase Staff	1.68%
Increase Visibility	14.70%
Provide Fuller Service	17.23%
Expand Product Line/Services	8.47%

Consolidate Business	1.80%
Move Business	4.42%
Sub-total	55.60%

"Defensive" Strategies	% of Total Responses on Each Alternative Strategy
Raise prices	1.52%
Lower prices	11.62%
Decrease work hours	1.12%
Decrease staff	8.08%
Narrow Product level/services	8.98%
Liquidate business	3.42%
Bankruptcy	1.63%
Sell business	6.40%
Merge business	1.63%
Sub-total	44.40%
TOTAL	100 %

The respondents to Question 17 numbered 479 firms on Question 17 or 84% of the 570 total respondents. The 479 firms answering the strategy question selected a total of 1782 alternative choices. Fifty-six percent were "positive" strategies, while 44% were "defensive" strategies.

The major aggressive "positive" strategies were as follows: "Provide Fuller Service," 17%; "Increase Visibility," 15%; "Expand Product Line and Services," 8%; and "Increase Work Hours," 7%.

Obviously, in view of the mega-retail discount chains being open day and night to accommodate the mobile shopper; increasing staff and the work hours would be a forward move for the small retailer. Since the mega-discount chain's large "Boxes" limit salesperson customer contacts; "Providing Fuller Service" creates a retail uniqueness to bring customers into the store. "Increased Visibility" means putting more money into advertising such as hand outs and radio advertising. "Expanding the Product Line and Services" is to create customer interest and provide an innovative solution to the present inability to compete on price alone. "Positive" selections, as stated previously, represented 56% of the choices.

According to the author's classifications, 44% of the choices were "defensive," negative or mildly negative. Twelve percent of the choices were to "lower prices." In view of "direct" mass purchasing by chains from suppliers and manufacturers, can a small retailer meet these lower prices? Obviously not, particularly since the number of wholesalers has begun to shrink because of direct "partnering" between mega-discount chains and suppliers. To illustrate, in the Philadelphia area the average monthly number of workers employed by wholesalers dropped from 44,200 in 1987 to 27,200 in 1994 - a reduction of 37%. The number of wholesale business establishments in Philadelphia in 1987 numbered 2,195; by 1995 this had dropped to 1817, a reduction of 20%.

These trends are continuing and are matched by the loss encountered in retail employment in Philadelphia. In 1987, there were 103,800 retail employees in Philadelphia in an average month. By 1995, this monthly average had dropped to 87,100 - a reduction of 19%. During the same period, retail business establishments were reduced in number from 8,425 in 1987 to 8,063 in 1991, a reduction of 4%.5

Other discouraging defensive strategies advanced were, "decrease staff," 8%; "narrow product line," 9%; "sell business," 6%; "liquidate the business," 3%; "bankruptcy," 2% and "merge business," 2%.

Table 14
Summary of "Positive" and "Defensive" Behavior

	California %	Illinois %	New York %	Pennsylvania %
"Positive" Decision Making	54.8	60.0	55.5	49.8
"Defensive" Decision Making	45.2	40.0	44.5	50.2
Total	100.0	100.0	100.0	100.0

An earlier national analysis in table 14A showed selections weighing the responses from four states as 55.6% "positive and 44.4% "defensive." However some retailers in each of the four states appear ready to fight for survival, while others are closer to quitting.

Illinois had 60% of the selections as "positive," California, 55%; New York, 56%; while Pennsylvania's choices were only 50%. All the data in the preceding charts and tables indicated the potentiality of fragmented decision making, ranging from optimistic to pessimistic.

Overall there appears to be great pessimism at this time in the minds of the small retailers in California, Illinois, New York and Pennsylvania.

SUMMARY AND CONCLUSIONS

(1) Results in four states, Pennsylvania, California, Illinois and New York State indicate that respondents to most questions in the Shils questionnaire, (see Appendix 1), almost uniformly were pessimistic about their chances for survival when faced competitively by the mega-retail discount chains.

(2) Over 6,000 questionnaires were mailed out to small retailers in four states. The 9.4% completed returns provides substantial information and meaningful validity with respect to the fears of small retailers and their concerns and expectations with respect to a possibility of a viable and profitable firm survival.

(3) The statistical results would have been well over 10% had it not been for the 321 or 5% of the questionnaires that were returned unopened because the intended recipients had already gone out of business. This was shocking information since the Dalton directory used in the survey is published annually for each region. The staff visited malls in Illinois; New York and California and noted that in dozens of cases, the addressees whose questionnaire had been returned by the United States Post Office, had signs on boarded up properties stating, "Out of Business." These retailers had suffered to a great extent, because normal sized "anchor" stores in the mall had closed down unable to compete with the super "Boxes" built by some of the mega-retail discount chains in the area.

(4) President Bill Clinton in an address at the 1995 White House Conference on Small Business on June 12,1995, stated that while more new small businesses had sprung up in 1993 and 1994 than in any previous year since World War II; that, nevertheless, he was concerned about their ability to stay alive. He expressed concern about the high rate of failures and bankruptcies among small business. Contributing to the increasing failure statistics among small retailers has been their inability to compete with the mega-retail discount chains.

(5) As to the new starts in small business alluded to by President Clinton, the enormous downsizing (millions) of employees working for America's large corporations has contributed to the desire of the redundant employee to become self-employed. Retail employment at near minimum wage cannot satisfy the family requirements of the former corporate employee; hence a desire for self-employment. Retail employment in most of the major chains can usually lead to a wage near the federal minimum or slightly above it. Many of these chains require that the hourly rate employee pay or contribute to his/her own health benefits. Thus, the opportunities in retail ownership appear rosy compared to a low minimum wage job; but the competition of the mega-discount chains makes survival and profit making speculative, indeed.

(6) As might have been expected, 86% of the returns were identified as "sole proprietors."

(7) Surprisingly, 62% of the respondents had been in business for more than 10 years. Closing a business like this is traumatic and has terrible social impact on the family and the community. Eighty-two percent of the respondents were in business at least 5 years.

(8) To prove that the respondents were in fact "small business," the typical retail respondent occupied only between 1,000 and 5,000 square feet of retail space. Think of the average retailer's inability to stock inventory to compete with the national chains who have stores with 45,000, 90,000 and even 160,000 square feet.

(9) When the respondents were queried as to what the anticipated effect upon the firm's economic health might be if a mega-retail chain were to locate nearby, the answers were overwhelming "negative" and "very negative." Forty percent anticipated the results as "negative" and an additional 33% answered "very negative." Thus, 73% viewed their futures in a most despondent, negative manner. Even the 19% voting "no effect" were certainly not "positive," but it is possible that in many cases, they decided not to answer the question positively or affirmatively because of a lack of hard data to make a judgment.

(10) To further validate the fact that opinions came from small businesses, it appeared that 74% of the firms employed 10 employees or less. Only 26% of the firms had more than 10 employees. These typical "sole proprietor" retailers were small indeed, with 52% of the respondents employing 5 employees or less.

(11) Fifty-eight percent of the respondents visualized serious losses in employment were a major chain to move into the area selling similar products. Forty percent of the respondents saw their retail venture losing from 5% to 35% of their employees. Eighteen percent visualized losing more than 50% of their employees. Only 4% saw a gain in employment. Thirty-seven percent anticipated "no effect."

(12) With respect to their current business volume, the retail respondents were characteristically small. Seventy-seven percent had volumes of $1,000,000 or less. Thirty-eight percent had sales

volumes of under $250,000; and 20% had volumes of $250,000 to $500,000. Only 23% had sales volumes over $1,000,000.

(13) The respondents were then asked to estimate the positive or negative impact on sales volume by the imminent competition of a mega-retail discount chain. Eighty percent of the respondents anticipated "sharp" to "drastic" reductions in sales volume; while only 14% saw "no effect." Only 6% saw a rise in volume by virtue of a new competitive entry of a major retail discount chain.

(14) Data appeared consistent as to sales volume loss and unprofitability. As to profitability, 24% of the respondents visualized profits dropping by more than 50%. In fact, 76% anticipated serious reductions in profitability as a result of the imminent competition of the mega-retail discount chains. Only 8% saw an increase in profitability, with these estimates being mostly conservative, i.e., 10% or less. Sixteen percent saw "no effect."

(15) Respondent retailers saw the reduction in the number of wholesalers, or those middlemen willing to sell small retailers, as affecting their business negatively. Over 50% saw the direct selling to mega-retail discount chains by suppliers as being "negative" or "very negative."

(16) Kmart's and Wal-Mart's recent ventures into the Super Kmarts and supercenters' food and grocery departments are creating new competition for the small grocer and the more traditional supermarket. Small retailers see these ventures as further threatening the survival of countless small food retailers. Many of whom (lacking wholesale resources) are buying now from Sam's Clubs or other clubs to survive.

(17) Small retailers do not have the relative financial ability to compete with the mega-discount chains in advertising, promotion, public relations, radio and television. They rely on the small business techniques replete with flyers, leaflets, brochures, the yellow pages of the telephone book and local newspapers.

(18) Ninety-five percent of the respondents lack the ability to compete with chains because of limited hours and days worked per week. More than 50% of these respondents close their businesses on Sunday; 8% close on Saturday. Forty percent of the total respondents however, saw Sunday as the "busiest" day worked during the week. Most work traditional work hours and are unable to compete with the mega-retail discount chains, who in many cases are open 7 days per week and 24 hours per day.

(19) Small retailers sell most of the products sold by Kmart, Wal-Mart, Target and many other major chains. Each store however is limited with respect to national brands, inventory and product lines. One might specialize in apparel; another in food; another in auto mechanics and supplies and so on. Table 13A showed the percentage of respondents selling each product. To recap: 18% are "food products"; 15% "home improvement"; 12% "apparel"; 11% "other" (jewelry, etc.), 9% "other services" (Optometry, photography, etc.). These vary greatly among the four states. For example, California shows heavy responses in "casual apparel"; while this is not as important in Pennsylvania and Illinois.

(20) The customer base of these retail respondents depends greatly on highways and parking. Naturally, the major chains locating outside "Main Street" have the advantage of parking lots; ease of access, freedom from parking meters and downtown traffic congestion. Add to that the

fear of crime and violence in downtown evening shopping which creates a major disadvantage for the small "Main Street" retailer.

(21) A major question addressed to the small retailers related to strategies they might apply in competing more effectively with the major discount chains. While the staff received an 84% response rate; it was lower than the answers to other questions. The respondents appear fragmented in their choices; frustrated, confused and pessimistic.

(22) Fifty-six percent selected alternative strategies that could be defined as somewhat "positive"; such as "increase staff," "increase visibility," "provide fuller service" and "expand product lines." Forty-four percent of the choices were "defensive" strategies; "going from raising or lowering prices," "decreasing staff," "liquidating or selling the business" or "going into bankruptcy."

There was not a great deal of difference among the four states as to "positive" strategies. Illinois was the most positive with 60%; New York with 56%; California 55% and Pennsylvania with 50%.

(23) The staff believe that the profile of small retail business as portrayed in Chapter III shows consistency and validity; not only nationally but among the four states studied. Surprisingly, respondents generally have been in business longer than might be the popular notion. Small retailers show concern about their future viability, and evidence fear of job loss, liquidation and bankruptcy; they become less competitive when compared to the mega-retail discount chains.

CHAPTER IV

THE STATE OF MIND OF THE SMALL RETAILER IN AMERICA: HIS FEARS AND CONCERNS ABOUT SURVIVAL

(Narrative Statements)

As was indicated in Chapters II and III, there was an approximate 10% return of the 6,000 questionnaires mailed to Pennsylvania, California, New York and Illinois. The research staff has categorized these responses which provide comments and suggestions on how to cope and prepare for the survival of the small retailer. The categories are grouped by state returns and indicate the types of product lines or services provided by the respondents.

Chapter IV reveals the depth of fear and discouragement of the small retailers, as per their own statements, who are desperately concerned with their chances of survival in the face of mega-retail discount chain competition by the Home Depots, Kmarts, Wal-Marts, Targets and other "Big Box" competitors, as well as competition from other powerful retail chains. The narrative comments and quotes are [resented here in geographical order.

Before launching into the comments and suggestions made by the retail respondents which are to be found in Part II of Chapter IV, the author believes it appropriate in Part I of this chapter to review suggestions made by authors, Taylor and Archer, on how the small retailer can survive in the face of mega-chain competition.1 This work was published by the American Management Association in 1994. It hoped to provide the small retailer with a strategy for survival.

PART I

CAN SMALL RETAIL ENTREPRENEURS SURVIVE CHAIN COMPETITION BY UTILIZING UPDATED MARKETING AND MANAGEMENT STRATEGIES?

Part I of this chapter is a response to the book, *Up Against the Wal-Marts*, authored by Taylor and Archer. The author recognizes this serious work as well meaning--but finds the suggested strategies almost impossible to implement at the current stage of retail failure and stagnation. These small firms simply do not have the financial resources, staff or leadership to snap back in the ways suggested by Taylor and Archer. Were there a reason to start a new business with more than adequate management experience and venture capital, their "Ten Strategies to Survive" would be both helpful and essential. It is possible that some individual retailers might survive in the face of the "Big Boxes" by following Taylor and Archer's "Ten Commandments" or strategies. However, for the most part, the dying breed of "Main Street" merchants requires external and formidable help from local, state and federal governments as well as specialized agencies such as zoning boards, planning commissions and community development authorities prepared to provide incentives and subsidies to small retailers, currently available to the mega-retail discount chains who generally build their "Big Boxes" on former agricultural or industrial land. For example, a mega-retail discount chain store is given the right to retain sales taxes collected for a given number of years in order to help finance construction of and debt service for the "Big Box." As small retailers close, the sales taxes they formerly collected are no longer

available to local government. These entrepreneurial subsidies and dozens of other incentives as well as tax abatements are generally not available to the small retail merchant.

Taylor and Archer are among those writers and journalists who attribute the failures of the traditional "Main Street" retailer to causes other than the price competition of the mega-retail discount chains. Taylor and Archer present a provocative and interesting volume which appears well-meaning in identifying ten survival strategies to enable the small retailer to compete more effectively with a giant Wal-Mart or other mega-chain retailers. The title of their book, published in 1994 is Up Against the Wal-Marts (How Your Business Can Prosper in the Shadow of the Retail Giants), as was listed in Footnote 1.

One cannot argue with the time honored principles presented such as "satisfy your customers"; "study the success of others"; "gather and analyze management information regularly"; sharpen your marketing skills"; "increase the customer's perception of value"; "position your business uniquely"; "eliminate waste"; "find something to improve every day" (the Kaizen Japanese method of incremental improvement); "embrace change with a positive attitude"; and "pull the trigger and start the battle."

These prescriptions would appear sound if the small retailer were not finding daily vacancies among his neighbors in strip malls; vacancies that result in the "Main Street" or the Mall taking on the appearance of a city ghetto, with boarded up properties and a sharply reduced traffic volume that makes the surviving retailers' look like lonely commercial outposts.

If out of every ten stores on "Main Street" or on a strip mall, three to five retailers close because of a neighboring Supercenter's announcing special promotions and discounted sales, what is a staunch "survivor" to do? The small retailer is unable to procure mass purchase discounts from manufacturers. Even in military parlance, if sixty percent of a company is devastated by superior weaponry, can a company commander rally his decimated troops and win? Do the valiant surviving retailers possess unique leadership skills and professional staff of the sort engaged by the mega-retail discount chains? Do they have the logistical support to survive the invasion of the supercenters?

The writer has visited many strip centers, "Main Streets" and malls, in a number of states and has interviewed a number of valiant survivors. In Part II of this chapter, the reader will certainly recognize their discouragement and disillusionment about the end of their "American Dream."

Taylor and Archer, while truly attempting to encourage small retailers to survive; nevertheless do recognize and observe the present devastation going on in malls, strip malls and the former "Main Streets" of Middle America. Furthermore, it is easy to see observers are shocked by the decline and elimination of most small retail stores in the ethnic and minority enclaves of our very large cities, in the East, Midwest and the West. The elimination of small retail store in the neighborhoods results in job loss and contributes to the ultimate conversion of a formerly socially stable neighborhood into a ghetto, beset by violence, crime, drugs and an underground economy.

This view is clearly expressed in the following quote from Taylor and Archer's opening statement in their book:

"'Main Street' Is Changing"

"Bowman's Hardware is closing!' The rumor had spread like wildfire through the small Georgia town just weeks ago. Now the store building stands quietly empty. The auction is over and the owner is gone."

"The 'for sale or rent' sign dominates the right-side display window. A hand-lettered poster board is taped up in the left hand window. Its message expresses the bitterness of the former store owner and the area's other failed merchants. It reads:

YOU WANTED WAL-MART. SOON THEY'LL BE ALL YOU GOT. GOOD LUCK THEN!"

"Bowman's is the eighth 'Main Street' business to close since Wal-Mart came to town. The owners are quick to blame the giant retailer for the failures. However, signs of neglect, apathy, and decline were evident on 'Main Street' long before the discounter located at the edge of town."

"Bowman's had been the only full-line hardware store in town. Its closing is a blow to the remaining independent owners. For the first time in seventy-three years the big corner store is empty."

"'Main Street' is changing."2

While it is true that all of the troubles of the small retailer can not be attributed to mega-retail discount chains; nevertheless, the pricing power of these chains makes recovery on the part of the small retailer well nigh impossible.

A lack of foresight on the part of local governmental authority in failing to back downtown improvements; to make parking readily available; to control traffic congestion; and to provide fiscal stability have all contributed to the plight of the small retailer in America.

After describing the Bowman's Hardware closing (which the authors of this current study find very typical of the fates of hundreds of retailers studied in Pennsylvania, California, New York State and Illinois), Taylor and Archer cited several successful survival instances in New Jersey, Missouri and Arizona. Based upon this writer's experience, these "miracles" are the exception rather than the rule.

Taylor and Archer quoted Mr. Jack McNabb of a Trenton, Missouri Hardware Store as saying, "This is a tough business, and these are tough times," he told us. "But I'll soon have it paid off, and then we'll have some fun again."3

Taylor and Archer tell the reader that, in more prosperous times, this store supported the families of five owners. 4 Now it appears that only McNabb manages a living. Like the family farmers that make up his customer base, this independent "Main Street" merchant may be one of a vanishing breed.

"'Main Street' is Changing." 5

Taylor and Archer also tell of Casey's in Flagstaff, Arizona that apparently has had the capital to advertise, promote and add specialized employees. Casey's president, Robert Gondek, attributed his firm's survival in part to watching prices. He stated:

"We're watching our prices too. Wal-Mart has 50 or 60 items they advertise pretty hard in this area. We watch those items all the time. If Wal-Mart is at 97 cents on a bag of steer manure, we'll be at 99 cents and load it in your car for you." 6

Admittedly, small retailers must fight back to survive. But how can Casey's continue to match Wal-Mart's prices when Wal-Mart and other mega-retail discounters such as Kmart, Target, and all other "Big Box" retailers who buy through mass purchasing buy "direct" from manufacturers and suppliers, while McNabb and Casey are apparently unable to secure this type of recognition. As has been indicated in this study, access to wholesalers is disappearing for the small retailers.

Numerous retailers are buying from such wholesale clubs as Price/Costco and Sam's Clubs. Price and Costco merged in 1993 and is now the largest factor in the wholesale club industry with over $15 billion in sales. Sam's Clubs is the wholesale/warehouse sales division of Wal-Mart. In 1995, 453 Sam's Clubs had combined sales of $19 billion. Retailers are becoming members of these clubs in order to purchase inventory for resale in their stores in the short run. How can they match prices with Kmart, Wal-Mart, Home Depot and Target, "over the long run?"

Taylor and Archer provide ten survival strategies for small retailers to consider in competing with Target, Kmart, Wal-Mart and other important mega-discount chains. These precepts are:

1. Focus completely on satisfying the customers.
2. Study the success of others.
3. Gather and analyze management information regularly.
4. Sharpen marketing skills.
5. Increase the customer's perception of value.
6. Position the business uniquely.
7. Eliminate waste.
8. Find something to improve every day.
9. Embrace change with a positive attitude.
10. Pull the trigger and start the battle. 7

Their work appears to be more appropriate in helping a retailer in planning a new venture, starting a new business, or selecting a new location. The book provides sound business advice for all retailers, large and small, of every type and description. However, the "generic" type of advice so generously offered cannot help most of the nation's small retailers who are under-capitalized; possibly deep in debt, unable to afford sophisticated information systems, costly advertising and promotion, and who are presently located in what appears to be "disadvantaged," "ghetto-like" locations. Here, the formerly lovely "Main Street" is loaded with vacant real estate. The historic neighborhood enclaves in large cities now exhibit abandoned stores and residential decline. Even malls constructed within the past five or ten years now suffer vacancies and reduced traffic as the "Big Boxes" of Target, Kmart or Wal-Mart open, perhaps a half mile to three miles from the former bustling commercial center.

The responses to our study show hopelessness, frustration and inability to respond to Taylor and Archer's ten strategies for survival, albeit, the advice is good. At a certain point the small retailer

becomes a dying breed, unless the nation and Congress realizes what the impact of these failures will be on communities, joblessness and social disorganization.

Generally, wages in the mega-retail discount chains do not match the earnings of employees who worked in family-owned small businesses. Not only has the economic impact of the mega-chains been negative; but also the sociological impact, as communities lose their small stores, the mega-stores will become socially unstable influences, resulting in increases in violence, crime and joblessness.

PART II

NARRATIVE "QUOTES" FROM RESPONDENTS IN THE FOLLOWING 4 STATES:

The surveys offered each respondent an opportunity to make further comments, explain their quantitative answers or to express ideas or opinions on the current state of their businesses and their communities. What follows are those responses. They have been organized by state and city or region within each state. All responses are presented in order for the reader to get a feel for the positive as well as the negative comments of the small business owners.

A. California

San Diego
Oceanside
Chula Vista
Poway
Mira Mesa

B. Pennsylvania

Philadelphia

C. Illinois

Chicago
Kankakee
Des Plaines

D. New York (Finger Lakes Region)

Geneva
Auburn
Syracuse

PART II - A

CALIFORNIA
[SAN DIEGO AREA]

S1 - Luggage/Bags:

"Our store primarily deals with bags and luggage. One block away there is another luggage store. None of them are (including ours) large stores. Yet, there is enough competition to really drive the retail price down, even between two small stores. We can imagine what it will be like if a

national chain store is placed near our store. This reminds us of a game of Monopoly! But perhaps this is an inevitable trend every one wants to make the most 'bang' for the most buck. So, it is only natural there will be the predominance of nation wide chain-stores in which they may bypass wholesalers and purchase goods directly from manufacturers. We are aware of the diminishing wholesalers (from L.A.). We sense economy of scale at work everywhere, but in a more overt form."

S27 - Men's and Women's Resort Wear:
"The wording of your questionnaire makes an accurate answer difficult. We operate specialty resort wear stores in resorts. A large store opening _ mile away would have no impact but an operation across the street would. Also a large discount store would not offer similar products. It is highly unlikely a discount operation would want to pay $60-$100 per square foot rent and could discount the upscale merchandise we offer."

S26 - Books and Magazines:
"Information regarding publishers and other suppliers offering preferential terms for 'mega stores' would be helpful."

"Research regarding possible trade violations by mega stores helpful. Also their influence on making 'best sellers' simply by their purchases - what is their influence on a book's success?"

"Cultural influence of chain/mega stores purchase pattern (de facto censorship) - less profitability of some books - also their negative impact on small publishers - (high purchase and high return)."

S25 - Security Equipment:
"In our experience, the large mega-retailers carry the low end of product lines which appeal to 'do-it-yourselfers' and handymen. Therefore we have shifted our emphasis to commercial customers and the Navy. The large retailers buy directly from the manufacturer and eliminate the distributors. We can not compete under those circumstances. If we do not have distributors to supply us with merchandise, and we can not buy from the manufacturers, that doesn't hold much of a future for small businesses."

S22 - Men's Casual Wear:
"I am located in Seaport Village, which is tourist/convention orientated. This may not suit your survey objective, as many of our customers wouldn't have the option of visiting a discounter because of time restraints or wouldn't want to, as they would feel they could do that in their hometown. I currently make a strong effort not to carry same labels available in the discount stores you named. Many manufacturers use a different label for discounters - same goods, or they manufacture a lighter weight garment (less quality) same look."

S20 - "Other":
"It seems a little late in the game to be trying to come to terms with the destructive aspects of mega stores. Perhaps some time should be spent anticipating the impact of electronic shopping and other emerging phenomena of our rapidly restructuring economy."

"My experience with superstores - Home Depot, etc. - is that they have a broad range of products but lack depth. I find myself patronizing the niche retailers - the specialty bookstore, or 'Real Goods' catalog for products I want. My concern with superstores is that they don't just save the

customer but they also define what's marketed without concern for origin of product (e.g. Chinese prison labor) or ecological consequences."

S19 - Jewelry:
"We are in a unique situation, as all our merchandise is hand crafted locally. However, the average person has only so much time to shop and will usually prefer to go to where they can get all their shopping done at once. We can not afford to go into a mall and of course, could not produce/compete in price with the larger volumes necessary for discount sales. We are seriously considering going out of business after 22 years in San Diego."

S18 - Home Improve/Building Supplies: "The old adage in retail that 20% of the items make up 80% of the sales is pretty much true. The big box retailers tend to stock and sell mostly these items. In traditional retailing, these items (the 20% items) subsidize the other slower selling items. Additionally most of these items (the 20% fastest selling items) are purchased on a direct basis from the manufacturers excluding the wholesalers from the picture."

"As the 'Big Box' retailers come to dominate the market, traditional retailers are driven out of business because they can no longer survive just selling the slower selling items. Wholesalers are driven out of business for the same reason (and because of direct selling). Manufacturers cannot find retailers and wholesalers to stock and distribute the slower selling items. The end result is that consumers find that there are fewer and fewer of these slow selling products available. Yet, these slow selling items once represented 80% of total number of manufactured items."

"That local governments are doling out tax incentives to the mega-discount chain retailers in exchange for opening stores in their communities shows an incredible lack of understanding of the big picture. These huge businesses operate differently than small and medium size business and do not need help from our government. Instead of providing incentives for big business our governments should relieve small business of the huge burdens that they have imposed. There are an incredible amount of rules, regulations, and paperwork requirements that impact small business and large business differently. Because of economies of scale, each new regulation imposed on business has a minimal impact on large business but a huge and detrimental impact on small business. Governments at all levels need to understand this."

S16 - Tobacco Shop:
"It should be noted that my store is in an outdoor mall. I have a primary location with innumerable tourists. The S. D. Convention Center is down the boardwalk and I am surrounded by 7,500 hotel rooms. I may not be an ideal candidate for your existing study. I felt you should have this insight for your study. I am primarily a tobacconist selling cigarettes, pipes, tobacco and cigars."

S15 - Apparel:
"I have personally seen Wal-Mart and other discount stores completely shut down a small town in southern Indiana. Businesses which had been in operation for years were closed and the only opportunities for employment were minimum wage jobs. In addition, clothing and other items are of a low quality, not really quality for price."

S14 - Beverages, Snacks:
"We are a small coffee vending (retail) operation which enjoys a good location in the business district and long standing track record. Our 'edge' on the market is quality and service and very

low overhead. The disadvantage is that we rent our locations; and, if a large company comes into the area, they could well afford to offer our landlord a deal they couldn't refuse or one that we couldn't match. If we did pay the 'increased market rent' one of our largest advantages would be lost (low overhead)."

CALIFORNIA
[OCEANSIDE AREA]

O7 - Electric Equipment/Kitchen Equipment:
"The large retail stores have nothing but a negative effect on the small business, especially in California. There is only so much business to go around and the increase in the number of stores only means that each one's slice of the economic pie is only that much smaller."

O2 - Picture Frames:
"Thank you for the opportunity to be included in this survey. As a young small business man I feel that some of the large chain stores do a greater deal of bad than good. If the United States wants to become an unfriendly discount warehouse then so be it. But being a 'service' business I don't believe that is what's happening. I honestly feel that someone forgot the most important thing about being a small business - 'the customer.' Without service to the customer it is just a matter of time before all the big stores are gone and the smaller 'Mom-and-Pop' shops come back (I hope)."

O21 - Specialty Shop:
"We are a specialty business with very little competition from large chain business. We provide products and customer service on use of products not found in large chain stores."

O105 - Sports Products:
"Large discounters will move in with lower prices. Independents will be forced out and then when competition's gone, prices will go up again until the cycle starts again. Service is the only way the small guy can compete. We have just liquidated due to discount competition!"

O101 - Bikes/Equipment:
"I will close my business by July 1, 1994. No tax concessions were offered to bring my business into town or to keep it in town. Many products which were sold in my store and made available from the manufacturer solely for 'independent' stores now have appeared in the discount stores via gray market trading. My customers were always quick to tell me about the great deals they got."

"The American public will always pay in the long run for the services they get and expect and perhaps service and quality are after-thoughts soon forgotten. Many cities have over built re: shopping malls, especially those anchored by discounts firms, only to have the mall become a picture of blight when it cannot be filled with small tenants or the discount firm packs up and leaves."

O99 - Nutrition Store:
"Mega-chain stores buy or discount wholesale, because of high volume then sell or discounts to attract consumers. Smaller margin of profit is offset by higher sales volumes. Tax breaks and other incentives from all levels of government (local, state, federal) favor big business unfairly to the detriment of the small business who gets no break even though small businesses are the

national economy's backbone. If this trend continues, small businesses will soon become a thing of the past. Small business should now get the breaks and larger ones should pay their full dues. When small businesses are gone, the larger chains will be able to raise prices without competition from the small entrepreneurs and retailers. Large chains are like sharks scavenging the fiber of the retail world, swallowing schools of smaller retailers, leaving dead zones within 'miles.' They will finally fail themselves and fold, because of over-building and the retail chain wars."

O94 - Food Products:
"Some California laws need modifying to be more 'small business friendly'."

O93 - Eye Glasses/Contact Lenses:
"Please tell these cities that want these stores the truth about the lower wage jobs, etc. They don't understand that they are putting small business out of business. Unfortunately, here in Oceanside, they don't care! I have spoken to the Chamber of Commerce and it has only got one side of story on these mega stores. There should be a limit as to how close these stores can be to each other. In the San Diego area, we now have 4 Price Clubs all within 6 miles of each other!! And now Wal-Mart wants to have 2 locations in Oceanside with the possibility of a 3rd!! I don't care what anyone says, but it does hurt small business including myself. Thanks for sending me the survey. I'll be happy to do it again."

O91 - Automotive:
"Big chains sell way too low the first year to gain customer base. My main concern is automotive and your survey didn't pertain to this area. Large chains will decrease employment because small businesses will close."

O85 - Food Products/Popcorn:
"One example: We sell a 3 _ gallon tin of popcorn for $18.95 with butter-cheese-caramel. Wal-Mart has a 3 _ gallon tin they sell for $6.95. Their tin doesn't have handles, but it is hard to justify three times the price. We pay $6.36 for an empty tin."

O83 - Food Products:
"Elimination of small and medium size business would be the result of discount stores moving to an area which eventually will cause the removal of working class and middle income categories. In short term, middle class and probably some low income consumers benefit from these changes but in the long run both will be losers and pay for short term benefits."

O81 - Furniture/Appliances:
"We are so busy trying to keep the doors open, so I don't have time to make comments. Business is BAD - BAD!"

O78 - Computer Equipment:
"As a small businessman I recognize it is next to impossible to compete against mega/retailers/discounters on price. But we will continue to strive to beat them on service."

"A large part of our business is selling, installing and maintaining networks. I believe (hope!) that this focus will keep us profitable and allow us to compete in the future. We also repair computers quickly, again something that the mega/retailers/discounters have not adequately provided."

O76 - Optometry:
"These companies, while they profess to promote jobs and add to the tax base and help the economy: nevertheless, from input I have had from other practitioners, they actually do just the opposite: They run small business 'out of town'; provide inadequate jobs and are only concerned about the bottom line! Prices that they charge for similar products that I have, are at times below my cost or at a level that I cannot compete with. There are only so many tax dollars. By adding another store, how can the tax revenue be increased? This is the big lie of the discount chain stores."

O73 - Shoe Store:
"I have two views about national discounters. 1) Our town already has 1 Target, 2 Kmarts, 2 Long's and now we are getting a Wal-Mart. All of these retailers sell 'some' similar products to mine and they get them much cheaper than I do - thus this is bad for my business. 2) Our town is in terrible need of businesses who can bring employment opportunities and tax dollars to us. I personally would rather see more upscale larger retailers come."

O68 - Food Products:
"The big question is what are local merchants and centers doing to compete with the national discount centers. For example, uplifting stores and malls that are looking so worn and are not as attractive to shop in as are new stores."

O63 - Audio Stereo:
"It is my opinion that the U.S. Government PX's are engaged in unfair business practices which present the most adverse impact on my business. They sell the same product at an average mark up of 20%. They do not charge sales taxes and in addition they now offer financing. I feel this has been a major impact causing about a 40% decline in business for the last 3 years. I feel the Exchange and PX should be limited to selling necessary items such as food only, not luxury items such as car stereos and electronics. We as business people and taxpayers are financing the government to operate at a loss and extending the time of recession."

O61 - Furniture:
"I am a sales representative in the home furnishings field. I also offer warranty services as an addition to the products I sell. I currently sell to Price\Costco, so I can't say it would be bad for me personally for their expansion. However, the other large discount chain retailers do take away from my customer base on a retail level."

O59 - Computer Equipment/Electronic Equipment:
"We are a family business in existence for over 20 years. Two locations (1 - Escondido; 1 - Oceanside). When we opened typewriter shops, we sold typewriters. Now Price Club, Sam's, Wal-Mart, Kmart, Silo, Circuit City, Sears, Montgomery Wards, all sell typewriters, word processors, etc. They sell at prices less than we can purchase from the manufacturer as a dealer. As a dealer we have quotas to meet in order to stay a dealer and be able to buy machines, supplies and parts. We are now a service oriented business."

O58 - Optometry:
"I am personally against retailers such as Wal-Mart, etc. They do not offer good jobs to the local public and do take away from jobs provided by the smaller business. Thus, their promise to add the 'so called' revenues to the city coffers is untrue, since these big retailers put many others out of business. Then the profits leave the local areas and go to the big corporate guys."

O56 - Paper Products:
"In 'general' there is already too much retail space now available and the giants are killing off the small retailers. While some of us hope to grow big enough to compete, most of us will not survive. Community planners and local and state governments put too much emphasis on tax revenue and not enough on quality of life, and plan too much commercial and not enough desirable housing, which leads to too many instant slums and not enough family desirable living areas."

O54 - Scuba:
"Currently I compete with the Federal Government 'MCB Camp Pendleton.' They have already created a mega store environment. You excluded government competition from your study. PX systems are as big as Target. The PX in my area went into competition with me in 1983. My business dropped 30%."

O53 - Food Products:
"The aspect of mega-retailers which greatly affects me is my ability to buy 'a few items' from a local hardware, lumber or business supply store - they're gone. Meanwhile the mega-retailer thrives and I have to buy 10 of something when I only want one, because they only package usually in bulk sizes."

"No personal contact, no help with products, limited variety, etc. are all problems with mega-retailers. Everyone can save if you would consider the savings in terms of paper/tree waste, postage (2 ways) and general ecological conservative principles."

O52 - Food Products:
"I have been in this location for four years. One year ago another store just like mine, but four times bigger, opened up about _ mile from me and my sales since then have decreased over 50%. They have not gone back up yet."

O51 - Electronic Equipment:
"Some of the products sold by the chains may be factory seconds, refurbished and not clearly stated. Small business must have the same leverage as bigger stores. If a product cost me $200 - the bigger stores should not be able to buy cheaper except in car load lots. I am selling a personal service and products that the big stores have a hard time competing against. Experience and fair competition may be a solution to the problem."

O49 - Food Products:
"My business is in a center that has a Target store in it. There is a proposal to put a Wal-Mart two blocks away. The tax base will not increase because the people that were shopping at Target will buy at Wal-Mart. Target will be forced to compete more aggressively, prices will come down and less taxes will be collected. The customer base will stay the same."

"Within a five mile radius we have two Price Clubs: one was very busy all the time until they opened the second one. Now they are not so busy at both locations. It proves my point that they are splitting their customers, not increasing the customer base."

O48 - Beach Snack Shop:
"I am very concerned with large chains moving into and eliminating small business. Over a long period of time, there is dramatic damage in the community. We lose the community family."

O47 - Food Products:
"In Oceanside, proposals are being considered for three Wal-Marts, - one has been okayed! In these economic times the carrot of sales tax revenue is being taken by local government. All the while, the three established Price Clubs (San Marcos, Vista, Carlsbad) have all reported reduced sales (cannibalized each other) and one will have to be closed. We have cities competing against each other for a mega-store and the result is short-sighted irresponsible planning with the small business losing out big time."

O38 Building Supplies:
"The Home Depot has been here for 10 years. We can offer more for less on a service and personal level. They, on the other hand, can purchase certain goods at a substantial saving usually under my price. They buy direct; we cannot. How can we compete?! The government thinks that these companies are small business. They are wrong - we are!"

O37 - Lawn and Garden:
"When Home Depot opened its doors several years ago, my sales dropped 15-20%. With a slow economy, people assume Home Depot and Home Base are cheaper, therefore my sales have continued to drop."

"On a positive note, many customers are returning to the service that we provide. The 'circus' atmosphere is costing them sales as well. Thank you for asking our opinions."

O34 - General Store:
"Predatory pricing by large retailing chains should be controlled."

O30 - Florist:
"No one said it would be easy to compete in any venue."

O27 - Photo Processing:
"We already have a tough time surviving in Oceanside. The city's business has decreased. Businesses in my center have moved or gone out of business, accounting for a 40% vacancy in the center."

"Selling my firm is probably out of the question because of Oceanside's reputation for poor business as of late. Wish me luck!"

O26 - Doors/Windows/Kitchen Cabinets:
"If the manufacturer sells direct to the large chains, then why not sell direct to the small businesses?"

O39 - Home Improvement/Lawn & Garden:
"I love the big guys - they sell the cheap products that break down, and I repair, or replace with quality products."

O24 - Furniture:
"Give small business same breaks that are offered to large chains, particularly tax breaks."

O23 - Auto Equipment and Services:
"There is no question that big chains, who have such buying power, are putting small and medium size business out of business. I did not know that any one out there cared about small

businesses going out. These big stores carry everything. The Price Club even has a travel agency inside. I think this is absolutely disgusting."

O20 - Women's Work Apparel:
"Uniform sales are generally a more service oriented and group sales type of retailing. It requires a more knowledgeable type of selling and marketing. I would only expect a moderate decrease in sales. Most uniform locations require male/female garments in all sizes, ranges and colors. National discount retailers do not have the space nor qualified personnel to handle our type of products."

O18 - Meat:
"There is nothing positive I can say in regard to having a large discount store locating in our area."

O17 - Hearing Aid Sales/Service:
"This survey is an excellent idea. I had not considered the impact on my business of the large retail outlets, so I appreciate the opportunity to respond."

O65/66 - Electronics/Video:
"I am totally opposed to the 'corporate-tization' of my community. (store A). We are being run out of business by blockbuster corporate companies who have more buying power, governmental tax breaks and the ability to direct dollars and lobby groups to keep status quo. The 'Mom-and-Pop' video business is in peril! (store B). We compete with everyone from grocery chains to drug stores to McDonald's which are using rental and sell through videos as 'loss leader' items. No entity is willing to stop this from happening. We cannot compete with below cost or free!"

CALIFORNIA
[CHULA VISTA AREA]

C20 - Variety Store:
"As a franchisee I rely on my franchisor to constantly be on top of my business needs and changes. We are very limited to what we can do. I feel because of their constant changes and the downsizing of their staff, that these actions have affected my business [ex: advertising, upgrading equipment, new ideas to keep up with the changes of our competitors]. I am relying on myself more and more to stay in business. I have gone from being able to have 2 days off and working 8 hour days to working 6-10 hour days and I'm not alone. Many other franchisees are doing the same thing."

C19 - Jewelry:
"Cities are strapped for income and have to raise revenues with increased parking fees which affect businesses that cannot afford large areas for free parking. Also, increased business license fees and large mega stores with their 'in-house' credit plans will eventually doom all small businesses. City Councils have not got business 'smarts' and legislate small businesses to death. I have had my own business for 35 years and it just gets worse every day. The fun is gone and the money is gone - only a fool would open a small business today."

C15 - Hardware:
"The big chains usually sell cheap products which puts the home owner in need of our services.

However, quality products prices can't compete with big chains so we end up with a rip off reputation for charging a decent price for quality work and quality material."

C13 - Home Improvement:
"The best way to compete is service. Our big job is getting customer in the first time."

C12 - Home Improvement:
"Most small businesses have been hard hit by the economy in last 3 years. Our business is down 35% to 50%. We have used up our savings and other resources. We have cut staff and all the fat from our budget. As owners we spend more time in our stores. There is little left to give, if we lose any more of our business - WE ARE OUT OF BUSINESS! 'Mom-and-Pop' are on death row! Down to the last appeal! Send in the priest not the tax man!"

C10 - Ice Cream:
"Large businesses can afford lower prices by allocating or prorating profit margins among several different products. Economy of scale."

C8 - Office Products:
"I do not like the City helping major stores open with tax breaks/land deals, etc., when the effect is to put many small business people out of business. Unless they are bringing new buyers into the city, they are only moving sales tax dollars from one place in their city to another."

C4 - Paper Products:
"A large competitor that handled the same or similar services would put me out of business."

C2 - Jewelry:
"It is necessary to stop irresponsible opening of new businesses in the areas already filled up with similar businesses."

C58 - Jewelry:
"1) Restrict to some areas all national discount retailer stores. 2) If local government waives taxes five or more years, than obligate the mega-retailer to stay five extra years after the five years waiver. 3) Tax extra for the number of stores they have. 4) Obligate manufacturers to give same prices to small business. 5) Waive some taxes to small business. 6) Lower Workman's Compensation insurance to small business. 7) Special loans to small business at lower rates."

C55 - Reupholsterer of Furniture:
"Small business can compete with large business providing government entities do not tax and or regulate us to death and offer incentives to large business that are not available to small. Small business worst problems include above and excessive insurance premiums, especially Workman's Compensation, health care cost of employees, unions. Small business is only surviving now because it gives better service and quality and is accepting less pay or rewards for its efforts."

C51 - Kitchen Products:
"Fedco, military base are 'not for profit.' It's very hard to compete with this type operation. I think if they are not for profit, they should not be allowed to sell the same products I do. People will often come in and see products I sell (and stock) then once they have all the information on the product they will go to a warehouse club or military base and purchase it cheaper."

C48 - Food Products:
"I have found that the large mega store customers have a negative impact because their business is one stop shopping. After an hour in Wal-Mart, etc. the last thing you want is to stop some place else for ice cream, etc."

C47 - Sewing Fabrics:
"Chula Vista, CA is unique. The Mexican border is five minutes south, San Diego proper is ten minutes north. There are now 3 and very soon 4 Kmart stores within 8 minutes of my store. There are 3 Home Depot centers, 1 Home Base, 2 Targets. 3 Major Malls, 1 Office Depot as well as a multitude of other strip shopping centers . . . all within 8-10 minutes. Drive for 20 minutes and easily triple these figures."

"Originally, these mega stores offered depth and low prices . . . very competitive prices. Price/Costco has zero profit prices . . . (net) margin. They are selling at cost only . . . deriving their 'profit' from quick selling in volume and 60-90+ day terms from their supplier. Price Club sells the same products as I do at a cost below my wholesale cost . . . and I still must pay freight! Competitively, it's not very fair. Will they still sell below my cost after I am gone?"

"For the consumer (me too) it is very good. I get selection, depth, low prices...if I shop around, and quick delivery, no hassle refunds. I travel a lot and observe other small communities (i.e. Eureka, CA; Grants Pass OR...etc) where the small 'Main Street' has become one-way only and boarded up or vacancy signs proliferated about the 'Main' part of town. Property values declined and 'Main' street moved to the outskirts near the interstate. This is progress?"

"I would hate to work all my life for a business that I am committed to, only to find it worthless after 50 years and retire to a Social Security program which may not exist when I am eligible."

"Only answer: Change with the times. Technology is moving foreword and so must we. Go back to school . . . get smart."

"Note: In the interim many new-generation type establishments such as coffee houses, teen related businesses generally run by new business families i.e.; the young and the restless, are popping up in the downtown areas and giving new life to those blighted areas. Small scale, but it's working. The blighted downtown/abandoned dockside in Boston, MA has been and is being rejuvenated with AFL-CIO funding into senior housing...and it looks pretty nice."

C45 - Communication Equipment:
"We are not worried about honest competition, because we provide excellent service to the customer. But the real problem begins when they start selling their equipment at cost or making only a very small profit (i.e. Price Club). We need to mark up our merchandise at least 20% over cost so we can pay a decent salary to our employees."

C43 - Optometry:
"Currently in practice eight years. It has never been necessary for me to see patients more than 2 _ - 3 days per week. Income is supplemented by working as an independent for other offices. Kmart and Wal-Mart (and Price Club) have moved in recently and that has sent the small patient load that I did have plummeting. Other private practitioners in the area have been impacted similarly. The profit margin was barely enough to justify the existence of my practice. With the current changes in competition; the practice will either have to be moved or sold."

C41 - Books and Games:
"Video Games - The large chain mega-retailers buy direct at cheaper prices and often use the video games (i.e. Nintendo/Sega) as 'loss leaders' and therefore make it extremely difficult or impossible to compete on new video games."

"Comic books - Many comic book publishers are embracing the mega-retailers, but at this time I think it will be a plus for direct market comic stores. But we will see what the future brings."

"Trading cards - Many trading card manufacturers offer special products to the mega-retailers which usually are more desirable than the products offered to small hobby shops such as mine. Usually these products are sold by their employees at drastically inflated prices to small stores such as mine and rarely offered to the public."

C37 - Food Products:
"At the present time it seems to me we have more stores than customers. With more stores all we do is keep dividing business."

C36 - Men and Women's Clothing:
"We are owned by a corporation (Melville) so I don't know if I should even be releasing these figures. The reason I am is that I am an entrepreneur and currently opening a small business of my own. The hardest thing about this whole business venture is lack of support. Communities need to get together and work together in order to keep the money flowing. I am interested in any ideas on how to pull people together. Please contact me!"

C34 - Food Products:
"How can a small business compete when my purchasing of some products are more expensive than their retail prices?"

C30 - Variety Store:
"I feel that the small business managers must somehow make cities that give your Wal-Marts & Kmarts non-tax status for years should be held accountable, as the cities lose revenue whenever the small businesses are forced to close due to the excessive competition. Also one should check-out the methods that Kmarts and Wal-Marts use to keep their cost down as far as employee wages & benefits. Do they give their employees the total package that my company offers?"

C28 - Pipe and Cigarette Shop:
"Predatory pricing also affects manufacturers in a negative way. Suppose you manufactured a great quality washing machine and had agreements with lots of independent stores to sell and service your product at reasonable prices. A big discounter moves in and demands that you sell him your product. He discounts the hell out of it, probably offers no service. All of your independent outlets drop your product. Now the discounter wants to buy more but at large discounts. The manufacturer has no choice but to discount to the discounter. He cheapens his product in materials and by possibly moving production to another country. I firmly believe that manufacturers have the right to decide who they will and will not sell to. After all they may have generations invested in their product's good name. We see some of the collective items that we sell and have a lot of our money invested in, being discounted by Costco/Price Club."

C25 - Men's Clothing:
"If the present trend continues of the mega-stores, numerous small merchants will not be able to

survive with such competition; as is already evidenced in many areas. Bankruptcies are and will continue to be a common occurrence amongst small business."

"The 'impact' is and will continue to be devastating. It is the strangulation of the small business segment in general."

"After 32 years in my business, never have I been more discouraged by trends in the large corporate invasion and the ultimate break up of small business."

C22 - Health and Beauty:
"It is a difficult environment for small business. Unfair pricing from manufacturers is a major concern. Contract lock outs is another. Changes in those may help lead to a more level playing field."

CALIFORNIA
[POWAY AREA]

P10 - Men's and Women's Casual Wear:
"It is getting more difficult to compete not only with the large retailers, but with garage operations, i.e. screen-printers, etc. If things don't improve soon, I will be forced to make some decisions regarding selling, liquidating or some other option."

P7 - Computer Equipment:
"The cheaper brands of computer equipment sold in mega-retail stores floods the workplace with inferior products. Purchasers, who do not understand the technical differences between brands and models, base their purchase decision on price alone. As a result, I have been forced to service increasing numbers of 'junk' computers - that often takes more time, and is less 'fulfilling' (professionally speaking)."

P4 - Specialty Sales:
"My business is a specialty sales business. This area is difficult for a challenge from mega-marketers. However, my daughter's job as a pharmacy tech for a drug store chain is threatened by Wal-Mart's arrival here, as is my friend, the optometrist, and many others."

P2 - Full Service Restaurant:
"I have felt the impact of several 'cookie cutter' chain restaurants that have sprouted in recent months. In the last year 13 new restaurants have opened in a 5 mile square area. They are confined enough to offer a variety of choices to customers and are located near Price Club, Home Depot and a few other discount houses nearby. They are not owner/operated and I believe without personality or the 'human' touch. I have to work too hard to please many of my customers only to have them tell me how wonderful this new place is or that. Chain restaurants seem to have very deep pockets to decorate and send out colorful, slick ads in our local paper. 'I can't afford it, so I have to work harder. I will never offer specials - my quality will not be compromised just to compete."

P27 - Auto Parts/Labor:
"The largest problem I see with a large retailer moving close would be its ability to buy direct from factory. If I were also able to buy direct, I could compete."

P26 - Home Improvement, Building Supplies/Labor:
"We are in the construction industry. We provide a full line of glass products and commercial case work. Since the Home Depot and Home Base opened up we have all but lost our glass income. They provide and install all glass related products either direct or through subcontract with area shops. Our suppliers are selling to them at big discounts because of their volume, we can't compete in this market. We've been reduced to a commercial cabinet installation shop - having to move our business."

P24 - Food Products:
"Wal-Mart's arrival has hurt and helped in our area. It forced Long's Drug Store out of business so that site - the 2nd major business of Poway Town and Country Shopping Center, has been vacant over two years. Several adjacent businesses were forced to close."

"Wal-Mart's employees frequent the restaurant improving my lunch business. I lost several employees to Wal-Mart. Several of the merchants in our center have been hurt by Wal-Mart's lower prices."

P20 - Flowers/Gifts:
"In Poway and surrounding areas, there are too many businesses competing for the same thing.
1) Why does the city allow similar business to open?
2) Population remains same and grocery stores increased from 2 stores to 6 stores in 10 years."

P18 - "Other":
"Cities should strongly weight the needs of the small business owners, who are solid establishments over the prospects of luring a national chain mega store."

P33 - Toys/Games:
"We no longer carry a large variety of nationally advertised merchandise. We no longer carry bicycles, only on special order. Wal-Mart opened 2 years ago."

P48 - Liquor:
"Comments below will be hard to change in my geographic area (10 mile radius). Rancho Bernardo is the best place to own a small business (retail). Why? Because it is a very small business area compared to population."

"Poway in comparison is the worst place to own a business because the business area is much too large compared to the population. The City of Poway derives its income from retail dealers. The more small businesses (retail) the more income for the city of Poway."

P46 - Retail Auto Sales:
"We are a franchised new car dealership. In general, a mega-chain outlet will not harm our business. However, they do provide a threat to our low end automotive service business. We can compete given our name recognition with the factory. An independent garage would have a more difficult time surviving."

P40: Art:
"Although I am in Poway, my business does not depend on this community for business. I have an art business that deals with a wide range of clients and quality of art work. However, I am

impacted by these mega stores because they attract the client with a limited budget and there is no way I can compete with the buying power they have in purchasing low cost art and framing which they then transfer to their pricing. Often a poster framed is sold for less than it costs me wholesale."

P37 - Pet Food/Supplies:
"I am a small pet store. There is a Petco pet supply store that has been almost directly across the street from us for a number of years. Recently (May '93) a Pet Supply Warehouse opened down the street, several blocks away. As they came in with the aspect of lower prices, Petco dropped theirs (particularly the pet food, which is already a low profit margin). To maintain my customers I had to lower my prices as well. I experienced a 30% drop in sales from a very good year in 1991. The recession hit us in 1992, and the Pet Supply Warehouse opened in 1993; we are hoping for some recovery."

"Further, a Wal-Mart and Home Depot opened in or near our community, also Price Club. Theoretically they should bring more business to our community, but Wal-Mart also sells fish and the supplies I carry. Customer service, however remains our real asset as well as the need to keep our prices competitive, if at all possible."

P36 - Drug Store:
"Give breaks to the individual businessman (taxes, 'signage,' etc)."

P32 - Optometry:
"Cities give away so much to the big retailers to get the sales tax revenue. All other commercial developers have to pay full fees for sewers, drainage, roads, etc. So since the mega-chains do not have as much costs going into a project so that their 'rent' can be significantly lower aiding them in undercutting existing businesses that got no breaks."

P35 - Food Products:
"Our business is mainly for India, Pakistan, Afghanistan and other mid-east countries. So, there is no effect from big chain stores. However, we can't compete with them in fresh produce and soft drinks."

P52 - Computer Equipment:
"It is impossible for the small business to compete with the national discount retailer. For every one that opens, 10-20 small businesses go under."

P50 - Women's Clothing:
"I feel communities should be very careful not to give a deal to the big retailers that hurt the community financially."

CALIFORNIA
[MIRA MESA AREA]

M30 - Furniture:
"I am a distributor for a national specialized product with a high dollar price tag. It is a very small volume customer base. If my manufacturer were to sell to a major chain there would be no more distributors for them any where it took place. It would be impossible to compete even if

they purchased at the same price; however, it is usually lower. If it is only for some of the product line, I think today's consumer will settle on a lower price and compromise for it."

M2 - Computer Equipment/Stationery:
"Small business is being forced out - too many rules and costs and competition. Soon, many people will be on unemployment."

M7 - Fitness Equipment:
"In general, mass merchants, at least in the fitness equipment industry, carry lines of equipment that don't measure up to the quality equipment specialty stores sell."

M8 - Carpet:
"The impact on small companies by the 'Home Depots' of the world with unlimited capital, etc. is causing an erosion of the middle America. In the end the consumer will pay more."

M16 - Carpeting/Flooring:
"In the flooring business in which I am engaged in retailing carpets, vinyl, wood and ceramic tile, several major carpet mills, i.e., most prominently Shaw Industries are engaged in what I consider anti-small retail store programs. They offer programs, such as Shawmark which require stores to buy in at from $20,000 - $40,000 annually which I can't afford!"

"Home Depot is our largest competitor locally in flooring. However, customer perception that Home Depot has better prices (not true) is being discovered. Further, HOME DEPOT does not provide the personal helpfulness, as well as professional installation, that I do."

M19 - General:
"We are a family owned corporation. I have been in retail several years and experienced a decline in business when large chain stores carried the same product line (western wear) at lower prices. It seems customers are willing to give up service and product knowledge for a lower price."

M25 - Athletic Equipment:
"Unfortunately, at this time the superstores appear to be the future in retailing. In order for small businesses to survive, they must be extremely specialized in their field of profession and offer services that can't be offered by the discount retail giants. Small business can no longer rely on the basic retail sales, but must pursue special services and orders that will enable them to be successful. The impact of the discount superstore will be devastating to most small business that compete directly with the superstores who can not differentiate their business from others."

M26 - Flooring/Counters:
"Their size (chains) lets them buy for less. They pay their help less money, consequently workmanship is poor. Too late for customer, they have already signed contract. These large companies know exactly how to stop people from backing out. Even when the product quality is bad."

M32 - Carpeting/Flooring:
"These types of clubs are hazardous to my business because of the margins they work on. We combat them by smart selling and service they can't match."

M31 - Home Improvement/Domestic Products:
"We are a very service oriented business specializing in designing and coordinating living spaces. Our main mega chain competition would be Home Depot. We cannot buy as well as well although we also buy from manufacturers - therefore we must impress our clients with our personal care and talents as designers."

PART II - B

PENNSYLVANIA
[PHILADELPHIA AREA]

4N - Pharmacist:
"Part of the biggest problem in our Industry today is multi-tier pricing by Drug Manufacturers. They sell to different classes of trade at different levels. If they have one standard price for everyone with volume discounts available to everyone it would place competition on a level playing field. Discriminatory pricing must be eliminated. Once the price factors are gone, then the consumer will look for service and this is where we as small businesses can prevail."

11N - Furniture Importer:
"Personally, I resent mega-chains who receive significant tax-breaks. They usually provide no relief to the community's economic dilemma. CARREFOUR was a primary example. Soon after their 5-year tax break, they took their profits home. Although I shopped there, I was not impressed with their company and usually went elsewhere for more knowledgeable salespeople. If mega-companies want a parcel of land, they should not be catered to; rather, provide a good community economic plan. I am confident that small towns don't want them - therefore, no tax breaks!

12N - Hardware:
"Opening the big chain store, it should assess the customer, but not the small retailer like myself. Currently, my business sales have not increased for 5 yrs. It means that I already lost or am losing some customers to the chain store. On top of that, if more chain-stores come to town and open up new businesses, I no longer will be able to compete. Because I know I'm the losing one. Don't you think bankruptcy or leaving the town will be better off for me?"

19N - Market:
". . . . Because they too sell similar products as I do, the competition is high and the sales low. But undeniably, the major grocery chains that have recently been built right outside of my immediate neighborhood and hurt my business greatly."

20N - Jewelers:
"Closed our doors 12/31/93 after 23 years in business!"

21N - Office Equipment:
"My business is primarily a service business, but I have still felt the impact of large business. KINKO's recently opened a 24 hr. 'mega-center' in my area and the only way I can remain competitive is to spend a great deal of money in advertising. A small business obviously doesn't have the advertising budget of a major franchise and the level of frustration rises with each passing day."

5FG - Lumber/Home Improvement:
"The legal system and the federal government have failed the small business people immensely. Family- owned business people, middle class people, who have worked in these businesses, they are the core of people left to carry the burden of supporting the City and the government. What will happen if we are gone? Total collapse is possible. The result of these stores infiltrating a city like Philadelphia will cause the small family business to become extinct."

1S - Video Store:
"We have already seen the effect that Blockbuster and CVS, for example, have had on our business. Our video store nearest a Blockbuster (517 S. 4th St.) has the slowest growth rate of all five of our stores - 4% compared to 20%. On the films that both we and larger chains sell, like children's videos, our sales are very low. They often sell these videos at our cost. We have just started a promotion of three free rentals with selected 'Kid Vid' purchases in an attempt to stay competitive. Our major advantage is customer service. We also sell and rent unusual titles, creating a different niche. On the other hand, as a consumer, I think these stores will save me money. I've already seen this with Caldor. My other, non-business thought is a concern about traffic. I have seen other neighborhoods where the increased flow has put a serious strain on existing roadways, making travel for the locals a nightmare."

3S - Hair Salon:
"The small business owner has kept service a priority and in a time of poor service that has a unique value."

10S - Wallpaper:
"I feel that manufacturers and distributors are helping the chain stores put the smaller businesses in bankruptcy by offering the chain stores better pricing and discounting."

12S - Jewelers:
"Currently have Wal-Mart for anchor store in our S. Jersey location. Has definitely shown to have negative affect on our business volume."

17S - Market:
"I think it is very bad for the government to allow these types of businesses to come into areas and operate. Too much burden has already been put on small business without the giant companies coming in and putting a lot of small businesses out."

"Small business is the heart of this country employing the majority of the workers. They keep getting knocked down by taxes and now these types of business practices."

21S - Jeweler:
"I believe that if you offer good service & quality you will have very little to lose to a discount store."

24S - Clothing:
"My company also manufactures men's neckwear, vests, and robe/boxer short sets which we sell to retailers. Large discount operations have a deleterious effect on our business on two fronts. They tend to drive small retailers out of business (our main customer base); and, two, they are ruinous to our bottom line by their very nature of being a mass discounter. In other words, it is

not profitable business with them. They source the world looking for cheap labor which makes me non-competitive."

26S - Electrical/Home Improvement:
"Our main concern is Home Depot, not that we can't compete; but, when a Home Depot comes into an area, we believe that they lower prices below cost to get their foot in the door because consumers are creatures of habit. Then we've heard that when they put everybody out of business they raise their prices."

27S- Auto:
"The area of South Philadelphia is heavily saturated with auto repair shops and would be hurt economically with the addition of discount service facilities coming into the area. This would cause a number of shops that are on the verge of closing to do so causing more people on the unemployment lines. The economy is very fragile in this area and should not be subjected to anymore mega-chain business openings until the economy becomes more stable."

29S - Hair Salons:
"The large chains should NOT be given any type of tax deferments because the responsibility of paying the taxes and/or increases will again fall upon the small businesses who cannot afford it and who will be forced to close."

"With the economy the way it is people want to pay cheaper prices for almost everything even if the community in the main loses jobs. These large chains can do nothing, but hurt small businesses. If a new business wants to be in an area, then the government and the community should decide whether that chain will help or harm the community."

33S - Jeweler:
"Jewelry business is rather personal/individual - consequently, some of your questions were not relative to our particular company. Ours is an 80 year old business and lots of our sales are by word of mouth, our proven honesty, and our employees who continue to enjoy their positions working for a small family type of business."

35S - Pet Store:
"I feel it is unconstitutional to stop any retailer from entering an area. I do feel the tax breaks and real estate deals are wrong."

"Just make the playing field the same and let the competition continue."

37S - Pharmacist:
"Wal-Mart just lost a law suit to three pharmacies in the local courts of their home state, Arkansas, for allegedly driving drug stores out of business because of claims of "predatory pricing." I believe that the major mega-retail discount chains are known for taking more out of a community than they put in."

38S - Jeweler:
"If a large company moved into our area, I would try to enter into contract work with them to do the repair or special order work my jewelry store deals in. If we could not do the work, we would try to advertise quality work, personal service, and better prices. If we see a drop in overall profit

and gross sales, I would then look for other locations to start over; but, it would have to be a large drop in business."

41S - Bookstore:
"I own a small independent bookstore. After 2_ years as the only 'new' bookstore in my area, a huge Tower Books opened around the corner (about 300 feet away). My sales started to drop slowly as my loyal clientele were wooed away by price cuts of 35%! Tower could sell books (because they bought larger quantities and 'drop shipped' to their various locations) at prices that I was buying them for! I have survived 2 more years, now I am closing up." (May 1994)

44S - Optical:
"Out of all of the nationals coming in, only Wal-Mart does optical right. Therefore, most will have very little impact on our company. I believe that the customers the deep discounters attract are the customers they bring in for TV's, appliances etc."

49S - Home Improvement/Tile:
"Companies such as those Mega companies mentioned, have caused much concern in my field. The impact on product identification is cause for alarm, with most people related in the field of ceramic tile imports. Since the recent opening of Home Depot in the Philadelphia market, I cannot say that I can express the same confidence that I have had in pricing products. It is quite obvious that easy product identities are singled out and low-balled so that smaller businesses dealing with some similar products will look bad. This type of tactic has had a negative effect and has caused hype in our industry."

PART II - C

ILLINOIS
[CHICAGO AREA]

CH 86 - Plumbing/Kitchen Supplies:
"Since large mega-retail chains entered into the retail trade, they have attained tax benefits not available for the smaller shop. Typically these large scale companies deal directly with the manufacturer and then sell to the consumer. Now if they receive tax credits i.e. Home Depot, they have the best of all worlds. They sell, in some cases, for what the smaller company buys the goods for. We do have a community interest, product selection interest and service (complete) to the end. We want to be here to stay, but with an uneven playing field, why waste the time."

CH85 - Women's Casual Clothing:
"We started in Des Plaines in 1897 and have never had any special favors or help from our city fathers. Our money has stayed here in town and we have helped hundreds of local people earn a living. Why an established discount retailer has to have help is beyond me. If they can't stand on their own two feet, they should be told to move on. Their profit goes to headquarters, ours pays taxes for the town."

CH77 - Stationery:
"Events that have hurt our business in the office supply industry are:

(a) Predatory pricing and 'loss leaders' items and (b) Manufacturers giving better prices to upstart superstores based on the size of the total business versus actual stationery sales. Then superstores use this to gain market share."

CH73 - Health and Beauty/Rx Drugs:
"My situation is unique in that I have an ethical pharmacy which is surviving only because I value the quality of my workplace more than I value a large paycheck. Consumers aren't aware of the fact that small businesses are quickly disappearing. The service and personal service given will be a thing of the past unless something is done. It will be like the 'service stations' and no one will even miss having a service attendant pump their gas for them because they weren't from that generation."

CH72 - Paint/Wallpaper:
"I'm hopeful that the independent dealer will survive. It takes a lot of people, sales and profit to keep these big chain stores going. Let them fight each other! In the interim, we will continue to offer above par service, and product knowledge with the thought of out living the big store image."

CH71 - Optometry:
"Tax breaks are given to mass retailers to move into an area. I get no tax breaks - totally unfair."

CH68 - Office Supplies:
"We have Super Kmart, Wal-Mart and Eagle about 3 blocks apart in Elk Grove. What's the point?? Woodfield is 5 minutes from them and now Office Max is 5 minutes from there. It's not fun anymore. 50% or more of office supply dealers have gone out in Chicago area."

CH67 - Snacks, Sodas, Cigarettes:
"Low select prices on select items such as sodas hurts the vending business."

CH62 - General:
"Don't give tax breaks!"

CH61 - Restaurant Equipment:
"Redevelopment, industrial revenue bonds and tax abatements should only be used for manufacturing or distribution businesses; not retail. Jobs are not created, only transferred by retail."

CH59 - Food:
"The large chains run so many 'loss leaders' that it is almost impossible to survive, much less grow your business. They sell many items well below my cost."

CH47 - Equipment Rental:
"Simplify government regulation and paperwork both nationally and locally to allow more time to focus on the developing business. Anything to level the playing field with larger deep pocket companies."

CH40 - Video Equipment:
"The commercial property tax is driving small businesses out."

CH38 - Food Products:
"I just spoke recently with our mayor about the 'tax breaks' that 'Sam's Club' gets. I, as a small business owner, would never get the breaks and concessions that our elected officials give these

large retailers. The mayor agreed. This left a feeling of hopelessness in my throat. It is very difficult to compete these days."

CH36 - Medical Equipment:
"We provide home medical equipment. The majority of our customers receive our products and service via our drivers and service vehicles. The large retailers have had an eroding effect on our business. The result to date has been customers receiving less service with no knowledge of warranty, billing, or adequate follow-up. If compatible tax incentives were made available to existing established small business, long term employment and tax revenue would have a positive impact, long term, on each community."

CH35 - "Other":
"Tax concessions to large companies should be given to start-up businesses only, not established companies who take advantage of local inducements regularly. Kmart used low rate financing on their leased properties. Wal-Mart as well. On the other hand, these large discounters offer attractive well stocked stores at low prices which benefits all. Many small businesses at retail are mismanaged by their owners."

CH32 - Food Products:
"Major complaint is these large merchandisers ask for and generally reclaim large tax breaks and incentives to come into a community. This is never offered to small business. We always pay full price and continue to carry a heavy load of the community responsibilities."

CH20 - Lighting/Electric (a distributor):
"As a distributor, the trend to buy direct is not only with the national discount retail chain, but also smaller, independent family owned business. The problem is, they still can't compete. Their distributor, such as my company, also can't compete. Therefore the middleman and small companies both get destroyed."

CH19 - Auto Parts:
"This country was founded on freedom and the free enterprise system. This system is in grave danger by both our government and big business. The tax burden on small business is now higher than our profits. A ground swell of small business is needed to stop these current trends. Small business is a major employer, yet government treats us like second class citizens."

CH14 - "Other":
"At least make it so large retailers must make a profit on items sold and pay their full share of all taxes (sales and real estate)."

CH12 - Auto Body:
"We are an auto body repair facility and not really affected by mega-retailers but have seen concerns from local hardware stores and neighborhood drug stores."

CH11 - Pharmacy:
"Large chain stores are robbing America of its heart. The average person is not capable of perceiving what they will be missing when all the small business people of America are gone. Their children will not find their first jobs, the little leagues and churches and bowling leagues will not have sponsors. Our country is losing its soul - corporate America is like a bad virus!"

CH9 - Greeting Cards, Stationery:
"My business distributes greeting cards, etc. to non-chain accounts. Our business has been strongly affected in addition to our customers. A significant number of 'Mom-and-Pop' locations have fallen by the wayside, unable to compete. In addition, the number of party outlets has also diminished our sales as well. Our highest year in sales occurred in 1991."

CH8 - Software:
"I certainly agree with what you are surveying, however my answers and survey are probably meaningless as I am in the proprietary software market and the companies you speak of have little or no impact on me other than to possibly pull some of my business if they sell some of the supplies I need."

CH91 - Auto Equipment:
"Big retailers have definitely decreased our sales in tires and exhaust parts and shocks. Difficult to compete with Kmart prices on above items - also tires sold at Sam's Club in area."

CH96 - Party Supplies:
"The larger discount houses hurt the small retailer. Consumers do not understand that their claims to have lower prices are not always true. They can afford T.V. and radio advertising while we can only rely on reputation and service. Grocery stores are getting out of hand; they should sell groceries and leave the greeting cards, gift items, flowers to the small retailer. I feel soon there will be no room for the small retailer because of rent, taxes and discount stores."

CH98 - Lawn/Gardens:
"We handle premium lines of mechanical equipment that have traditionally been marketed through certified independent dealer networks, outlets created by manufacturers to assure the availability of professional expertise in the sales, service and maintenance of their product lines. This 'value added' support cost is rarely provided by mass merchants and thus this savings in their cost of sales plus their buying power, provides them with their retail price advantage. In the long run its the consumer who will suffer overtime as mass merchants force out 'value added' dealers. This type of product eventually needs service. Few manufacturers of top end products provide for service only dealerships. Sales have always been and still are the prime requisites of a dealer franchise. As sales through 'value added' dealers diminish and those dealers become competition victims to the low prices of mass merchants, then sources of professional service and maintenance will become a problem for customers, and too late we will understand that the lowest price was not the best price in the long run."

CH97 - Jewelry:
"I think the large corporations will dominate our economy. The true craftsmen will sell out or go bankrupt. The jobs created in the large corporate stores are low wage and often part-time. There are not as many management positions in the large corporate stores. The youth in America are not studying the right subjects to compete in our global economy. Technology is also taking jobs away. What took the U.S. 50 years to learn up to World War II now takes less than 5 years to learn. I think the strongest entrepreneurs will survive. Many less motivated people will work at Kmart and spend their checks hoping to win LOTTO or gamble at the Casinos! Plus, big firms take over other firms and then they scale down help, etc. - laying off many people."

ILLINOIS
[KANKAKEE AREA]

K51 - Auto Equipment/Services:
"We are an automotive repair/service business with over 32 years experience in this field. We have had mega-retailers entering our area rapidly in the last 2 years. Being able to determine the problem and to determine the cause and effect, and to recognize the solutions would be very difficult. As an example, to lower prices would only be a possible temporary fix. Our local government has waived mega-retailers requirements through tax abatements in the Northfield Square Mall. I am very interested in your study and look forward to receiving additional information."

K50 - Florist/Arts and Crafts:
"Products you have listed do not pertain to our florist/gift shop retail operation. However, there are national and regional chains that would affect us like Frank's, Michael's, and Christmas chains."

K48 - Video Equipment/Games:
"There was a time when the video rental business was profitable as a stand alone business. Now it is not, for a number of reasons: 1) Large stores use rentals as a 'loss leaders'; 2) Purchase price to large stores are much lower; and 3) Major discounts are available from manufacturers not available to small independents."

K47 - Food Products:
"We are faced with severe competitive pressures. We are truly an independent food operation. Our competition is Jewel, Kroger, Eagle Supercenter (new 180,000 square feet) and Kmart Supercenter (new 160,000 square feet) store. We will probably not survive. We have fight and desire but we don't have the capital or mega dollars to compete with the discount chains. We can't purchase product in many cases for what competition is selling at retail. We also lack the buying power that large national and discounters have. As I see it, the large are forcing out the small, with discounts to the consumer, until they secure the market - then they do what they want."

K45 - Lighting/Electrical:
"Having regional warehouse home centers (Blains, Menard's, Home Base, Builder's Square, Big 'R') in our areas has sharpened our abilities to survive. We are able to describe the 'enemy' to our team members much more clearly."

K44 - Telephone Systems and Lines:
"Discount chains are wonderful for products that do not require additional service. The customer ends up with the best price. On the other hand for products that require any service, you should purchase at a smaller more personalized store."

K43 - Athletic Equipment:
"Currently, within a two mile radius, Wal-Mart, Super Kmart, K's Merchandise, and Target compete for the same customers. The only way our retail business survives is through service and quality products. There was a time in the business when large retailers could not buy the high end sporting goods' products. Recently that niche has eluded us - the specialty store. Fortunately for us, we have developed a sporting goods team business which sells and serves the

needs of over 300 grade schools, high schools, and colleges. If we had not started a new business and continued to solely concentrate on retail, we would have considered selling the business."

K39 - Health and Beauty:
"We have already experienced Super Kmart, Wal-Mart and soon Target. When I purchase products for my business I have been forced to look harder at price and quality. Consumers right now are only concerned with price; they are not looking for quality. When in a discussion with clients we try to point out the value of personalized service and that the mega-retailer really doesn't care, as to what will happen if they spend all their money there in terms of jobs, families, communities, etc."

K - 38 Food:
"In our local area (Kankakee, Bradley, Bourbonais) TIF[Tax Incentive Funding] Money has been used by Bradley & Bourbonais to develop large retail areas in the last 10 years. They used the TIF money to develop farm ground (not blighted areas as originally proposed). During this time they have raped the tax base of the City of Kankakee. Many Kankakee business have moved from Kankakee to Bradley and Bourbonais."

"Now that retail business has left Kankakee, Bradley and Bourbonais and county officials have decided to end TIF money for retail business, Kankakee has lost the weapon (used against them) to recoup retail business. TIF money was misused here and a warning should go out to other communities."

K37 - Games, Hobbies, Books:
"I live in Bourbonais, IL and have my radio controlled hobby business in Bradley, IL. When we started seven years ago, we had no help from the village as far as tax incentives; in fact never gave it a thought to inquire. We have worked hard to keep our business intact, but find our taxes going higher each year both personally and business-wise to maintain these large retailers that come in under the TIF Programs and then leave in seven years or less. We little people are getting the shaft."

K33 - Optometry:
"We need to get rid of the one hour labs that draw people. They don't do the service that they say and prices are high. We need to get back to the old ways. If we have to have them I would try to limit only one per town. In so many towns there just too many of them."

K25 -Doors and Windows:
"The tax abatements provided chains are an unfair practice; I know that helps mega chain competition. This alone allows them to reduce prices to hurt other small businesses."

"A free market to all, giving large and small businesses the same local advantages in taxes, land, etc, is most important to the survival of the small retailer."

K24 - Electronic Equipment:
"I have experienced several times in my career what happens when a major chain leaves. The buildings are left vacant. Their restrictions to buyers because of competition are contributing to why these large buildings are left empty. In our area TIF increments have led stores to move a mile or two at most to be in another town and receive tax breaks. I have also got to see local schools and police forces suffer through problems because no tax money comes from TIF."

K21 - Audio Stereo Equipment:
"With a lower overhead I have been able to compete favorably with the large discounters; however, if one moves close to me I may lose a handful of customers but the increase in traffic would also increase new customers."

K20 - Food:
"A Super Kmart opened in February 1994 near our business strip and we have noticed a definite decrease in customer traffic and sales. A Target will be opening in July and we will probably experience another decline."

K18 - Auto Mechanical Service:
"I have a service business that employs four employees that make a decent living, not minimum wages like mega chain stores. This puts me at a disadvantage even before their tax breaks come into effect. I get no tax breaks. If I need money to remodel, I have to finance it myself at local banks not unlike the national corporations."

K17 - Children's Dance Shoes:
"We are a small manufacturer of dance shoes, shipping nationwide to retail stores and dance studios. Also we have a very small local retail business. Local Pickway and Wal-Mart have brought in cheaply made dance shoes from other sources and sell them at almost wholesale prices. We have lost several large retail accounts across the nation. Due to this low pricing, small retailers cannot compete because of the nature of the product and customers who are uninformed about quality."

K16 - Lawn and Garden:
"It looks like local, state and federal government help the giants who want to take all the sales away from the small merchant who made the American way of life possible, leaving us just to do service work for the giants. They make the easy money and we do the hard physical work for them in the service sector."

K15 - Furniture:
"The big chain stores are taking advantage of tax breaks. They move from town to town and close smaller stores. They build their stores with out-of-town builders, so nobody local makes a profit on them. They want to make a living in town but don't support the town."

K14 - Hunting/Fishing Equipment:
"We have four chain discount stores in our area and it is very hard to be competitive and make a living."

K12 - Meats/ Poultry:
"We in the Kankakee, IL area are already experiencing the opening of several TIF businesses which are creating problems for the smaller operations due to their discount pricing on certain sale items. In my business we deal with fresh meat products and they are highly perishable, so any drop in business is very critical. In the last year we have experienced the opening of a Super Kmart and the state has been working on the highway for one year. These two factors have created a 10% drop in our total sales."

K10 - Optometry:
"We are a full service, one hour optical business. We already have experienced a Super Kmart

opening (3-6 months ago). Our prices were already competitive - in some cases lower. The only people we lost were a few (approximately 20-40) contact lens patients who wanted a lower price on contacts. The average was $10-$15 lower, however, we don't make our main profits from these patients, so the loss was negligible. Also when these people go back for a new exam they will find it (the exam) $25.00 more!"

"Overall the opening hasn't hurt us much; however, we are a franchise with a national name, not just a small local owner. Even though we are not just a single owner, I do agree that Kmart, etc. do have the advantage, insofar if they have a slow month they can get an infusion of funds, etc. from their corporation, while we have to struggle along!" K7 - Home Improvement/Building Supplies:

"There should be some kind of truth in advertising when quoting such as 50%, 60% or 70% off, or 'Special Sale.' But what was the original price?"

K4 - Foods:
"There should be government regulations that super or big business locations be limited to certain areas, because most or almost all of those big businesses get a tax break from the state or city that they go to. Small businesses don't get that privilege."

K1 - Gift Shop:
"We try not to carry the same products you find in discount stores. Our gift shop carries the finer crystal, bronze, pewter and other specialty items. The Railroad Shop, located on the second level, also carries items not found in discount stores."

K61 - Water Conditioning:
"We have to meet a customer on service and personalized greetings since we do not have the buying power to attain the 'best' price as the large chains do. We are able to meet an individual customer's needs personally; they are not just a number."

K58 - Jewelry:
"I mainly feel that mass merchandisers serve large numbers of people but lack quality merchandise in our field. We, on the other hand, have to present a quality picture or image to attract those who are more discerning. This includes educating the market we go after, while still maintaining an edge on fair competitive prices. We belong to trade groups that help us compete. The Kmarts, Wal-Marts, etc. don't seem to help the communities they do business in."

K62 - Home Improvement Supplies:
"1. Reduce trading area to 3 mile radius. 2. Advertising locally. 3. Chains steal employees to hurt your effectiveness. 4. Chains steal employees to hurt traditional experience. 5. Chains then release employees after two years to reduce their payroll after competition has been knocked out."

PART II - D

NEW YORK
[FINGER LAKES REGION (GENEVA, AUBURN, SYRACUSE)]

NY48 - Athletic Wear, Toys, Athletic Equipment:
"Geneva is an area in need of development, and Geneva already has Kmart and Wal-Mart. The damage from their development was not major at best. There wasn't much available that they created too much competition for. The area that needs to be reviewed here is the definition of what we have in small businesses and then attempt to attract businesses that are needed and wanted by the people. Geneva is too much duplication which is so counterproductive. Same old-same old doesn't sell."

NY44 - Office Products:
"We operate an office products business. At the present time we are still not greatly affected by the new Wal-Mart store. What the greatest influence is the prices published by discount stores operating out of Syracuse and Rochester and the 'Paper Cutter' (Fays Drugs) in Auburn and the catalogue they distribute. My concern is the fact the discount stores sell, at the same or lower prices what I pay for the same merchandise. The manufacturer offers these products at prices that are not available to me because of a much lower overall volume."

NY40 - Marina Supplies:
"Wholesale stores have forced me to lower my inventory, reduce the prices of goods sold and reduce my work force, but that's only part of the problem. School and county taxes have doubled. Canal permits have gone up 800%. Cigarette and Alcohol tax has increased. Beer licenses also went up this year, making me think seriously of ending the sales of beer and cigarettes, because the reduction of the profits being made. New York State is forcing the small business man out."

NY37 - Jewelry:
"Too many stores which are 'Mom-and-Pop' operations will be closed down by these mega stores with their buying power and low prices. Only stores that can provide service and knowledgeable service employees will survive."

NY36 - Silver and Crystal:
"Factory Outlet Malls and mega-retailers are destroying and will continue to destroy 'Main Street' in small town America. As 'Main Street' disappears, so will the tax base which is so vitally needed for the entire community."

NY34 - Furniture and Stationery:
"I only hope I can make our business last long enough to educate our four children. I will not allow any of them to work for us. I would not wish this on anyone. We have told our children they would be better off working for a large company. My 15 year old says 'You say you have more freedom with owning your own business, but all my friends' parents get days off and vacations and their families don't always discuss work.' I think the way retailing in America has changed is revolutionary. There is no going back, the consumers will not permit it."

NY29 - Computer Equipment:
"We have responded to the encroachment of large retailer selling computers by specializing in markets that are not the 'retail' consumer."

NY28 - Food:
"Most open minded small businesses can survive large chain competition by adjusting to their weaknesses such as specializing, offering personal services, delivery, and the list could go on and on depending on the individual situation."

"Generally small business cannot be everything to everybody when they are up against the giants. Reduce the areas that you are weak in and concentrate your efforts on the strength of the business."

"Our strength is subs, salads and sandwiches. When we opened 12 plus years ago, McDonalds and Burger King were here already. Now there is Arby's, Wendy's, Subway, Denny's, etc. While a dozen or more independent businesses have come and gone, we are surviving."

NY10 - Home Improvement:
"We have had a Wal-Mart move into our area within the past two years. We lost 35% gross sales and fired all employees. The best thing to do is to provide service and knowledge."

NY7 - Tavern:
"I feel the American public welcomes the discount prices offered by large discount houses, as long as it does not affect them personally. My business is a small 'blue collar' tavern. I pay $2,140 every three years for a state license to sell on premise liquor and beer and off premise beer. Large food and discount stores (i.e. Newmans, P&C, Fays Drugs) pay $75 per year for a license to sell off-premise beer. These large stores use beer as a 'loss leader' to get the public in the door. They sell my only product to take out for less than I can purchase it wholesale. In my opinion, N.Y. State requires license fees for the money only."

NY6 - Restaurant:
"It is extremely difficult at the present time to compete with larger competing restaurants, especially franchises, because in a tourist area, it's the franchises that are the first draw. Taxes and insurance and Workman's Compensation costs continue to rise. Suppliers continue to raise their prices and yet if we do, everyone becomes upset and stays away. It's basically a 'no-win' situation."

NY5 - Auto Supplies/Service:
"The way things are right now, if a chain came here in Geneva it would probably force us out of business."

NY4 - Men's Wardrobe:
"We are a better men's specialty store. Chances are, a customer who wants a better quality in men's wear will come to us or a similar type store. I feel a Wal-Mart type store hurts a store like us by taking away traffic from our 'Main Street.' We lose window shoppers who might stroll in just looking, and possibly make a major purchase. The mega-chains compete with so many types of stores (hardware, electronics, etc.) that people will tend to go there first before checking 'Main Street'."

NY2 - Jewelry:
"The Geneva market was already affected by introduction of Kmart, Wal-Mart (2 locations), Wegmans and Tops (Superstore). Market surveys for this area do not support this amount of

retail space and now three major outlet strip plazas of over 150 stores are planned for Geneva development within 12 months."

NY1 - Men's Casual Clothing:
"One of the biggest negative impacts is the reduced downtown traffic caused by these mega stores. It is hard to draw customers to a downtown location. These chain stores, by being situated on the out-skirt of the city further erode customer traffic. A positive impact is that you have to become a better merchant in order to compete. You cannot remain stagnant."

NY54 - Bikes/Equipment:
"It's a free enterprise society so they have every right, but these 'mega stores' are putting us small guys out of business and ruining downtowns."

NY55 - Bar and Grill:
"I don't understand why I was sent this survey. My business is a floundering bar and grill. In the nine years that I've owned it, I have seen business dwindle to nearly nothing because of laws, rules and regulations and the economy."

NY57 - Lumber:
"We currently have Builders Square locations in Syracuse and Rochester. Although they are approximately 40 miles from us we still realize their impact. Home Depot is currently building and/or planning stores within both of those market areas. To further complicate our rural market, the Depot is developing a strategy to penetrate the rural/smaller market areas. It goes without saying that it is tough as hell out here and getting worse. We are doing everything possible to survive. Our business plan is not designed for 3 to 5 years, it is based on daily survival. Without help, I believe most independents will not survive."

CHAPTER V

ARE MEGA-RETAIL DISCOUNT CHAINS SUBJECT TO REVIEW BY STATE AND FEDERAL REGULATORY AGENCIES, WITH RESPECT TO ANTITRUST STATUTES ALSO, THE SUBJECT OF PREDATORY PRICING IS EXAMINED?

This question will be examined by the writers with respect to (a) what statutes may conceivably apply to the nations largest retail chains and (b) what in the legal history of the past decade indicates that states and federal agencies may review such questions as: predatory behavior; dominance; availability of supply to smaller retailers; pricing formulae; restraint of trade and other related questions generally review able under the Sherman Antitrust Act, the Clayton Act, the Robinson-Patman Act and other applicable federal statutes, as well as comparable state statutes regulating business behavior.

Among the more recent flurry of litigation in this area was a suit in October 1993, in an Arkansas Chancery Court claiming that Wal-Mart Stores, Inc. had violated state law by selling some drugs and health and beauty aids below cost in its store in Conway, Arkansas. Judge David Reynolds ordered an end to the practice and awarded the plaintiffs, three independent Arkansas pharmacies, nearly $300,000 in damages.1 At the trial, a company official said Wal-Mart's pricing policy was designed to make a profit, not to injure competitors. Wal-Mart, however, admitted in the two day trial that it priced certain items below cost ("loss leaders") as a strategy to draw customers, but not to drive local druggists out of the market.

Judge Reynolds based his ruling in part on Wal-Mart's in-store price comparisons of products sold locally by the plaintiffs in Conway, as well as other competitors.

The three pharmacies accused Wal-Mart of violating state laws against predatory pricing by selling as many as 200 items--ranging from Crest toothpaste to over the counter drugs, below cost in its supercenter store in Conway, Arkansas. The plaintiff originally sought $1.1 million in damages. The case was brought under Arkansas' 1937 Unfair Practices Act.

The Arkansas statute forbade selling or advertising for sale items below cost "for the purpose of injuring competitors and destroying competition." 2

When this suit was announced antitrust experts pointed out that many state laws provided retailers with a better chance to win a predatory pricing suit than the federal law. States apparently have broader definitions and distinct causes of actions that don't depend on federal precedents. 3

The conclusions at law warranting the decision against Wal-Mart follow: 4

"Conclusions of Law"

"Act 253 of 1937, 'The Unfair Trade Practices Act,' Ark. Code Ann. -75-201 through -75-211, ('the Act') specifically sets out the legislative intent of 'the Act':"

> "The General Assembly declares that the purpose of this subsection is to . . . foster and encourage competition by prohibiting unfair and discriminatory prices by which fair and honest competition is destroyed or prevented."

"The Arkansas Supreme Court recognized 'the Act's' purpose in *Beam Brothers v. Monsanto* [1976-1 Trade Cases 60,720]. 259 Ark. 233, 532 S.W. 2d 175 (1976):"

> "This subsection (of the Act) is intended for the primary benefit of the public by protecting dealers, especially small dealers, from unfair competition by large dealers."

"The purpose of 'the Act' is not to protect small business from large business, downtown from malls, or to guarantee any business a share of the market, but to encourage 'fair and honest competition.' The protection afforded by 'the Act' is from 'unfair competition'."

"'The Act' makes it unlawful for a business to sell, or advertise for sale 'any article or product' at less than the 'cost thereof.' 'Cost' in this instance is defined as:"

> ". . . all costs of doing business incurred in the conduct of the business and must include without limitation the following items of expense: labor, which includes salaries of the executives and officers, rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery cost, credit losses, all types of licenses, taxes, insurance, and advertising. Ark. Code Ann. 4.75.209(2)(b)(3)"

"The prohibition against sales below costs does not apply to the sale below cost of seasonal, damaged, deteriorated and perishable items; good faith closing business sales; and court ordered sales."

"Wal-Mart contends that the court should look at 'market-basket' cost rather than single product or article cost. While the Court can find no Arkansas judicial decision construing this issue the Court finds that Ark. Code Ann. 4.75.209 is clear -- 'the Act' applies to 'any article or product' and not 'market-basket' or 'overall product line' cost."

"The burden of proof is on Plaintiffs to establish three essential elements: that Conway Wal-Mart sold, offered to sell or advertised to sell products (1) at less than the cost to Conway Wal-Mart, (2) for the purpose of injuring competitors, and (3) for the purpose of destroying competition. Ark. Code Ann. 4-75.209 (a)(1)."

"The evidence is clear that Conway Wal-Mart advertised and sold pharmaceutical and health and beauty products below invoice or acquired costs (without taking into consideration the 'cost of doing business') on a regular basis. These below cost sales do not fall within the exemptions set out in 'the Act.'

"The Court finds that purpose to injure competitors and destroy competition cannot be inferred from below cost advertising and sales alone. There must be other proof of intent of purpose. A person's purpose or intent, being a state of mind, ordinarily cannot be proven by direct evidence, but may be inferred from other circumstances. Alford v. State 34 Ark. App 113. 806 S.W.3d 29 19911."

"The court finds from the following circumstances that Conway Wal-Mart advertised and sold pharmaceutical and health and beauty products below cost for the purpose of injuring competitors and destroying competition:"

1. "The number and frequency of below cost sales."
2. "The extent of below costs sales."
3. "Wal-Mart's stated pricing policy -- 'meet or beat the competition without regard to cost'."
4. "Wal-Mart's stated purpose of below cost sales -- to attract a disproportionate number of customers to Wal-Mart."
5. "The in-store price comparison of products sold by competitors, including Plaintiffs."
6. "The disparity in prices between Faulkner County prices of the relevant product lines and other markets with more and less competition."

"Relief Aid Damages"

"Plaintiffs' request to enjoin Conway Wal-Mart from selling below cost as defined by the 'Unfair Trade Practices Act' is Granted."

"Plaintiffs's request for damages is Granted and the Court awards damages as follows:"

"American Drug--$42,407.00"

"Baker Drug--33,767.00"

"Family Drug--20,295.00"

"Plaintiffs' request for treble damages and costs is Granted."

"Plaintiffs' request for attorney's fees is denied due to the lack of statutory authority for such allowance."

Wal-Mart immediately announced that it would appeal Judge Reynold's predatory-pricing decision to the Arkansas Supreme Court. Wal-Mart subsequently appealed the decision and had it reversed by the Arkansas Supreme Court; but not without dissent. 5

In Chapter VI on Predatory Pricing, the writer will discuss in more detail some of the data, expressed by the lower court as well as the majority and minority views of the Supreme Court in the appeals case won by Wal-Mart.

The tendency to litigate continued to grow when a large number of independent drug store owner/operators, from the traditional proprietorships to small chains, decided that pricing differentials were not fair and decided to take legal action not against the large chains, but against drug manufacturers and wholesalers. The issue in what was to become a class action suit was whether the price differences for prescription drugs at the retail level were based upon economies of scale present in large drug chains and generally justifiable.

The small drug stores saw the enemy as the drug manufacturers, and not always the retail chains. The proposed class action suit wanted the manufacturers to prove not only how they can justify

selling at lower prices to higher volume customers, but additionally how they could justify selling at lower prices to lower volume customers, such as buying groups who purchase drugs for hospitals, HMO's, nursing homes and clinics.

However, there were a number of these lawsuits involving price discrimination in pharmaceuticals, one of which included large and small drugstore chains that challenged primarily the high discounts offered to HMOs and buying groups.

The plaintiffs (pharmacists), numbering in the hundreds, filed a class action suit in federal court in Chicago in November, 1994 6 against at least thirty drug manufacturers and wholesalers. The suit was an antitrust suit, alleging specific violations of the Sherman Antitrust Act and the Clayton Act. The suit related to pricing, variable discounts, combinations and conspiracy in unreasonable restraint of trade and concerted action.

Later in this text, the author will detail various cases and precedents which might have relevance with respect to protecting the nation's small retailers against possible monopolization, predatory pricing, restraint of trade and various antitrust activities by the nation's major retail chains as well as the mega-retail discount giants.

Nowhere in this text will the author recommend company versus company litigation, but he hopes to make his observations available to Congress, State Legislators and federal and state regulatory agencies with the recommendation that fair trade practice laws be reviewed and where more surveillance is necessary to protect the small retailer, that it be done.

In August 1994, Representative John La Falce (D. N.Y.), Chairman of the House Small Business Committee conducted panel hearings with respect to the growing dominance of the nation's major retail chains as well as the major retail discount chains, and what appeared to be behavior harming small business and entire communities, such as (alleged) predatory pricing, unfair labor practices and market saturation. A detailed discussion of these meetings and their findings can be found in Chapter VI.

The committee indicated that the growing powers of the retail-chains ought to be a continuing review responsibility of the Federal Trade Commission (FTC), and additionally expressed that as of August 1994, two of the five seats on the FTC still remained vacant. 7 Further action by the Committee has not been taken.

Since the hearings, Robert Pitofsky was nominated by President Clinton to head the Federal Trade Commission. *Wall Street Journal* articles heralding his appointment emphasized Pitofsky's belief in the active enforcement of antitrust laws. Pitofsky, a Georgetown University Law Professor had served as a Commissioner of the FTC, 1978-1981, and was Director of the FTC's Bureau of Consumer Protection from 1970 to 1973.

Among the witnesses at the hearings was Thomas Muller, a Fairfax, Virginia economist and the author of a report on the impact that three proposed Wal-Mart stores would have on northeastern Vermont communities. Muller stated, "In a few years, given (that) current trends continue, one corporate entity may have a substantial share of all retail trade in the United States." 8

ANTITRUST LAWS OF THE UNITED STATES

(As per a study by the Congressional Budget Office)

In order to provide a guide to the reader interpreting the behavior of giant retail chains as being dominating, unfair or restraining trade through undesirable practices, the author is presenting in outline form, three statutes which might apply. This material was prepared as part of a Congressional Budget Office (CBO) study by the U.S. Congressional Budget Office and published in September 1994. 9

In addition to citing certain important statutes, the CBO researchers interpreted several sections of the Robinson-Patman Act with respect to predatory pricing.

Antitrust Law

In the last quarter of the 18th century, the spread of the industrial revolution from Britain to Europe, the United States, Russia, and Japan brought with it the development of large industrial concerns with substantial market power. 10 In some cases, that power was enhanced by the formation of trusts, cartels, and other monopolies. Such market power was subject, or thought to be subject, to various abuses, among which were high prices and predatory pricing.

The Sherman Act

In the United States, concerns about monopoly abuses resulted in the passage of a series of antitrust laws. The first such law was the Sherman Act, passed in 1890. 11

The Sherman Act prohibited "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations." 12 It also made it illegal to "monopolize, or attempt to monopolize, or combine to conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations." 13 Violations of those provisions were misdemeanors punishable by fines, imprisonment, or both. U.S. attorneys could obtain injunctions to prevent or restrain violations. Furthermore, private parties injured by violations could bring suit against the perpetrators and recover treble damages. 14 However, violations of the Sherman Act are now deemed to be felonies. Furthermore, private parties can now sue for injunctions.

The courts have long interpreted the Sherman Act to prohibit predatory pricing. Without a showing of predatory intent, price discrimination and selling below cost are not held to be violations of the law. 15

Predatory intent is an element of proof in some violations of the Sherman Act, i.e., monopolization and attempted monopolization, but not in conspiracy cases.

In the past two decades, the courts and the Federal Trade commission have become more skeptical of claims of predatory pricing than they were previously. They tend to look for evidence of such factors as prices below average variable cost (not merely below average total cost), large enough market share and sufficient barriers to other firms' entering the market to make monopoly and subsequent price increases feasible, and local price cutting in particular markets rather than general price cutting in all markets. 16 Mere price discrimination or selling below average total cost are not generally sufficient for demonstrating predatory pricing.

The Federal Trade Commission Act and the Clayton Act

Dissatisfaction with the courts' interpretation of the Sherman Act led to the passage in 1914 of the Federal Trade Commission Act and the Clayton Act. 17 The Federal Trade Commission Act created the Federal Trade Commission (FTC), and the Act empowered the FTC to proceed against "unfair methods of competition" in interstate or foreign commerce. 18 The general and undefined nature of the latter power resulted from the view that businesses would always find new ways of suppressing competition that did not violate any given list of prohibited behaviors. The act empowered the FTC to proceed against each new form of unfair behavior as it appears and is recognized as a problem.

FTC proceedings are administrative and prospective (that is, the FTC can proscribe future behavior, but cannot punish past behavior). When the FTC believes a firm is engaging in unfair competition, it issues a complaint that is heard before an administrative law judge. If the judge agrees there is a violation, he or she issues and order for the firm to cease and desist. That order can be appealed to the courts. Assuming the order either is not appealed or is upheld on appeal, the firm is subject to fines if it continues the behavior. On judicial review, a decree to obey the order can be issued, in which case violations make the firm liable to be held in contempt of court.

Section 2 of the Clayton Act was the first law to restrict price discrimination outside the railroad industry. 19 It prohibited charging different prices to different customers when: (1) the price difference did not reflect differences in cost, grade, quality, or quantity; (2) it was not a good faith effort to meet competitive pressures; and (3) "the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly." 20

The Clayton Act authorized the Federal Trade Commission to enforce the act's provisions through the sort of administrative and prospective proceedings described above. 21 It authorized U.S. attorneys to obtain civil injunctions to prevent and restrain violations of the act, and it gave private parties the right to obtain injunctions to protect them from violations of the antitrust laws generally. 22 It also gave parties injured by violations of the antitrust laws the right to sue for treble damages. 23 Finally, it made individual directors, officers, or agents of corporations violating penal provisions of the antitrust laws guilty of misdemeanor violations, if they directed, ordered, or carried out the corporate violation. 24 In addition, it subjected them to punishment by fines and imprisonment.

The Robinson-Patman Act

In the 1920's and 1930's, the large chain retail stores rose to prominence. The market power of some of these chains enabled them to negotiate lower prices from manufacturers than the traditional small independent retailers could obtain. For that and other reasons, the small retailers found it difficult to compete leading to pressure for the Congress to do something to help them. That pressure and dissatisfaction with the lack of success of the Clayton Act in preventing price discrimination led to passage in 1936 of the Robinson-Patman Act. 25

The Robinson-Patman Act amended the Clayton Act to make it unlawful "to discriminate in price between different purchasers of commodities of like grade and quality" where the effect "may be substantially to lessen competition or tend to create monopoly in any line of commerce, *or to injure, destroy, or prevent competition* [emphasis added] with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them."

26 Exceptions were made for price differences resulting from differences in cost, charging low prices to meet those of a competitor, disposing of deteriorating perishable goods or obsolete goods, and disposing of goods in a closeout or bankruptcy sale. The act also prohibited buyers from knowingly inducing or receiving a prohibited discrimination in price. The act made some violations criminal offenses punishable by fines and imprisonment. However, the criminal provision of the Robinson-Patman Act has not been used in decades and is unlikely to be used.

> "A key issue relates to the phrase emphasized above: 'or to injure, destroy, or prevent competition.' Does 'competition' refer to competitors of the firm engaging in price discrimination or to the vigor of competition between and among the price-discriminating firm and its competitors? The former could make almost all price discrimination illegal, depending on the standard of injury. The latter is a much more demanding standard. If the price-discriminating firm takes away 10 percent of the market, each competitor is injured. Yet the loss does not affect the vigor of competition between and among the competitors and the price-discriminating firm." 27

> "The courts have decided this question differently depending on the relation of the injured firms to the participants in the low-price sale. The injured firms might be competitors of the price-discriminating firm, competitors of the firm receiving the lower price, or competitors of the customers of the firm receiving the lower price. Injury to the first of these groups--competitors of the price-discriminating firm--is the sort of injury that is at issue in predatory pricing and dumping cases. In cases of such injury, the courts have generally interpreted "injury to competition" to mean "injury to the vigor of competition." Over the years, the standards for proving such injury have evolved to the point that they are now essentially identical with those for predatory pricing cases under the Sherman Act. Thus, the sort of price discrimination that is the domestic analog to dumping is illegal only in cases of predatory pricing." 28

A Review of the Antitrust Statutes by the Author and His Consultant Attorneys

29 The consulting attorneys were not asked to recommend any type of litigation against retail chains, but simply to restate the meaning of the various regulatory statutes and their possible relevancy to subsequent enforcement against certain types of behavior by the mega-retail discount chains.

The following memorandum to the author is, in a sense, a further analysis and interpretation of the historic and current meaning of the antitrust statutes summarized earlier in this chapter as a result of reviewing Congressional Budget Office reports and analyses.

It becomes obvious to the reader that the statutes on antitrust and their interpretation do provide an umbrella for federal governmental agencies to prescribe anti-competitive activities on the part of major retail chains, but only if appropriate evidence is found of such conduct.

The purpose of this study is not to stimulate litigation by government against any retail chains or manufacturers, but to alert Congress and the appropriate federal agencies that the laws protecting small business do exist since the 1890's, and if federal agencies make it known that when anti-competitive misbehavior is noted, and alleged, that surveillance and investigations might suggest to the mega-retailers that they consider putting a stop to the "roller coaster" which is eliminating the small retailer from the competitive scene. Further, Congress should hold hearings to be alerted to the possible excess of anti-competitive behavior or monopoly power by the huge retail

chains; and further to consider legislation to amend the Sherman, Clayton and Robinson-Patman Act (and other statutes), originally designed to maintain a free market and protect small businesses in their rights to enter the market and survive as viable firms. The survival of small business, which was the desired aim of the 1995 President's White House Conference on Small Business is necessary for a balanced economy and for industrial and collective security, both economically and sociologically.

In addition to the review of federal statutes on antitrust, the federal government should review the Tax Code as a means of limiting chain abuses.

There follows Davis, Cowell & Bowe's memorandum to the author dated August 1, 1994, on the subject of "The Basics of Federal Laws on Monopolization and Predatory Pricing" prepared by Andrew J. Kahn, Esq. and Marjorie M. Alvord, Esq.

MEMORANDUM

The Basics of Federal Laws on Monopolization and Predatory Pricing

To: Dr. Edward B. Shils

From: Davis, Cowell & Bowe
Counselors and Attorneys at Law
100 Van Ness Avenue
San Francisco, CA 94102

Date: August 1, 1994

This memorandum sets out a brief overview of basic federal antitrust law on monopolization and predatory pricing.

I. Basic Definition of Monopolization

Section 2 of the Sherman Act makes it a crime to monopolize or attempt to monopolize commerce. See 15 U.S.C. 2. Unlawful monopolization is typically defined as the possession of monopoly power plus some element of deliberateness, i.e., conduct intended to acquire, use or preserve that power. As was stated by the Supreme Court:

> The offense of monopoly under Section 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power, as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

See *U.S. v. Grinnell*, 384 U.S. 563, 570-71 (1966) [emphasis supplied]. The principal dilemma faced in making the analysis is that the same conduct used to obtain and/or maintain monopoly power (e.g., low pricing, customer discrimination, integrating into different markets, introducing new products) are also often seen as generally beneficial competitive strategies which ought to be encouraged. See, e.g., *Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 594 (1986).

A. The Relevant Market

Monopoly power has been generally defined as "the power to control prices or to exclude competition." See *American Tobacco Co. v. U.S.*, 328 U.S. 781 (1946). The power to exclude competition may derive from any number of unfair practices that make it difficult for existing competitors to survive or to enter the market, such as predatory pricing. In order to determine whether monopoly power exists (or is dangerously likely), first the relevant market in which to evaluate this power must be defined. See *Walker Process Equipment v. Food Mach. & Chem. Corp.*, 382 U.S. 172, 177 (1965) ["without a definition of that market there is no way to measure ability to lessen or destroy competition."].

The notion of the relevant market is usually defined in terms of two aspects: The products or services involved ("the relevant product market") and the geographic area involved ("the relevant geographic market"). See *Brown Shoe Co. v. U.S.*, 370 U.S. 294, 324 (1962). The question of what constitutes the relevant market is one of fact, typically involving complicated concepts from neoclassical economic theory and battles of experts.

1] Relevant market for products or services

On the product side, the Supreme Court discussed the notion of the relevant market in *U.S. v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956), where the question was whether the relevant market was cellophane (du Pont had a 75% share) or flexible packaging material (du Pont had a less than 20% share). The Court stated:

> When a product is controlled by one interest, without substitutes available in the market, there is monopoly power . . . [W]here there are market alternatives that buyers may readily use for their purposes, illegal monopoly does not exist merely because the product is said to be monopolized differs from others. (351U.S.at 394)

The court concluded that the relevant product market consists of products which have reasonable interchangeableness, considering prices, use and quality. In applying the reasonable interchangeableness test, most courts look to measures of the cross-elasticity of demand which represents the responsiveness of one product to price changes of the other. Courts also sometimes look to the reasonable interchangeableness of production (i.e., cross-elasticity of supply).

2] Relevant geographic market

On the location side, the relevant geographic market is said to be the area in which the seller operates and in which the buyer can reasonably turn for such products or services. As stated by the Supreme Court:

> The criteria to be used in determining the appropriate geographic market are essentially similar to those used to determine the relevant product market. Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal legalistic one. The geographic market selected must, therefore, both "correspond to the commercial realities" of the industry and be economically significant. Thus, although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area. (*Brown Shoe Co. v. United States*, 270 U.S. 294, 336-37 (1962)).

In persuading any government agency to investigate antitrust implications of "Big Box" warehouse stores, market definition will be crucial. A more narrow market definition may

make it easier to demonstrate a market share large enough to support a monopoly power presumption. However, too narrow a definition will not be seen as credible. For example, in one case the definition of the relevant market as shopping centers with more than 50,000 square feet was rejected as too narrow when sellers of the product regularly operated in smaller centers, strip centers, hardware stores, variety stores and drug stores. See *American Key Corp. v. Cole Nat. Corp.*, 762 F.2d 1569 (11th Cir. 1985).

One might be able to get away with a relevant market definition of retail department stores in the semi-rural U.S., southwest or west. It could be argued that such a definition constitutes a "pragmatic, factual approach" necessary for promoting the purposes of antitrust laws.

B. Market Share

The existence of monopoly power itself is usually defined in terms of market share. Although it is typically conceded that direct proof through use of reconstructed supply and demand curves is best, it is (or should be) recognized that such proof is virtually impossible to establish accurately since data simply does not exist in the form necessary to match the constraints of necessary neoclassical economic assumptions. Therefore, the notion of market share is used. Although there is no hard and fast rule as to what market share establishes monopoly power, a market share in excess of 70% has almost always been deemed sufficient to support the inference, while a market share of less than 40% virtually precludes a finding of the existence of monopoly power.

Market share is not the only determination of the use of market power. Other factors to be considered include consideration of whether market share declines or increases over time, the extent to which the alleged monopolizer is forced to lower prices in response to the pricing practices of competitors, the extent to which new competitors are able to enter the market, the degree of product innovation, and so on. A defendant may have a huge market share but avoid liability by successfully arguing the one or more of these other pro-competitive conditions exists. Again, this analysis would involve a costly battle of experts.

Of course, proof of monopoly power is not by itself enough to show an antitrust violation. One must also demonstrate deliberate or intentional anti-competitive conduct. To persuade a government agency to investigate, evidence of such deliberateness would be important.

II. Predatory Pricing

A demonstration of predatory pricing practices may be one way to establish the deliberateness prong of the test. Predatory pricing has been defined as "pricing below an appropriate measure of cost for the purpose of eliminating competitors in the short run and reducing competition in the long run." See *Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 117 (1986).

One of the complaints frequently heard about the "Big Box" warehouse stores is that they aggressively price in order to put the local competition out of business. As the above discussion implies, however, one should bear in mind that aggressive pricing is not *per se* unlawful under the Sherman Act. It is important to show use and abuse of monopoly power in the relevant market.

In addition to Section 2 of the Sherman Act, the Robinson-Patman Act regulates pricing policies. Section 2(a) of the Clayton Act as amended by the Robinson-Patman Act provides:

> It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives benefit of such discrimination, or with customers of either of them.

See 15 U.S.C. 13(a). Actions for predatory pricing have often involved claims under both provisions.

In 1993, the Supreme Court issued its decision entitled *Brook Group Ltd. v. Brown and Williamson Tobacco Corp.*, 113 S.Ct. 2578, 61 L.W. 4699 (1993), which substantially undermines the availability of a predatory pricing action based on federal law, either under the Sherman Act or the Robinson-Patman Act. The Supreme Court indicated that the appropriate legal analysis in a predatory pricing case is substantially the same whether the action is brought under the Sherman Act or the Robinson-Patman Act.

The *Brook Group* case is referred to as the "*Liggett*" decision because that was the former name of the plaintiff cigarette maker. In that action the plaintiff was a struggling cigarette maker which introduced a line of generic cigarettes. The defendant Brown and Williamson responded by coming out with its own generic brand. Liggett alleged that Brown and Williamson was selling its generic cigarettes at a loss with the intent to monopolize and/or injure competition. In essence, Liggett was raising claims both under Section 2 of the Sherman Act and under Section 2(a) of the Clayton Act as amended by the Robinson-Patman Act.

The Supreme Court in the *Liggett* decision indicated that whether a claim alleges predatory pricing under Section 2 of the Sherman Act or primary line price discrimination under Robinson-Patman, the essential prerequisites to recover remain the same. First a plaintiff must establish that the Company is pricing the product below average variable cost. Next the plaintiff must establish that the competitor had a reasonable prospect or (under Section 2 of the Sherman Act) a dangerous probability, of recouping the investment in below cost prices. As the Court noted:

> Recoupment is the ultimate object of an unlawful predatory pricing scheme; it is the means by which a predator profits from predation. Without it, predatory pricing produces lower aggregate prices in the market, and consumer welfare is enhanced.

The Court in essence stated that below cost pricing which is not ultimately recovered is a "boon to consumers" and therefore can't be found unlawful. Finally, the Court indicated that the cause of action is not available unless the plaintiff establishes injury to competition or use of monopoly power.

The decision makes it all but impossible for a private litigant to bring and prove predatory pricing action under federal law. As discussed above, the analysis of the existence of or use of monopoly power is extremely complicated both in terms of defining the relevant market and in establishing that power itself exists. Additionally, information on a competitor's average variable cost is extremely difficult if not impossible to obtain legally. Because these hurdles will almost

always prove too costly or otherwise insurmountable for private litigants, it may be especially appropriate to request government investigation if one can produce evidence of abuse of monopoly power and/or predatory pricing activity.

III. Price Discrimination

Actions under federal law for price discrimination where there are competing buyers, as opposed to competing sellers, may be more viable than actions for predatory pricing. To bring a price discrimination claim the purchaser must establish at the outset that: 1] sales in interstate commerce 2] have involved a cognizable difference in price between two or more buyers, of 3] commodities of similar grade and quality, and the 4] such discrimination may substantially injure competition. See *Texaco, Inc. v. Hasbrouck*, 110 S.Ct. 2535, 58 L.W. 4807, 4810 (1990). Additionally, the action is available only to distributors who are actually damaged by the unlawful price discrimination. In addition, the plaintiff has to establish price discrimination regarding products of the same grade and quality and that the practice tended to injure competition.

Although the price discrimination cause of action remains viable, it is far from easy to maintain to victory. The action can be defended by proving various approved justifications for the discounts.

For example, Section 2(b) of the Act creates a defense when the seller acts "in good faith to meet an equally low price of a competitor." This "meeting the competition" defense is an absolute defense to other prohibited price discrimination. See *Standard Oil, Co. v. FTC*, 340 U.S. 231, 251 (1951).

Section 2(a) of the Act permits price differentials that make "due allowance in cost of manufacture, sale or delivery resulting from the differing methods or quantities" in which goods are sold. Thus, there is the so-called "cost justification defense" under which the seller shows that the actual cost savings in dealing with one buyer is equal to or greater than the price reduction offered, based upon the factors enumerated in the statute. See *Morton Salt Co.*, 334 U.S. 37, 48 (1948). Pricing differentials are also allowed when they represent functional discounts, that is, when the buyer assumes all the risk, investment and cost involved in connection with actually performing a certain function related to the sale. See *Texaco, Inc. v. Hasbrouck*, 110 S.Ct. 2535, 58 L.W. 4807, 4811 (1990).

In part because the price discrimination action depends upon actual injury to a specific buyer, it makes less sense to seek government investigation of such issues.

IV. Other Issues

Apart from predatory pricing, one might argue for an investigation to determine whether "leveraging," that is, the use of monopoly power in one market to gain an advantage in another market, has been used in violation of Section 2 of the Sherman Act. This notion stems from remarks made by the Supreme Court that monopoly power cannot be used "to beget monopoly." See *U.S. v. Griffith*, 334 U.S. 100, 108 (1948).

The notion of illegal "leveraging," however, is an extremely controversial one. The question is whether one violates the Sherman Act when it uses monopoly power in one market to achieve a

competitive advantage in another, even though there is no attempt to monopolize the second market. The Second Circuit has said that such a violation exists so long as an actual abuse of monopoly power is shown. See *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 275 (2d Cir. 1979).

Using this notion, one might argue that "Big Box" warehouse stores violate Section 2 in unfairly "leveraging" monopoly power enjoyed in the Southern U.S. market to gain advantage in the Western U.S. market. However, apart from the difficulties in establishing the existence of monopoly power in the Southern U.S., or the "abuse" of such power to leverage into the Western market, the Ninth Circuit has made such an argument much more difficult by expressly rejecting the leveraging notion. After noting that antitrust laws tolerate monopolies arising from efficiencies, the Court of Appeals in *Alaska Airlines v. U.S.*, 948 F.2d 536 (9th Cir. 1991) stated:

> [T]he elements of the established actions for "monopolization" and "attempted" monopolization" are vital to differentiate between efficient and natural monopolies on the one hand, and unlawful monopolies on the other. *Berkey Photo's* monopoly leveraging doctrine fails to differentiate properly among monopolies. The anti-competitive dangers that implicate the Sherman Act are not present when a monopolist has a lawful monopoly in one market and uses its power to gain a competitive advantage in the second market. By definition, the monopolist has failed to gain, or attempt to gain, a monopoly in the second market. Thus, such activity fails to meet the second element necessary to establish a violation of Section 2. (948 F.2d at 548).

Thus, the leveraging concept is rejected as far as activities in the Western states (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington) are concerned. The continued viability of the leveraging concept in other jurisdictions is questionable.

Monopolization and predatory pricing issues under federal antitrust laws should not be confused with potential remedies under state unfair trade laws. For an example of the latter, see the attached copy of the lower court decision in *American Drugs, Inc. v. Wal-Mart Stores*, the Arkansas predatory pricing case Wal- Mart lost at trial. The matter is now on appeal. It is important to recognize that this lawsuit was brought under Arkansas' own unfair trade statute, not under federal antitrust laws. Thus, the fact that the judgment was against Wal-Mart in this predatory pricing case does not suggest that there would be a similar result in a federal antitrust lawsuit.

There are a number of reasons why the sale-below-cost claim under Arkansas law was easier to maintain than it would be under federal antitrust laws. First, as is true under a similar California statute, See *Turnbull & Turnbull v. ARA Transp.*, 219 Cal. App.3d 811, 268 Cal. Rptr. 856 (1990), the Arkansas law uses a "fully allocated cost" measure (i.e., replacement cost plus attributable overhead) on the cost basis. Federal courts generally use "average variable cost" (which does not generally include fixed costs or overhead) as the cost basis. Under federal law, the cost basis against which sales-below-cost will be gauged will necessarily be lower, making it much more difficult to attack predatory prices under federal law.

Secondly, the Arkansas court rejected the "market basket" approach to analyzing sales-below-cost (as California courts have, See *Western Union Financial Services, Inc. v. First Data Corp.*, Cal. App. 4th, 25 Cal. Rptr.2d 341 (1993)). Rejection of the market basket approach means that

an aggrieved plaintiff can recover in a state law sales-below-cost claim as to a particular product even if the retailer overall maintains a healthy profit margin.

Finally, in the Arkansas case, (in the lower Chancery Court) the judge determined that the plaintiffs need not show monopoly power or injury to competition (involving complicated expert analysis of relevant markets and so forth). Instead, the plaintiffs only needed to show the company had an intent to injure the competition, which could be inferred more directly from the company's stated policies and purposes.

A REVIEW

1. Many states (24) according to the research division of the Library of Congress had state "Below-Cost Sales Statutes." This list included Oklahoma, where Wal-Mart was sued, and additionally such large states as California, Massachusetts, Pennsylvania, Wisconsin and others (See Chapter VI for more details).

2. As a result of the case of *American Drugs Inc. v. Wal-Mart Stores Inc.*, where at least in the lower court the plaintiffs won, there has been engendered an increased interest in the law of predatory pricing, generally with concurrent interest in state below-cost pricing statutes.

3. The reader should understand from the Congressional Budget materials as well as the legal analysis provided the author by the law firm of Davis, Cowell & Bowe of San Francisco, California, that while predatory pricing comes under the purview of the Sherman, Clayton, Federal Trade Commission and Robinson-Patman Acts at the federal level; that nevertheless it should not be construed that any "below cost sales," at least at the federal level are not necessarily to be interpreted in the same way as would be the case of litigating in the twenty-four state jurisdictions having "below-cost" pricing statutes.

4. Nevertheless, the Wal-Mart opinions, both at the Chancery level (when Wal-Mart lost) and at the Arkansas Supreme Court level (when Wal-Mart won) do create interest in the subject of predatory pricing and should stimulate the Federal Trade Commission and possibly the U.S. Justice Department to review appropriate federal regulatory statutes which might result in greater protection for the small retailer.

5. Further, most states have enacted "baby" Sherman Acts which track the federal statute, and the below-costs sales provisions, themselves are often contained in the more general pricing statutes that are similar to the federal Robinson-Patman price discrimination law--either of which may be used advantageously to challenge truly predatory pricing behavior.

6. Chapter V also mentioned that a group of retailers took a different tack on pricing differentials by suing both manufacturers and wholesalers. The author's study shows that more and more of the chain's ability to lower prices is due to the massive discounts available to them for large volume purchases. Not only are these unit prices not available to small retailers, but wholesalers, who used to sell the small retailer are disappearing as the chains buy "direct" from the manufacturer.

7. In August 1994, the House Small Business Committee met and listened to witnesses who were concerned about the survival of the small retailer in the face of the growing power of the mega-retail discount chains. Although the 1995 and 1996 Small Business Committees of both the

House and Senate have continued this type of public hearing, the outcomes or results are minimal with practically no legislation passed to protect the small business.

8. In order to open the question in public forums and elsewhere as to which regulatory statutes available at the federal level might pertain to the behavior and growing power of chain stores, materials obtained from the U.S. Congressional Budget Office were included in this chapter. Their interpretative comments and analyses of the Robinson-Patman Act were particularly valuable. CBO describes "how in the 20's and 30's, large chain retail stores rose to prominence." The market power of some of these chains enabled them to negotiate lower prices from manufacturers than the traditional small independent retailer could obtain. For that and other reasons, the small retailers found it difficult to compete, leading to pressuring Congress to do something to help them. The pressure and dissatisfaction with the lack of success of the Clayton Act to prevent price discrimination led to the passage in 1936 of the Robinson-Patman Act.30

CHAPTER VI

PREDATORY PRICING - PART I

THE ARKANSAS WAL-MART CASES

Chapter V briefly described the initial victory of independent pharmacists in Arkansas over Wal-Mart.1 The case was brought under the Arkansas Unfair Trade Practices Act, and resulted in a national discussion on whether or not national discount retail chains might be prosecuted for predatory pricing under the existent laws of 24 states having these laws. The thought was expressed that if the federal government was reluctant to explore relevant clauses under Sherman, Clayton or Robinson-Patman -- that plaintiffs representing small retailers might follow the Arkansas experiment among many national retail chains in many other states, or that the federal agencies might begin to explore their own avenues to study possible predatory pricing activities on the part of chain stores.

The decision in favor of the independent pharmacies was overturned in Wal-Mart's favor in the Arkansas Supreme Court. However, of interest to scholars was the fact that in the Chancery proceedings, Wal-Mart did admit selling below cost, but denied the predatory charge. David Glass, Wal-Mart's CEO, said that the Bentonville, Arkansas retailer regularly sells a variety of items below cost, including such standards as Crest toothpaste and Listerine mouthwash. But he maintained the selling below cost doesn't violate the law or destroy competition. 2

The Arkansas statutes, which were being tested for the first time since passage in 1937, generally forbade businesses from selling or advertising "any article or product . . . at less than the cost to the vendor . . . for the purpose of injuring competitors and destroying competition." 3

Wal-Mart's attorneys argued in a pre-trial brief that what the law described as a "product" shouldn't be considered to apply to individual items, but rather to Wal-Mart's "market-basket" or full line of products. If the entire line isn't priced below cost, they contended it wasn't a violation of the statute. 4

It is obvious that to determine a state violation on "predatory pricing" that the court must determine what principle it would accept as "non-predatory" in pricing below cost. This is indeed a gray area and possibly was the issue resulting in Wal-Mart's reversal victory in the Arkansas State Supreme Court. Furthermore, federal surveillance of predatory pricing under the Robinson-Patman Act is based upon a different type of "below cost" formulae and analyses. This will be discussed later.

The second element to be considered under state laws is whether there was an "intent" to injure competition, and whether in fact the result of such malice was to injure the competition. The third element was "recoupment." Were the prices ultimately raised, once the competition was put out of business?

At issue in the case was whether Wal-Mart, which had built the nation's largest retail chain with its everyday-low-price strategy, went beyond the legally recognized retail practice of promotional pricing and intended to destroy its competition.

Although Chancery Court, Judge Reynolds said there was not any direct evidence tying Wal-Mart's pricing policies to such a plot, he did say circumstantial evidence existed.

"The court finds that purpose to injure competitors and destroy competition cannot be inferred from below-cost advertising and sales alone. There must be other proof," **5** the judge wrote, citing Wal-Mart's policy of allowing store managers to unilaterally cut prices on goods below that of local competitors as part of the evidence.

Attorneys for Wal-Mart in the Chancery Court also argued that "federal antitrust law should pre-empt the Arkansas law . . . and seek not to protect businesses from the workings of the market, but to protect the retailer from the failure of the market." **6**

This was not the first time that Wal-Mart had been in litigation involving pricing. In 1986, it was found to have violated an Oklahoma state law that required retailers to sell products at least 6.75% above cost, unless the store is having a sale or matching a competitors price. Wal-Mart settled out of court during an appeal and agreed to raise prices at all of its stores in the state. 7

Wal-Mart became the number one major retail discount chain by obviously offering value and the lower prices possible. Pricing is the essential advantage that the mega-stores have over the small retailers who have few options to buy direct and who are attempting to buy merchandise from a reduced number of regional wholesalers. Even the major wholesalers have begun to consolidate their operations as was the case in June 1994, when the number two and number three United States food wholesalers, Fleming Company, Inc. and Scrivners, Inc., began discussions to merge. The contemplated merger would have resulted in combined total sales of $19 billion, making Fleming the nation's largest food distributor. Fleming's rival is Supervalue with $16 billion in sales. The trend towards consolidation continued to threaten the ability of the small retailer to survive. In October 1992, Supervalue had acquired Wetterau, Inc. of St. Louis for $1.1 billion.

While the continued consolidation of wholesaler and distribution into fewer hands raised possible antitrust concerns; nevertheless the argument employed by the mega-retailers is that distributors would cut their own duplicative operations and hopefully provide cost savings to consumers. **8**

But Ortega in a *Wall Street Journal* article pointed out that Wal-Mart intends to deal with manufacturers directly:

> "Wal-Mart's sheer size--more that 2,300 stores and warehouse clubs, (August '93) gives it the leverage to demand goods at the lowest possible cost from suppliers. And the company, facing increased competition from other large retailers as it moves into urban areas, has moved aggressively to trim as much cost as possible. In 1991, for example, the retailer told major suppliers it would deal with them directly, cutting out independent sales representatives. A manufacturers group then filed an unfair trade practices complaint with the Federal Trade Commission." 9

Pricing is the name of the game. It has been the issue in previous litigation against major corporations in state cases and will obviously remain a key issue in possible review by federal agencies, such as the Justice Department and the Federal Trade Commission.

In May 1994, Wal-Mart had to change its slogan about claiming the lowest prices after a National Advertising Review Board protested against Wal-Mart's format in claiming low prices. An article, which follows, in *USA Today* from May 1994, reported on Wal-Mart's reaction to competitors' criticism of Wal- Mart's pricing advertising.

"Wal-Mart Modifies Its Slogan"

"Wal-Mart will change its slogan, which has been criticized as misleading by competitors and an advertising watchdog group."

"The Old: 'Always the low price. Always.' The New 'Always low prices. Always.' The change will show up in ads next month, says Jane Arend, Wal-Mart's Director of Public Relations."

"Wal-Mart made the change after a National Advertising Review Board panel ruled the old slogan 'is communicating to many that its low prices are always the lowest' rather than just competitive."

"'We are disappointed that the NARB has interpreted the slogan so technically,' Arend says. 'But they have made their recommendation and we will make the appropriate changes'."

"A complaint was filed by a group representing several local Better Business Bureaus and Wal-Mart rivals, including Target Stores and Vision World Inc."

"The NARB -- 70 members from advertising and public interest groups -- works with the Better Business Bureau on truth in advertising issues. It has no legal authority to change Wal-Mart's slogan."

"This was not the first attack on Wal-Mart's marketing strategy. Early this year, the State of Michigan criticized Wal-Mart's practice of displaying its own prices vs. competitors' prices. The signs sometimes compared items of different sizes and were not fair comparisons, state officials charged."

"The old slogan has been in use since 1988."

"Retail consultant Alan Millstein says it may have worked for Wal-Mart in its early years, when it frequented smaller markets and easily beat competitor's prices. 'Now they are well into the most competitive metro markets. It's much more difficult for them to make that claim and have it be true,' he says." 10

In a related matter, but in a governmental involvement in Michigan, Wal-Mart agreed to modify its pricing rules after negotiations with Michigan's Attorney General. 11

"Wal-Mart Stores agreed not to use unfair or deceptive practices in comparative price advertising at it Wal-Mart and Sam's Club stores in Michigan."

"The agreement with the Michigan state attorney general's office came as response to a complaint filed by Kmart Corp., Troy, Mich.; Target Stores, Minneapolis, and Meijer Inc., Grand Rapids, Mich."

"The three retailers claimed Wal-Mart's comparisons were misleading. In signing the agreement, Wal-Mart did not admit to any violations."

"Wal-Mart agreed to identify the date on which comparisons were made; not to lower an item's price solely to achieve a favorable price comparison; not to use market-basket

comparisons unless the Wal-Mart employees responsible for pricing do not know which items have been selected for the survey; and not to compare multiple-item package prices with individual item prices when the multiple package is not available to others in the market."

The growing power of the mega-retail discount chains is in part a matter of mass purchasing at discounts from manufacturers and major wholesalers, which provide merchandise at very low costs to consumers; often below costs as "loss leaders." Also, the reduced overhead per store as the corporations grow in accelerated fashion and introduce formidable powers to confront City Councils, zoning boards, etc. to accomplish their real estate objectives is contributing to their power.

Scholars such as Kenneth Stone, Professor of Economics at Iowa State University, a Wal-Mart analytical observer and Thomas Muller, a Fairfax, Virginia economist and the author of a report on the impact that three proposed Wal-Mart stores would have on Northeastern Vermont communities, both previously mentioned, might have a somewhat similar point of view on the major impact resulting from the growth of the Kmarts and Wal-Marts on small retailers, "Main Street" and community stability.

The writer will point out Muller's testimony before the House Small Business Committee in 1994 at a later point in this chapter. Seven years ago, Kenneth Stone, began to study the Wal-Mart phenomenon in his state after he noted the commercial life of many towns being hollowed out by the huge intruder. Few scholars had paid any attention. Now Stone is in demand all over the United States lecturing on the nature of Wal-Mart and how to deal with it. Stone estimates that Wal-Mart's stores -- a combination of general merchandise, groceries and wholesale clubs -- could, if growth in the 1990's equals that of the 1980's, gross $200 billion annually by the end of the decade. "It could be the biggest corporation in the United States," says Stone, and that includes Exxon and General Motors. **12**

Wal-Mart is already the largest retailer, smothering Sears and Kmart. "The impact of a corporation of that size and that involvement in the life of this country is immense." **13**

Stone advises small-town merchants on how to deal with the arrival of a Wal-Mart in their region. "I don't fight Wal-Mart . . . if you believe in the free-market system as I do, then you cannot keep them out of your community. Much of what I tell you will be to emulate them." **14** Stone talks about such ideas as finding special merchandising niches not occupied by Wal-Mart, about improving service and extending store hours.

In an earlier chapter the author described the "Ten Commandments" where the American Management Association prescribed how the small retailer could survive the Wal-Mart competition. This author points out the inability of the small retailer to apply the principles of "Management 101" without professional staff, capital, financial and other resources, to be able to contribute to the revival of downtown "Main Street." Little can be done in this respect without the strong support of the local, state and federal governments. These programs will be discussed in Chapter VIII.

Time continued its review of the hopelessness of Stone's prescriptions by the following statement in Sedey's article:

"Yet for all the delicacy of Stone's presentations and the litany of stores and communities that have survived Wal-Mart, there is a brooding inevitability about the data in Stone's studies. Small communities of static population sooner or later lose business from their downtowns to Wal-Mart, which sinks its roots at their edges. Surrounding communities with no Wal-Mart are devastated. Independent stores in growing areas generally rise with the tide even with Wal-Mart scooping up a big share."

"Some of this was surely inevitable in our boiling capitalism: Wal-Mart, perhaps, has done no more than finish off bad shopkeepers and lazy combines. Its bright, clinic-clean stores are the boondocks miracle that Walton wrought."

"But few if any American enterprises, no matter how huge and momentarily successful, have enjoyed uninterrupted bliss. The betting in dozens of tiny stores around the country is that Wal-Mart will reach its own plateau. Despite the superb management team Walton left in place, his death will inevitably mean that the soul of his corporation will change. Community irritation at secretive and stand-offish ways of Wal-Mart managers, the "us" (Wal-Mart) against "them" (downtown merchants) attitude, and the modest involvement in public affairs and charities by store officers are building resentment."15

Wal-Mart's Successful Appeals from the Faulkner County Chancery Court. Opinion Delivered by Judge Robert L. Brown of the Arkansas Supreme Court on January 9, 1995

Judge David L. Reynolds' earlier decision in the case of *American Drugs Inc. v. Wal-Mart Stores*, filed on October 12, 199316 was reversed and dismissed by the Arkansas Supreme Court on January 9, 1995. 17

This appeal is classic in that hundreds of lawyers in various states in which mega-retail discount chains are located are reviewing the majority and minority opinions to determine whether additional state litigation on various predatory pricing and selling below cost cases are worth exploring; and whether any of the data provided in both the majority and dissenting opinions might throw light on whether similar predatory pricing cases may be in the purview and plans by either the U.S. Department of Justice and the Federal Trade Commission.

"Appellant Wal-Mart Stores, Inc. appealed from an order of the Chancery enjoining it from engaging in below-cost sales and assessing damages against it for violation of the Arkansas Unfair Practices Act. Wal-Mart argued on appeal: (1) that the Chancery Court erred as a matter of law in finding that it sold products below cost for the purpose of injuring competitors and destroying competition; (2) that the Chancery Court erred in considering individual articles to determine cost and profit rather than the entire product lines, or "market basket"; and (3) that the Chancery Court's interpretation of the Arkansas Unfair Trade Practices Act violated the Arkansas Constitution and the United States Constitution." 18

The Supreme Court of Arkansas agreed with Wal-Mart, on their first point and hence reversed the Chancery Court order and dismissed the case. **19**

The Chancery Court had earlier ascertained certain findings among others in coming to its decision against Wal-Mart. **20** These findings should be kept in mind when reviewing the successful appeal later in this chapter.

"That Wal-Mart determined the 'every day price' for its products at its headquarters in Bentonville, that store managers could not raise the price for a product above that set price, but that store managers could lower prices after monitoring prices charged by competitors in the market area without regard to the cost to Wal-Mart of individual items;"

"That the lowered price was frequently below Wal-Mart's cost of acquiring some of these products in highly competitive markets, and that this had occurred at the Conway Wal-Mart;"

"That the store had advertised individual items for sale below Wal-Mart's acquisition cost;"

"That Wal-Mart's stated policy in this regard was to 'meet or beat' retail prices of competitors, to maintain 'low-price' leadership in the local marketplace, and to 'attract a disproportionate number of customers into a store to increase traffic';"

"That by generating traffic, Wal-Mart could engender sales of other items which would offset losses from sales of below cost items;" and

"That Conway Wal-Mart's overall product line for pharmaceuticals and health and beauty aids was sold above cost, and its pharmacy was profitable."

The Chancery Court then stated:

"There is no direct evidence that the purpose of Wal-Mart's pricing policy or Conway Wal-Mart's implementation of the policy is to injure competitors or to destroy competition. However, such purposes may be inferred from the stated policy, the effects of the stated policy and other circumstantial evidence."

The court found that the appellee drug stores had lost sales to Conway Wal-Mart due to the below-cost policy, and that the growth in sales and profits for those drug stores had substantially decreased.

This author discussed previously in Chapter V, the major findings of the Chancery Court which ruled in the plaintiff's favor against Wal-Mart. While it may be somewhat repetitious to present these findings again, it is necessary for the reader to understand that the majority opinion in the Arkansas Supreme Court ruling which favored Wal-Mart and reversed the Chancery Court order. It is germane to an overall understanding of the pros and cons in the arguments before the Supreme Court when reviewing Wal-Mart's appeal.

The crux of the Chancery Court's order was as follows:

The Court found that the purpose to injure competitors and destroy competition cannot be inferred from below cost advertising and sales alone. There must be other proof of intent or purpose. A person's purpose or intent, being a state of mind, ordinarily cannot be proven by direct evidence, but may be inferred from other circumstances.

The Court found from the following circumstances the Conway Wal-Mart advertised and sold pharmaceutical and health and beauty products below cost for the purpose of injuring competitors and destroying competition:

1. The number and frequency of below cost sales.

2. The extent of below costs sales.

3. Wal-Mart's stated pricing policy - "meet or beat the competition without regard to cost."

4. Wal-Mart's stated purpose of below cost sales - to attract a disproportionate number of customers to Wal-Mart.

5. The in-store price comparison of products sold by competitors, including Plaintiffs.

6. The disparity in prices between Faulkner County prices of the relevant product-lines and other markets with more and less competition.

The Chancery Court then granted the injunction against below-cost sales. The chancellor also assessed treble damages as a penalty.

Majority Opinion of the Court Hearing the Wal-Mart Successful Appeal

Several items stand out in the Supreme Court's opinion:

"It is clear that mere proof of below-cost sales is not sufficient to prove a violation of the Act. The Chancery Court agreed with this but found an intent to destroy competition based on the extent, frequency, and number of those sales. Despite this finding, the Chancery Court failed to present details of Wal-Mart's practice regarding specific articles which led to the (alleged) violation. The individual items sold below cost, the frequency of those sales, the duration of those sales, and the extent of such sales were not revealed in the Chancery Court's opinion. And that is a critical point in this case."

"We discern no proof in the record of this case that Wal-Mart specifically intended to destroy competition with regard to any one article like Crest Toothpaste or Bayer Aspirin or Dilantin by selling below cost for a sustained period of time. What is evidenced is that Wal-Mart regularly would sell varying items below cost as loss leaders to entice people into its store and increase traffic. The loss-leader items would change on a regular basis. That strategy of selling below the competitors' price and even below Wal-Mart's own cost, which Wal-Mart admits to, is markedly different from a sustained effort to destroy competition in one article by selling below cost over a prolonged period of time. Our statute does not make loss leaders illegal, and for that reason the Chancery Court erred in inferring a purpose to destroy competition from a loss-leader strategy."

"We observe further that if the Chancery Court's statutory interpretation was correct, any business using the loss-leader approach to attract customers on a regular basis would be in violation of the Act. That kind of expansive interpretation runs directly counter to our oft-stated policy of strict construction of penal statutes in favor of those upon whom the burden will fall. Our statute plainly does not contemplate a prima facie case of predation based on loss-leader sales, and we are not willing to invalidate, and indeed render illegal, the technique of using loss-leader products or services without a clear directive from the General Assembly that is now the public policy of the State of Arkansas."

"Admittedly, there is a point where competitive pricing ends and predatory pricing begins. The Eighth Circuit Court of Appeals has discussed the difficulty in distinguishing the two in the context of the Sherman Act:"

"The difficulty, of course, is distinguishing highly competitive pricing from predatory pricing. A firm that cuts its prices or substantially reduces its profit margin is not

necessarily engaging in predatory pricing. It may simply be responding to new competition, or to a downturn in market demand. Indeed, there is a real danger in mislabeling such practices as predatory, because consumers generally benefit from the low prices resulting from aggressive price competition."

"There is also a distinct danger in inferring, first, specific predatory intent and, secondly, purposeful destruction of competition from sales below cost. That involves a double inference, as the Eighth Circuit Court of Appeals has recognized. There is no question that double inferences stretch a circumstantial case to its limits. But the Idaho Supreme Court has also recognized additional problems with too heavy a reliance on inferences to determine specific intent in an antitrust case."

"Nevertheless, a finding that a defendant has engaged in a particular predatory or illegal act, such as selling below cost, is not the equivalent of finding specific intent, but is merely a basis from which such intent may be inferred. Isolated or occasional instances of selling below cost, while predatory or illegal in nature, do not necessarily indicate a specific intent to monopolize. To hold otherwise would render the requirement of specific intent a nullity."

"In the case before us, the loss-leader strategy employed by Conway Wal-Mart is readily justifiable as a tool to foster competition and to gain a competitive edge as opposed to simply being viewed as a stratagem to eliminate rivals altogether."

"If the policy of this State is to render illegal the loss-leader tactic or to recognize a prima facie case of purposeful intent to destroy competition by below-cost sales in disparate articles that are changed on a regular basis, that policy should be clearly announced by the General Assembly in appropriate legislation. We hold that the Arkansas Unfair Practices Act, and specifically section 4-75-209 (a) (1), does not provide a sufficient statutory basis for the Chancery Court's inference of a specific intent to destroy competition based on the facts before us. We further hold that the Chancery Court erred as a matter of law in concluding that purposeful intent to destroy could be inferred under these facts. Because we decide this matter on the first point, (see case appeal) there is no need to address the other points raised by this appeal."

"Reversed and dismissed."

Dissenting Opinion Provided by Judge Walter Niblich, and Joined in by Collegial Dissenters, Judges A. Watson Bell and Barbara P. Bonds

The appellant appealed the lower courts decision by raising the following questions. The dissenting opinion answers the appellant's issues and questions:

1. The lower court's standard of review. </DD

"We (the dissenters) review Chancery cases de Novo and will not reverse a finding of fact, unless it is clearly erroneous. We consider the evidence in the light most favorable to the appellee (the pharmacists). The burden is upon the appellant to show the findings are erroneous."

2. Did the lower court's ruling support an inference of intent to destroy competition?

"For its first point of error, Appellant argues that the Chancellor used an improper legal standard to find the inference of intent to destroy competition. The analysis advanced by

Appellant required Appellees to establish two factors (a) conduct inconsistent with a lawful purpose; and (b) knowing conduct that creates a dangerous probability of achieving a monopoly. Appellant stated the Appellees did not establish these two factors, and any inference of unlawful purpose by the Trial Court is, therefore, improper and legally erroneous."

"Appellees responded to this argument by stating that the Chancellor not only used the proper standard but evaluated the evidence and reached the only permissible conclusion. The evidence showed that up to thirty percent (30%) of Wal-Mart's pharmaceutical sales were below cost; that Wal-Mart posted negative profit margins on their most competitive items in over one-half of the period under examination; and that many of the prices were below invoice or replacement cost without consideration of the additional factors mandated by Arkansas Code Ann."

3. Did the Chancery Court fail to employ the proper standard?

"Appellant's contention is unpersuasive on two points. First Appellant fails to identify the legal standard used and how the legal standard was improperly applied. Appellant also failed to articulate the alleged "proper legal standard" for this Court to use when interpreting the Arkansas Act. Second, Appellant provides this Court with a potential framework for analysis but provides no authority or source for this framework. If Appellant does not like the statute as it is written, its remedy is in the legislature not the courts. However this question . . . is not a matter to be addressed by the court but is within the province of the legislature . . . This is a matter which must be left to the sound discretion of the General Assembly."

4. Was there intent to destroy competition?

"Appellant's second argument concerns the inference of intent to destroy competition and that the enumerated factors identified by the Chancellor could not possibly support an unlawful inference. The burden is upon the appellant to show that the findings are erroneous. Despite their analysis of each factor, Appellants fail to articulate a legal basis to reverse the findings and conclusions of the Chancellor."

5. Was the Chancery Court's interpretation of the Arkansas Act inconsistent with legislative intent?

"Appellant argues that the interpretation of the Arkansas Act given by the Chancellor is inconsistent with legislative intent. They cite the Unfair Cigarette Sales Act, Arkansas Code Ann., 4-75-708 (b) (Michie 1991), in which the legislature inserted a provision that below cost sales were 'prima facie evidence of intent to injure competitors and destroy or substantially lessen competition.' Because the legislature failed to insert a comparable provision in the Arkansas Act, Appellant argues that non-inclusion of a similar phrase 'establishes that the General Assembly did not intend for unlawful intent to be inferred from below-cost sales'."

"The proper source of legislative intent is the language of the statute. The legislative intent of the Arkansas Act is expressed in Arkansas Code Ann. @ 4-75-202:"

"The General Assembly declares that the purpose of this subchapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented."

"The basic rule of statutory construction, to which all other interpretations must yield, is to give effect to the intent of the General Assembly. (Quoting *Roy v. Farmers & Merchants Insurance Company*, 307 Ark. 213, 819 S.W. 2d 2 (1991)). This court should give effect to the expressed General Assembly intent, and in doing so should reject the argument advanced by the Appellant. This Court adopted this language in *Beam v. Monsanto Company, Inc.*, 259 Ark. 253, 532 S.W. 2d 175 (1976), and should continue to construe the Arkansas Act consistent with the intent of the legislature as expressed in the statute.

6. What price benchmark should be used to determine if the Arkansas Act has been violated? Should the valuation of cost be "Market-basket" or "single product?"

This section of the dissenting opinion is very important in reviewing possible review of pricing and the Federal Trade Commission, and hence the author provides details of the dissenting opinion.

"Appellant's next point of error requires this Court to examine the language of the statute and resolve the question of what price benchmark should be used to determine if the Arkansas Act has been violated. Appellant urges this Court to adopt a 'market basket' valuation approach for the cost of goods. Under the 'market basket' approach, a court would be required to consider other factors in addition to the invoice cost of an item allegedly for sale below cost. Appellant's economist, Dr. Leonard White, testified that the cost of an item under the market basket approach would include the product, the atmosphere of the store, the parking lot, air conditioning, and a whole group of services that surround the purchase of the alleged below cost item."

"Appellees (American Drugs) urge this Court to adopt a 'single product' cost comparison to determine if sales below cost have occurred. Under the individual item approach, the invoice cost of a product becomes the benchmark to determine if sales below cost have occurred."

"The Arkansas Act has not been interpreted on this point. The Chancellor found Wal-Mart guilty of Violating @ 4-76-209 (a) (1), which states:"

"(a) (1) It shall be unlawful for any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state to sell, offer for sale, or advertise for sale any article or product, or service or output of a service trade, at less than the cost thereof to the vendor, or to give, offer to give, or advertise the intent to give away any article or product, or service or output of a service trade, for the purpose of injuring competitors and destroying competition."

"The first rule in considering the meaning of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language."

"When a statute is clear, it is given its plain meaning and we do not search for legislative intent. That intent must be gathered from the plain meaning of the language used."

"A literal reading of Arkansas Code Ann. @ 4-75-209 supports the Trial Court's use of a 'single product' cost comparison to determine if Appellant has engaged in below cost sales in violation of the Arkansas Act. The language of @ 4-75-209 refers to any article or product' and does not include consideration of the atmosphere of the store, the parking lot, air conditioning, and a whole group of services that surround the purchase of an item.

We should reject Appellant's market basket approach for establishing the price benchmarks."

7. Does the Arkansas Act violate the Arkansas Constitution?

"Appellant argues that the Chancery Trial Court's construction of the Arkansas Act bears no rational relation to legislative purpose and violates the Arkansas Constitution, Article 2, Section 2, which states:"

"All men are created equally free and independent, and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed."

"Appellant cites *Union Carbide & Carbon Corporation v. White River Distributors, Inc.*, 224 Ark. 558, 275 S.W. 2d 455 (1955) in which this Court ruled that the Arkansas Fair Trade Act was unconstitutional, as it established minimum prices. This Court said that 'the right to sell is a valuable property [that] cannot be denied.' Id. At 561. Appellant also cites *Noble v. Davis*, 204 Ark. 156, 161 S.W. 2d 189 (1942), in which a statute establishing minimum prices, commissions and hours of operations for barbers failed a constitutional challenge. Appellant states that this Court found that 'statute had no rational relation to the public safety, health or welfare.' Id. At 152-63. The same result should attain here. Appellant states 'that these cases establish that the Arkansas Constitution recognizes that each person has a right to sell his property and services at the price at which he chooses. That right should not be abridged except upon a compelling showing of public harm'."

"We review challenges to the constitutionality of statutes under the principle that statutes are presumed to be constitutional."

"The burden of proving a statute unconstitutional is upon the party challenging it."

"On appeal, if it is possible to construe a statute as to meet the test of constitutionality, we will do so. In searching for any rational basis, we ask whether the created classification has a conceivable reasonable relationship to the governmental action."

"Our task is merely to consider if any rational basis exists which demonstrates the possibility of a deliberate nexus with state objectives so that the legislation is not the product of a lawful purpose."

"The Arkansas Act addresses the creation of and perpetuation of monopolies. Appellees established at trial that Appellant sold goods below invoice cost and presented circumstantial evidence from which the Chancellor made a permissible inference of intent to destroy competition and harm competitors. Once a plaintiff has established that one of the enumerated conditions existed in a given market, this Court and any court under its jurisdiction must follow the dictates of the statute. Appellant merely alleges that the Arkansas Act as applied in this case is unconstitutional. It would require intellectual somersaults to declare that the Arkansas Act does not have any rational basis for its enactment by the Legislature. The task of the court is merely to consider if any rational basis exists which demonstrates the possibility of a deliberate nexus with state objectives so that the legislation is not the product of utterly arbitrary and capricious government and void of any hint of deliberate and lawful purposes.' The Court should find that the

Appellant failed to establish that there was no rational basis for the Arkansas Act as applied in this case."

8. Is the Arkansas Act preempted in federal law?

"Appellant argues the Arkansas Act is preempted by the Robinson-Patman Amendments to the Clayton Act, which specifically addresses the weapon of predatory pricing by monopolies. The doctrine of federal preemption is based upon the supremacy clause in Article VI, Clause 2, of the United States Constitution. State laws that 'interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution' are invalid." (*Gibbons v. Ogden*, 22 U.S.) (9 Wheat).

"The preemption test of *Gibbons v. Ogden* was expanded in *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 104 S.Ct. 2694, where the Court based preemption on four factors: whether Congress expressed a clear intent to preempt state law; whether Congress occupies the field so as to leave no room for the states to supplement; whether compliance with both the state and federal laws is impossible; and whether the state law stands as an obstacle to Congress' objective or purpose."

"The fact that the Arkansas statute is broader in scope than the Robinson-Patman Act does not invalidate the state statute, for in applying the rational basis test, the judiciary will not act as a superlegislature to question the means employed to accomplish the state objective."

"We find Appellant has not established that the Arkansas Act is contrary to or in opposition to any federal statute. Further, Appellant has not demonstrated that 'Congress expressed a clear intent to preempt state law; Congress occupies the field so as to leave no room for the states to supplement; [that] compliance with both the state and federal laws is impossible; and [that] the state law stands as an obstacle to Congress' objective or purpose'."

Concluding Comments in the Dissent

"We would hold that the Appellant has failed to prove that the Chancellor used an improper legal standard with respect to the inference of intent to injure competitors and to destroy or substantially lessen competition. We also find that the Chancellor could have found an intent to injure competitors from the evidence in the record and particularly from the testimony of David Glass, President of Wal-Mart Stores, Inc., who used language such as 'aggressive,' 'do whatever it takes,' 'kill the competition's momentum,' and 'war zones.' Appellant failed to establish that the Arkansas Act violates rights guaranteed by the Arkansas Constitution, Article 2, Section 2. Appellant also failed to establish that the Arkansas Act was preempted by federal law."

"For the foregoing reasons, I would affirm the trial judge's decision. Opinion written by Walter Niblock, Special Justice and Special Justices A. Watson Bell and Barbara P. Bonds join."

AUTHOR'S COMMENT

The Supreme Court, despite the strongly worded dissenting opinion reversed the Chancery Court's victory for American Drugs Inc., dismissed the original plaintiff's case and awarded in favor of Wal-Mart, the Appellant.

The author has provided great detail in the dissenting opinion because of references to the predatory pricing features of the Robinson-Patman Act; particularly with respect to the several different approaches to calculating below cost sales on (a) the "market-basket" approach or (b) the "single product" approach. The majority opinion in the Supreme Court reversal also acknowledged that: "Admittedly, there is a point where competitive pricing ends and predatory pricing begins." Further, Justice Robert L. Brown's majority decision in favor of Wal-Mart also pointed out that the Eighth U.S. Circuit Court of Appeals had discussed the difficulty in distinguishing the two in the context of the Sherman Act; i.e. "Competitive pricing" vs. "Predatory pricing." Moreover, while a finding that a defendant has engaged in selling below cost is not the equivalent of finding specific predatory intent; nevertheless, it could be a basis from which such intent might be inferred.

CHAPTER VII

PREDATORY PRICING - PART II
THE ARKANSAS WAL-MART APPEAL, AS WELL AS A COMPARISON OF STATE V. FEDERAL ALTERNATIVES

The federal courts have interpreted predatory pricing statutes broadly on the grounds that there is insufficient evidence below-cost pricing hurts competition. This non-enforcement has given business more freedom to compete on prices. In response, plaintiffs in predatory pricing lawsuits are increasingly turning to state courts in the hope of drawing upon a different philosophical tradition.

In the face of strong federal antitrust laws (see Chapter V), nevertheless, there has been substantial interpretation of antitrust law as discouraging predatory pricing lawsuits. However, recently, both the Justice Department and the Federal Trade Commission have become more active in their reviews of the increasing powers of mega-retail discount chains as well as vertical restraint cases involving manufacturers and retailers.

In some quarters, there are anti-trust attorneys who do believe that the U.S. Justice Department has not pressed forcefully on vertical restraint cases. However, it is a fact that both the Justice Department and the FTC have brought resale price maintenance cases against manufacturers in the last five years, and both have had active investigations of other vertical restraints such as exclusive dealing (as in the Toys "R" Us case discussed below).

This changed with the recent accusation by the FTC accusing Toys "R" Us of antitrust violation by using its power to keep competitors' prices high and reserving the most popular toys for its own stores. The FTC has accused the chain of:

> "bullying major toy makers onto deals that kept the toys from being sold at low-priced warehouse stores, such as Sam's and Price Clubs, thereby curbing competition."
>
> "Toys R Us has used its clout to force Mattel, Hasbro and other toy makers into arrangements that cut out competition and 'forced consumers to pay more than they otherwise would have for toys,' said William J. Baer, director of the FTC's Bureau of Competition."1

The plaintiff anti-trust bar was indeed pleased when it appeared that Assistant Attorney General Anne Bingaman would provide new confidence in the antitrust activities in the Justice Department. She and her department seemed to be on the verge of abandoning the Reagan guidelines on several aspects of antitrust activities. Ms. Bingaman was regarded as a tough-talking, pragmatic chief of the antitrust division of the Justice Department. 2 However, Ms. Bingaman suddenly resigned effective November 1996, and for the present it doesn't appear that enforcement policies with regards to the Justice Department are not likely to change in the near future.

Had Ms. Bingaman remained she would have been strong company for Robert Pitofsky, a leading antitrust scholar and author of several papers in the early 1990's, which called for the re-invigoration of antitrust law. Pitofsky has been confirmed by the U.S. Senate as Chairman of the Federal Trade Commission. 3 Antitrust lawyers say that Mr. Pitofsky, a former Federal Trade

Commission Commissioner and the agency's former Director of the Bureau of Consumer Protection, should be regarded as a powerful chairman. In his writings, Mr. Pitofsky, a former Law Dean at Georgetown University Law Center, has called Federal Trade Commission enforcement of the Robinson-Patman Act, which prohibits price discrimination, as "exceedingly modest, during the Republican years." Mr. Pitofsky was formerly of Counsel to the Washington, DC firm, Arnold and Porter. 4 It is this author's belief that predatory pricing may soon be reviewed in the near future by such an aggressive appointee as Mr. Pitofsky.

Recently, Charles P. Kocoras, U.S. District Judge for the Northern District of Illinois has had before him a class action involving manufacturers of brand name prescription drugs. 5 This case, which was referred to in Chapter V, has become very complicated due to the inability to have all plaintiffs agree to be part of the certified class, while others are involved in pending actions as individual plaintiffs.

Specifically, the individual plaintiffs argued that the class notice must disclose the following:

A. "That the class actions allege only violations of the Sherman Antitrust Act."

B. "That there are also pending individual actions alleging price discrimination in violation of the Robinson-Patman Act, as well as violation of the Sherman Act," and

C. "That the Robinson-Patman Act claim is not being pursued in the class action and would have to be pursued, if at all, in an individual action."

Judge Kocoras, dismissed the individual plaintiff's motions and granted the class plaintiffs proposed motion, "as the best notice practicable under the circumstances." 6 (F.R. Civ. p 23(c)(2))

It may be observed that small drug stores see the enemy as the drug manufacturer, rather than the big retail chains. They may have a compelling case against the manufacturers. In an antitrust case the manufacturers may have to prove not only how they can justify selling at lower prices to higher volume customers, but, even more difficult, is how they can justify selling at lower prices to lower volume customers -- HMO's, hospitals, etc. Legal victories may come too late or even after-the-fact for many sole proprietor drug stores.

Inasmuch as when one observes the inability of plaintiffs to use federal agencies rather than state agencies in predatory pricing disputes, it is interesting to note that in the late 1970's, several faculty members at the Harvard Law School broke new ground with their "average variable costs" (AVC) rule for predatory pricing lawsuits. Their AVC rule would create for the firm that the legal price was its marginal cost, rather than total cost. Critics deemed the AVC rule as a kind of "monopolist's heaven, where wolves are a metaphor for sheep." 7

Predatory Pricing

Predatory pricing is the practice of selling a good or service at a loss in order to drive competitors out of the market, and thereby increase the market power of the predator firm, allowing the firm subsequently to raise prices above the levels that prevailed before the predatory pricing began.

Firms engage in predatory pricing in the hope of using the resulting increased market power to ultimately raise prices and thereby increase their profits.

On the infrequent occasions when predatory pricing does occur and succeed, it has a pernicious effect on the economy because it leads to the formation of monopolies. 8

While it might appear that it is difficult to create a monopoly in retailing; nevertheless, the recurring sights of destroyed "Main Streets"; the decline of formerly prosperous malls, now loaded with store vacancies; and the elimination of the small retailer in the city neighborhood all attest to the formidable power of the mega-retail discount chains. Over time, the increasing power of the chains and the decline in the number of viable small retailers results in social as well as economic inequities.

Price discrimination allows firms to sell products at high prices to customers who are willing to pay them without simultaneously losing sales to customers unwilling to pay the higher prices for them. These discriminating behaviors can take place between manufacturer and mega-discount retailer; between manufacturer and wholesaler; or between manufacturer and small retailer. In retailing, it has often become impossible for a small retailer to obtain a source of supply, let alone at a price that will permit competition with a mega-retail discount chain.

Intentional price discrimination is essential to support a charge of predatory pricing. Predatory pricing with malice to eliminate competitors and thus enjoy a subsequent recoupment is indeed difficult to prove. Many people think that selling below cost is somewhat nefarious. Since firms are in business to make a profit, the thinking goes, they could not possibly sell below cost intentionally unless they were engaging in predatory pricing. In fact, selling below cost as a "loss leader" is a form of advertising and not necessarily indicative of predatory conduct. All in all, this is a difficult subject, and one well worthwhile for Congress and the FTC to explore further.

Congressional Research Service, Library of Congress Report on Predatory Pricing and State Below Cost Statutes 9

After reviewing the Chancery Court opinion favoring the plaintiffs, in American Drugs, Inc. v. Wal- Mart Stores, Inc. 10, and before the eventual reversal in Wal-Mart's favor upon appeal to the Arkansas Supreme Court, the Congressional Research Service(CRS) researched the question of predatory pricing on "the basis for predatory action." Were the standards different on a state basis versus a federal basis?

CRS made the distinction very clear between the state objective and the federal objective in the following statement:

> "That difference in emphasis -- between 'competition' (the Wal-Mart court) and 'competitors' (the other courts cited) reflects precisely the distinction usually made between the federal concept of predatory pricing and state below-cost sales statutes. Whereas the federal antitrust laws are directed at competition and maintaining a competitive marketplace, the state statutes, which are variously denominated as Unfair Sales Acts or Unfair Practices Acts, were for the most part enacted during the Depression in an attempt to stem the tide of small business failures. Federal courts that have construed state law claims have often done so by emphasizing the federal considerations." 11
>
> "As for example, the Wisconsin Unfair Sales Act was enacted in 1939 to prevent large retailers from selling below cost, an 'act of unfair competition' which was seen as one of

the primary causes of small business failures . . . [It] is very similar to most unfair sales acts passed in the 1930's." 12

The federal courts when involved in state pricing statistics still emphasize federal consideration. Note the court's statement in the Seventh U.S. Circuit in 1989:

> "Competition is a ruthless process. A firm that reduces costs and expands sales injures rivals -- sometimes fatally. . . . These injuries to rivals are by-products of vigorous competition, and the antitrust laws are not balm for rivals' wounds." 13

J.E. Rubin, Esq. of the Library of Congress research staff also points out the rationalization behind the state and federal interpretations of predatory pricing:

> "Another way to differentiate between the federal and state unfair competition emphasis is to recognize that the federal concept of predatory pricing, which is included in the prohibition against monopolization (or attempted monopolization), is analyzed under the "rule of reason"; the state sales below cost provisions are more likely to be per se laws." 14

What Constitutes Predatory Pricing? (Congressional Research Service Analysis) 15

The Congressional Research Service in the following memorandum reviews various aspects of predatory conduct and predatory pricing in such a manner that the author believes there is an overlap in alleged predatory pricing conduct that would permit legal review under either state or federal statutes, such as the Sherman, Clayton and/or Robinson-Patman Acts.

> "The basis for a designation of predatory conduct generally, and predatory pricing specifically, is the conclusion that the alleged predatory conduct allows a market participant to succeed, not on the merits of his product or performance vis-a-vis his competitors (e.g., efficiency), but only by harming his competitors."16

Courts vary in the standards they apply to pricing practices in order to determine whether pricing is "predatory," but perhaps the most accepted gauge is the courts' assessment of whether the price-cutter could, practically, later recoup his losses if he remains in the market as a monopolist: 17

Rubin added:

> "A firm engaged in predatory pricing bites the bullet and forgoes present revenues to drive a competitor from the market. Its intent, of course, is to recoup lost revenues through higher profits when it succeeds in making the environment less competitive."18
>
> "The success of any predatory scheme depends on maintaining monopoly power for long enough to recoup the predator's losses and to harvest some additional gain."19
>
> "Will the predator recoup? Will the competitor(s) survive?"
>
> "If rivals survive or entry [to the market] occurs [thus maintaining or creating competition for the alleged predator/monopolist], not only will predation be unsuccessful, but that very prospect reduces the likelihood that a challenged low price is in fact predatory." 20

It is obvious that pricing on the part of several mega-retail discount chains has contributed to the failures, bankruptcies and disappearance of many competing "Main Street" stores, as well as, the increasing vacancy and abandonment rate in many formerly prosperous and attractive malls and strip centers. It is certainly not the competition of the small retailer that is putting the other small retailers out of business. It is the formidable buying and pricing power of the mega-chains -- that often creates a situation where a legitimate retailer, losing his wholesale resource, has to buy at the lowest price at a warehouse club -- generally associated with a mega-retail discount chain. Can it be inferred that the "Main Street" failures result from the growing power of the mega-chains. Is this power a form of monopolization?

Rubin in the CRS Study raises an umbrella over predatory conduct which might fit into the federal jurisdictions, i.e., Sherman, Clayton and/or Robinson-Patman Acts. Rubin states:

> "The fact that predatory pricing at the federal level is subsumed under the 'monopolization' rubric has one other significant consequence -- inasmuch as there is no 'no fault' monopolization, and legitimately realized monopoly positions are not punished, market participants must specifically intend that their behavior injure competitors. Intent will not be lightly inferred, and pricing policy is extremely unlikely to produce such an inference in the absence of other, strong evidence. Many state below-cost pricing statutes permit the inference that advertisements to sell below cost, or sales -- even one -- below cost, constitute evidence of an intent to injure competitors or destroy competition."21

Although the court in the lower Arkansas Wal-Mart Chancery Court case stated that it could not infer either a purpose to injure competitors or to destroy competition from the fact that the defendant store 'engaged in below cost advertising and sales,' it did infer such intent from, inter alia, the fact that there was a "disparity in prices between Faulkner County prices of the relevant product lines and other markets with more and less competition." 22

Price variation which is dependent upon market competition is generally considered evidence that markets are functioning properly. Similarly, no inference of harm (injury) flows from even a proven violation of the Robinson-Patman Act, the federal statute that is specifically addressed to price, and which prohibits price discrimination. 23

Payne v. Chrysler cited in Footnote 22 held that the Robinson-Patman Act did not allow for automatic damages upon proof of a violation: A plaintiff must prove the violation damaged him. It appears that were a company prosecuted under the Sherman Act, that monopoly and pricing would be directed against "competition"; but under Robinson-Patman, it might involve damage to the "individual competitor."

Should Complaints Against Predatory Pricing Be Filed under State Laws or Federal Laws?

Rubin provides a balanced analysis as to the way to go:

> "Just as there were studies to indicate that state Fair Trade (resale price maintenance) laws did not serve their purported purpose of protecting small retailers against the pricing practices of 'discounters,' there is no evidence to show that state below-cost pricing statutes serve small business positively; the studies found no discernible difference in the number of small business failures between those states which had resale price maintenance laws and those which did not. Most states have enacted 'baby' Sherman Acts which track the federal statute, and the below-cost sales provisions, themselves, are often

> contained in more general pricing statutes that are similar to the federal Robinson-Patman price discrimination law -- either of which may be used advantageously to challenge truly predatory pricing behavior. Accordingly, states must weigh the purported benefits of below-cost pricing statutes and their emphasis on competitor protection against assessments of the competition policy inherent in the federal antitrust laws." 24

Rubin added further:

> "State Fair Trade laws were also considered by proponents to be protection for small retailers against predatory pricing; they were rendered ineffective in 1976 when Congress repealed the authority for them by deleting the exception in the Sherman and Federal Trade Commission Act provisions which are used to prohibit price fixing (Consumer Goods Pricing Act of 1975, P.L. 94-145)." 25

This author believes after a review of materials in Chapters VI and VII that it will be extremely difficult, but not impossible, to demonstrate that the "Big Box" warehouse discount chains engage in the types of anti-competitive activities which are proscribed by federal antitrust laws. Although it is possible that government investigators could find appropriate evidence of such conduct, our sense is that such an investigation is unlikely to take place unless some evidence is supplied in the beginning. Any request for investigation ought to come from an appropriate congressional committee concerned with the economic future of the nation and its retail component.

Additionally the government ought to look to the Tax Code as a means for limiting some of the alleged "Box Store" abuses which result in a type of "corporate welfare." There will be more specific recommendations made on this approach later in this study. Concerns over benefits provided to these chains, by the local governments and state governments in California, New York and Illinois have already been revealed by quotations from respondents in Chapter IV.

"The appointments of Bingaman in Justice and Pitofsky in the Federal Trade Commission may begin to restore more active enforcement of the antitrust laws that were "more or less abandoned during the Reagan years" stated Robert S. Stein. 26

In the same article, Charles Rull a former Reagan antitrust chief was quoted as saying:

> "Bingaman comes from the more traditional Democratic school . . . . They feel that (during the 1980s) antitrust didn't pay enough attention to protecting the little folks and let too many mergers through." 27

Bingaman had testified at her confirmation hearings that the Supreme Court should reverse its 1980s decision involving the Japanese electronic giant Matsushita, a decision that made it very difficult "to prove predatory pricing." 28

As the author pointed out in this chapter and Chapter VI, the Wal-Mart case based on predatory pricing has aroused national interest in the subject and the state cases on predatory pricing may yet stimulate further review of the federal regulatory powers provided in the Sherman, Clayton, Federal Trade Commission and Robinson-Patman Acts.

The Stein article also stated that, "Some antitrust experts note that companies can bring predatory pricing suits against others as a means of 'back-door protectionism'." 29

Some economists now endorse recent and relatively expansive theories of price predation, 30 despite the theorists who provide the traditional economic analysis that "predatory pricing schemes are rarely tried, and even more rarely successful." 31 Nevertheless the condition of this nation based upon the disruption of "Main Street" and of the malls and the neighborhood infrastructure, deserves a review and update of what is predatory pricing?

Predatory pricing was certainly on the minds of the delegates at the 1995 White House Conference on Small Business when one of the top recommendations addressed this very issue. Small businesspeople were particularly concerned with the large retailers' ability to demand favorable pricing from manufacturers and service providers. They call for stronger laws action by the President in this area. Their recommendation follows:

> 141. "Small business cannot compete with large businesses who use their economic power to extract unfair competitive pricing from manufacturers and service providers. Antitrust laws should be strengthened and enforced to prohibit abuses including unfair vertical integration, tying of pricing and product purchases, and predatory pricing tactics. The President should appoint a presidential commission on competition to study the enforcement and impact of the federal antitrust laws ensuring the survival and diversity of small businesses." 32</DD

Finally, in the predatory pricing area, the Supreme Court has steadfastly refused to resolve the debate that flourished in the mid-1970's over the proper standard of cost by which to determine whether prices are predatory.33 Instead, the Court has embraced a model of predation under which the predator expects to lose money during the predatory campaign, drive the competitor from the market, and more than recoup its losses thereafter. The Court has focused on the prospects for recoupment, the "back-end" of the scenario, and if the predator could not expect profit, the prices will be assumed to be nonpredatory.34 Consistent with the analysis, the Court will deem implausible a claim that a firm with a small market share engaged in predatory pricing, relying upon tacit collusion to recoup losses, for such a strategy would not likely be profitable. The court has largely repudiated the suggestion in Utah Pie35 that price discrimination undertaken to injure rivals in a concentrated market that merely contributes to the erosion of price levels is illegal, and it has suggested that the standards for illegality under the Robinson-Patman Act and the Sherman Act are all but identical. 36

The author's references to the U.S. Supreme Court's views on predatory pricing are germane indeed to this study. Perhaps one cannot prove that the several mega-retail discount chains individually lack intent to destroy their competitors or to recoup -- nevertheless it is obvious that with the destruction of the small retailers that a negative result, harmful to the national economy has occurred, regardless of the intent. Then why not have Congress and the federal departments and agencies reviewed the problem as it obviously exists. Further, in the author's previous footnote 34, the Supreme Court suggested that the standards for illegality under the "Sherman Act and the Robinson-Patman Act are all but identical."

A Review of Certain Questions Raised by the Author in Chapter V

> 1. In the author's discussion of the Federal Trade Commission Act and the Clayton Act, it was stated that the Federal Trade Commission Act created the FTC . . . to proceed against "unfair methods of competition in interstate or foreign commerce" and that the undefined nature of the latter power resulted from the view that businesses would always find new ways of suppressing competition that did not violate any given list of prohibited

behaviors. The act empowered the FTC to proceed against each new form of unfair behavior as it appears and is recognized as a problem. 37 In lay language it looks like the FTC can and should look for new behaviors, which may or may not have been previously prohibited, but nevertheless raise serious questions about the economic welfare of the United States.

2. In Chapter V, the author pointed out that in the 1920's and 1930's the large chain retail stores rose to prominence and the market power of these firms entitled them to negotiate lower prices from manufacturers than the traditional small independent retailers could obtain. This led to pressure on Congress to help the small retailer and it was generally argued that the Clayton Act had failed to prevent price discrimination; so that pressure led to the passage of the Robinson-Patman Act in 1936.38 Hence, Robinson-Patman was to correct the failure in the Clayton Act and is a vehicle for reviewing possible predatory pricing cases.

3. There appears to be some doubt legally as to whether "location based" price discrimination is or is not prohibited by the Robinson-Patman Act. There is some legal thought that price discrimination is unlawful as Robinson-Patman makes price discrimination unlawful as between different purchasers of same commodity (i.e. chain X has one price in Atlanta and a lower price for the same product in Atlantic City) . . . does this justify the charge of "discrimination!"? Under the Robinson-Patman Act, the illegality is a purpose to "injure, destroy or prevent competition. Do the failures of hundreds of small businesses in the United States warrant a review under Robinson-Patman? Are we discussing a "competitor's" failure or "competitions'" failure? How much of a market, say in groceries or home improvements, must a discount chain have to be reviewed by FTC and Robinson-Patman? First, the plaintiff must establish that the company is pricing below average variable cost, and second, that the company has a reasonable prospect to recoup the investment below cost prices. It's tougher, therefore, for a private litigant to bring and prove predatory action under the federal law, but a government agency has the staff and resources to make these complex investigations possible. On the other hand, there are legal theorists who believe Robinson-Patman does not require a market share floor as a monopolization charge does, and the predatory pricing issues apply only to charges by a seller that its competitor has harmed the plaintiff by discriminating among the competitors' customers.

The issue here is who is the consumer that is being discriminated against. Is it the mega-retail discount chain that is discriminating against buyers in one location or another? Or, is it the manufacturer or food distributors that is discriminating against such competing chains as Wal-Mart, Target, Kmart or other smaller retailers.

4. In persuading any government agency to investigate antitrust implications of "Big Box" warehouse operations, a market definition is very important (see advice from Davis, Cowell & Bowe) in Chapter V. A more narrow market definition is easier to support a monopoly power presumption. Certainly a market share of 60% or 70% should be a strong indicator that the market is no longer free for small retailer viability, particularly when large chains buy "direct" from manufacturers and small retailers are unable to do so. Can a new businesses enter the market strongly under the influence of a mega-retail discount chain? Could he survive? Could he buy merchandise from a wholesaler or manufacturer?

5. Chapter V also pointed out that aggressive pricing was not necessarily indicative of monopoly power. It is the abuse of power that should be reviewed.

6. In Chapter V, the author reviewed the Brook Group Ltd. cases and the Supreme Court indicated that whether a claim alleges predatory pricing under Section 2 of the Sherman Act or price discrimination under Robinson-Patman, the essential prerequisites to recover remain the same. This is correct where the discrimination charge is brought by the seller's competitor rather than its customer.

7. Manufacturers can also be targets of pricing suits. Increasingly there have been charges that pricing arrangements between manufacturers and distributors have been unchallenged. For example, while vertical price fixing has not been a significant problem in the grocery industry with regard to food items, it could have an effect on stores that have been stocking more non-food items to compete on a basis of "one-stop" shopping offered by the nation's mega-retail discount chains. Increasingly, courts have been demanding more than demonstrations of market concentration as antitrust violations. They want broader economic analysis with proof of harm to consumers. Most federal price discrimination suits have been brought against manufacturers.

Suits Are Now Being Filed Against Manufacturers

As an illustration of actions against manufacturers, a suit filed on March 10, 1993, in Arkansas by 135 independent Arkansas pharmacists in the U.S. District Court claimed that 42 of the world's largest prescription drug makers were illegally setting prices on their products. The suit, according to Tyler Treadway39 is one of hundreds filed on behalf of more than 50,000 pharmacists throughout the nation. Most of the lawsuits eventually will be consolidated by the Judicial Panel in Multi-District Litigation and sent to U.S. District Judge, Charles Kocoras in Chicago, Illinois. The trial is scheduled to begin on January 5, 1996, and Judge Kocoras already denied a motion by the manufacturers to dismiss the suits. The Arkansas part of the federal case charged drug manufacturers with violating: (1) The Federal Clayton and Robinson- Patman Acts; (2) The Federal Sherman Act; and (3) alleged violations of state laws.

The Arkansas federal suit followed one in California filed in August 1993, where 680 independent pharmacists went out of business that year and a second lawsuit filed in October 1994, in Pennsylvania where hundreds of pharmacists had closed doors in recent years. The Arkansas attorney noted that the federal cases were quite different from the recent state case where a group of Conroy, Arkansas pharmacists had sued Wal-Mart in the Faulkner County Chancery Court.

Booksellers File Suit Against Publishers

Just as the pharmacists filed a federal suit against manufacturers and distributors, so did members of the American Booksellers Association(ABA) file an antitrust lawsuit. On May 27, 1994, the ABA filed a suit against five publishers in the U.S. District Court in Philadelphia. The suit, which followed a year-long investigation on the part of the ABA alleged that the ability of ABA member bookstores to compete had been "increasingly harmed by unlawfully favorable deals, prices, and promotional allowances" that these publishers have given to a limited number of large bookstore chains and discount outlets. 40

The plaintiff, the ABA, on behalf of its members, requested that the Court provide declaratory and injunctive relief and restrain defendants Houghton Mifflin Company, Inc., Penguin USA, Inc., St. Martin's Press, Inc., Hugh Lauter Levin Associates, Inc., and Rutledge Hill Press, Inc. from continued unlawful discrimination in prices and promotional allowances in violation of the Robinson-Patman Act. 41

According to the Plaintiff, the ABA brought this lawsuit on behalf of its membership, comprised of over 4,500 separate members operating general interest bookstores across the country. The vast majority of ABA's members were independently owned businesses operating individual bookstores. As they have done for generations, these bookstores provide books and services to meet the needs of the general reading public in communities where they were located. Many of these independent bookstores offer broad or specialized selection and services that are not generally available in larger chains of bookstores.

According to American Booksellers:

> "The ability of these bookstores to compete had been increasingly harmed by unlawfully favorable deals, prices, and promotional allowances that certain book publishers, including defendants, had given to a limited number of large chains of bookstores and discount outlets in the country. By depriving independent bookstores of discounts and promotions made available to large chains and discount outlets, defendants damaged independent bookstores and threatened their capacity to compete in the marketplace. These threats to independent bookstores in turn threatened the richness and selection of reading material that was available to the American reading public. Through the complaint, plaintiff ABA sought to obtain for its members the level playing field required by antitrust laws of the United States." 42

Specifically mentioned in the lawsuit were major retail book chains as well as warehouse clubs:

> "The two largest chains of retail bookstores in the country are Waldenbook/Borders and Barnes & Noble, which together operate over 2,000 retail bookstores under various trade names (collectively referred to herein as 'the Chains')." 43
>
> "The two largest chains of discount outlets known as 'membership warehouse clubs' or 'buying clubs' are Price Club/Costco and Sam's Club (collectively referred to herein as 'the Buying Clubs')." 44

The complaint also alleged among other things, that the defendants routinely made payments to bookstore chains so that the chains would advertise the defendants' books; would place the defendants' books in favorable places within the stores; and would aggressively promote the sale of defendants' books, without making such payments proportionally available to all booksellers. 45

The complaint also alleged that the defendants sold certain books to "warehouse buying clubs" or their suppliers at wholesale discounts far beyond those offered to retail bookstores. The discriminatory discount granted by defendants enabled warehouse clubs to sell the books to the public at prices lower than the lowest wholesale prices defendants offered to retail bookstores. 46

While admittedly the Booksellers case is under Robinson-Patman and does not involve the section of the act having to do with predatory pricing and recoupment; nevertheless, the attention now given to arrangements between manufacturers (or publishers) and chain customers reflects a

serious plight on the part of the independent bookseller, not too different from the plight of the small merchandise retailer who can't receive the huge discounts from the manufacturer for mass purchases, and who often can't find a supplier to sell to him. Hence, many retailers have to buy in Sam's Clubs, owned by Wal-Mart or in other warehouse clubs.

Further the warehouse discount chains are also involved in the American Booksellers case as well. The warehouse buying clubs, Price Club/Costco and Sam's Club have been mentioned prominently in this study and while they are not a principal legal target of the lawsuit, it does provide some relevancy to an overall discussion of Robinson-Patman.

According to the Plaintiffs, because of price discrimination and disproportionately favorable promotional allowances, payment, and programs, and the advantages and extra profits that these allowances, payments, and programs provided to the Chains and Buying Clubs, some smaller and independent bookstores, including current and former ABA Members, have been harmed. The Plaintiffs indicated that the discrimination in favor of the Chains and Buying Clubs had caused, and will continue to cause unless enjoined, irreparable injury to the business and property of ABA's members and had lessened competition in the book retailing marketplace and threatened to reduce the selection of books available to consumers. 47

The dismissal by the FTC of its lawsuits against major publishers years after the FTC staff negotiated consent decree illustrates how difficult these price discrimination cases are.

Has Home Depot Utilized Predatory Pricing Techniques?

In March 1995, a story by Chris Roush, staff writer with the Atlanta Journal and Constitution48 quoted critics of Home Depot's pricing policies. He quotes a John Connolly of J&S Paint and Stein in Mableton, Georgia, who paints houses throughout the state and buys his supplies from Home Depot. Recently, Connolly claimed that he noticed price differences between Home Depot locations in Atlanta, where the chain dominated the home improvement market, and stores in Augusta and Savannah, where it competed with other chains.

> "Paint prices in Atlanta are higher, he claimed. Which means he's forking out $2,500 more per year when he buys supplies in the metro area." (This is Roush quoting Connolly) "When they control the market, they gouge the prices" claimed Connolly, "I don't want to get into a fight, but it's predatory pricing in action." 49

According to the writer, Chris Roush, "It's not the first time Atlanta-based Home Depot has been accused of unfair pricing. As it enters new markets - and increases its domination in the Southeast - competitors have accused the nation's largest home improvement retailer of so-called predatory pricing designed to put them out of business." 50 On the other hand, Home Depot defended its pricing practices, saying its policy was to compete based on price.

"It's not a very complicated policy," said Home Depot spokesman, Jerry Shields. "We have the lowest prices in every market we do business in. Or we'll beat someone's prices if it comes to our attention. We're not saying you won't find a lower price; we'll just have to adjust our prices." 51 Shields also said that prices may also vary between markets because of fluctuations in transportation and other overhead costs.

Roush further stated in his article that in November 1994, Home Depot was accused of violating Utah's Unfair Trade Practice Act. Standard Plumbing company Inc., which operated 14 stores,

filed two suits alleging that Home Depot was selling supplies below its cost. Roush further reported that Home Depot quickly settled the lawsuit in an out-of-court agreement in which it admitted no wrongdoing. And, according to Roush, the chain agreed to stop selling plumbing supplies in Utah below its invoice price. 52

The Atlanta Journal also quoted Kenneth Smith, an analyst from Interstate/Johnson Lane, who had conducted a study in 1994 comparing prices of 35 products at a Home Depot in Atlanta with those at a store in Greensboro, NC, where it competed head-to-head with Lowe's, another chain. Smith, pointed out that in Atlanta, the 35 items totaled $625.37, or were 9.7% higher than the $568.96 they cost in Greensboro. "They don't have uniform prices," said Kenneth Smith. He believed that it was not Home Depot's intention to kill competitors; however, he was convinced that Home Depot could buy in a lot bigger volume than the small firms. 53

Big Customers' Late Bills Choke Small Suppliers

Previous comments by the author in this study indicated that small retailers were having trouble buying from national or regional wholesalers and manufacturers because of the mass discounts offered to the mega-chains by both large and small suppliers. If, as reported, wholesalers and manufacturers were in fact being paid later than traditionally, it would contribute to having a negative impact upon the small retailer. Eventually there will be less suppliers available to sell to small retailers.

A Dun and Bradstreet Corporation Survey 54 released in 1994 indicated trends portraying continued weaknesses in the bill paying capacity of small retailers. Dun and Bradstreet has been tracking such behavior for over four years. The survey canvassed mostly small suppliers -- recipients of late payments and the firms that can least afford delays.

Lawrence Winters, a Dun and Bradstreet assistant vice president, stated that some large companies were routinely paying their bills as much as 90 days after receiving invoices routinely due in 30 days.

Smaller suppliers typically accept such terms "out of desperation to get business," Mr. Winters said, "They don't realize the implication of the decision until it hits them.." 55 Blinded by the prospect of a big new customer, many entrepreneurs forget "a sale is not a sale until you collect the money," 56 adds Paul Mignini, Jr., President of the National Association of Credit Management. Most of its 35,000 members are credit managers at small firms.

Does the Size of the Retailer Permit a Mega-Discount Chain Retailer the Right to Cancel a Previously Booked Order at Any Time Prior to Shipment?

As the power of the mega-chains continues to be more formidable, manufacturers and suppliers are bound to become weaker. As these suppliers turn their attention to the larger customer, they begin to lose the autonomy and sense of independence that a manufacturer possesses when it has a diversified list of many customers both large and small.

As "partnering" of sorts continues to interest the largest American corporations, small retailers continue to weaken in terms of their ability to buy from many resources formerly available to them.

A clause in Wal-Mart Stores' standard purchase contract that gives the discounter the right to cancel an order anytime prior to shipment, was found "substantively unconscionable," in a recent decision in New York State Supreme Court. 57

In a decision denying Wal-Mart's motion to dismiss a suit by Jonathan Cass, Ltd., a women's apparel manufacturer and seeking damages for cancellation of orders for some 150,000 items of merchandise, Justice Beatrice Shainswit said that among other defenses, Wal-Mart claimed that because of the clause, it had "the absolute right to cancel." 5858

The Court stated:

> "On its face, this provision which gives Wal-Mart the right to unilaterally and arbitrarily cancel its orders at any stage of production prior to shipment regardless of the expense its vendor has incurred, is so grossly unfair as to be substantively unconscionable, that is, unconscionable by its terms." 59

The court continued:

> "Given Wal-Mart's size and buying potential versus the relative size of its vendors, the contract formation process must be examined as well to determine whether the procedural elements of unconscionability (i.e., unequal bargaining position) are sufficiently present so as to bar enforcement of this clause for unconscionability." 60

This issue, the court said would have to be determined at trial. Merchandise involved in the action was ordered from June through October 1990, and later refused for various reasons including late deliveries and failure of the merchandise to conform with specifications. (Kenneth A. Schulman of Kreindler & Relkin represents the plaintiff.)

The author of this study has not yet seen the results of the trial ordered by Judge Shainswit. Obviously Wal-Mart may have had strong reasons for refusing shipment of the merchandise from Cass, such as lateness in delivery or lack of conformity to requisite specifications. Nevertheless, the Judge in the pre-trial activity in the Cass v. Wal-Mart case was concerned about whether or not unequal bargaining power may be sufficiently present to bar enforcement of a cancellation clause for "unconscionability." In this case the buyer is possibly one of the largest corporations in the United States in terms of volume and number of employees. Wal-Mart's motion for summary judgment was denied by the court (J. Shainswit).

Wal-Mart appealed almost immediately to the appellate Division of the New York Supreme Court. On June 6, 1995, the five judge panel unanimously affirmed the lower court's decision in denying the defendant's motion for summary judgment discussing the complaint, the case will therefore go back to trial.

In the August 1994, U.S. House of Representatives Small Business Committee Public Hearings, the Committee Lashed out at the Mega-Discount Super Store for Hurting Small Businesses and Entire Communities with Predatory Pricing, Unfair Labor Practices and Market Saturation

In Joyce Barrett's article on August 11, 1994, in Women's Wear Daily 61, she reported on the first Congressional probe of the retailing phenomenon that was changing local markets

nationwide. The mega-stores were derided of everything from crushing local competition to altering the traditional product distribution chain.

As the largest retailer in the nation, according to Barrett, Wal-Mart Stores, Inc. drew most of the criticism, although Rep. John LaFalce (D., NY), Chairman of the House Small Business Committee, said he had hoped the discussion would not target specific retailers. Wal-Mart's actual volume for 1995 was $81 billion, but currently it projected to be over $106 billion in 1996.

Representative LaFalce said he aimed to explore three ways of protecting small business from the super-chains:

- Increase publicity about expansion of the mega-stores.
- Curb federal money, such as industrial revenue bonds, that goes toward retail development.
- Insure that federal antitrust and banking laws are tough enough and are enforced. 62

LaFalce acknowledged that the federal government can do little to affect the recent course of retailing, but said he was concerned that superstore development was coming at the expense of smaller merchants. Unfortunately no tangible actions were taken by LaFalce's committee or subsequent ones except to hold the hearings and to provide publicity on the need for action to assist in the survival of "Main Street" businesses.

At the hearings, according to Barrett, there was a litany of complaints about the superstores edited by other panel members. Thomas Muller, previously mentioned, said Wal-Mart charged higher prices in communities where it has eliminated the competition. Also, Wal-Mart and other mega-stores don't increase the dollar volume of sales, but instead redistribute sales. Further, he pointed out that the claim that Wal-Mart creates jobs also is wrong. Muller added, noting that in communities with a Wal-Mart, the results could be fewer retail jobs. He also said that full-time jobs in the mega-stores were often based on a 28-hour work week, instead of the usual 40 hours and he observed that based on its current marketing strategy, Wal-Mart could open another 5,000 stores within the next 10 to 15 years. Muller estimated in the Daily News Record:

> "...that Wal-Mart had reached 'optimum penetration levels' in Arkansas, Mississippi and Oklahoma, and now appears to be targeting urban and rural areas in other states. The new Wal-Mart approach for areas close to saturation, as well as others, is to revamp the older stores as supercenters," Muller said. "These combine the general merchandise store with a full-line grocery store, using the same checkout counters." 63

Muller continued:

> "The experience of Wal-Mart has been that these superstores have increased per-square-foot general merchandise sales. With its superstores, Wal-Mart sales could easily double, even in states where current stores are close to saturation. In a few years, given current trends continue, one corporate entity may have a substantial share of all retail trade in the United States." 64

The Honorable Jean Ankeny, a Vermont State Senator, expressed similar concerns about jobs but also highlighted the sociological impact these large stores can have on a community in a letter written from her home in Williston, Vermont:

"The anxiety about Wal-Mart's aggressive tactics continues. Williston, St. Johnsbury and St. Albans are all feeling the hot breath on their necks, and opinion is divided over whether or not Wal-Mart will be a benefit. Many of us feel sure that this megalith will not only wipe out small stores for miles around, but also drain our communities of much needed leadership."

"The owner of the hardware store is the coach of Little League. Members of the school boards, supporters of local arts, etc. live here and have their businesses here. Wal-Mart will not replace these local leaders." 65

These are the effects that can not be put into numbers; but are at the basis of the concern raised in many communities when a large corporate chain is entering the market.

Jonathan Laing, in a May 1996 article in Barron's, confirmed the growth strategy of Wal-Mart by reporting on CEO David Glass's predictions for the future. Laing accepts Glass's projections that by the year 2000, the grocery business to be enjoyed by Wal-Mart's new Supercenters will blow past the $24 Billion business volume of the Kroger supermarket chain. By adding groceries to the stores and often using the lower prices to entice shoppers, the overall business of the Kmarts and Wal-Marts are increased. Laing goes on to say:

"The synergy of the supercenter concept is best grasped by a simple calculus. By merely adding 35% - 40% to the floor space of a traditional discount store to create a supercenter, sales essentially double once the supercenter reaches maturity in four to five years. Profits won't rise quite as sharply because of the inclusion of lower-profit food items. Maybe they'll jump only 80%. Nonetheless, the supercenters will yield a higher return on investment than most of Wal-Mart's existing discount stores and provide a substantial boost to sales and earnings down the road." 66

This is indeed substantial growth, both in sales and profits. Examples of this are evident from Muller where he cites expansion already occurring in New York State.

Muller pointed to Wal-Mart's expansion in upstate New York as an example of its growth potential. A few years ago there were essentially no Wal-Marts in the region. As of 1993, there were 28 Wal-Marts and 14 Sam's Clubs. Because the economy of the region is not growing or growing slowly, virtually all sales represent losses to existing merchants. Also, the evolution of Wal-Mart supercenters means that its new stores, with about 175,000 or more square feet of retail space, will be equal to more than 100 typical small businesses. 67

In fairness, it should be mentioned that there were only few proponents of the mega-retail discount chain present at the La Falce committee hearings. Morrison Cain, Vice President of the International Mass Retail Association, was the sole voice testifying in defense of the burgeoning mass industry.

After the hearings, in a telephone interview from Kmart's Troy, Michigan headquarters, Don Morford, Director of Employee Benefits, said he could understand smaller retailers complaining that the bigger stores hurt their business. He noted, however, that smaller retailers liked the increased traffic the big stores generate. Cain said the mass stores provide greater choices for consumers, employment and income growth and an improved economy. Mass retailers can offer the low prices that have made them famous because, early on, they embraced technological advances in distribution and logistics, such as checkout scanning, sophisticated inventory

processing systems, direct store-to-warehouse and store-to-vendor communications and Just-In-Time delivery.

Cain stated:

> "These operating efficiencies can spell the difference between success or failure in this fast-moving business. The sheer volume of merchandise they sell also leads mass retailers to put growing emphasis on greater consultation and communication with their suppliers, not just in traditional areas, such as price and availability, but also in a broader range of concerns, including product design or customization or joint promotional efforts." 68

Cain offered a menu of adjustments small businesses could make to survive superstore competition: find a niche, sell items not carried by the giant discounters, refocus on upscale merchandise, improve store marketing and image, price competitively and emphasize services that discounters do not. 69

Cain's comments remind one of the Ten Commandments prescribed by Taylor and Archer, in their book, Up Against the Wal-Marts and the usual management prescriptions taught in Management 101 in schools of business throughout the country. As already discussed, in reality, these suggestions are impossible for the small business to finance and implement.

Concluding Comment

It is recommended that the current Committees on Small Business in both the U.S. House of Representatives and the U.S. Senate continue to hold hearings on the applicability of such regulatory statutes as the Sherman, Clayton, Federal Trade Commission and Robinson-Patman Acts relevant to the weakening condition of small retailers in the United States, in part because of the ever increasing power of the chains to procure the lowest of prices from manufacturers and suppliers.

While predatory pricing might have to be viewed differently in the federal area compared to state litigation, nevertheless the increasing power of the chains requires federal review in terms of applicable statutes and regulations designed to protect small business and to provide free market opportunities. Further, the opportunities of the large chains to secure "corporate welfare" in terms of financial assistance for building their huge stores should be re-examined by Congress since many of the grants are basically part of federal funding.

The author has given some thought to the possibility of federal review by either the Justice Department or the FTC of the overwhelming power of the mega-retail discount chains and their impact upon the opportunities of small businesses to survive. Obviously, one can be skeptical that either agency would be likely to undertake an across-the -board review of the subject that has been under study in this document. One reason, the author believes, is that both agencies have internalized some basic lessons of "Chicago School" economics, primarily that the antitrust laws are concerned properly only with questions of economic efficiency. Also, the Antitrust Division appears to be reluctant to use the Robinson-Patman Act because of the difficulty of reconciling its effect with other antitrust laws.

However, both the Antitrust Division and the FTC have been conducting some fairly aggressive investigations of predatory pricing and related issues. This initiative represents a significant

CHAPTER VIII

RETAIL CORPORATE WELFARE

More and more the news out of Washington, D.C. are statements that America's corporations are often permitted tax incentives, subsidies, financial and other types of encouragement that are generally not available to small businesses. This has been termed as "corporate welfare." Generally speaking, "corporate welfare" programs are products of local, state and federal initiatives and are supposed to be directed to community redevelopment.

The question that must be resolved is, "Jobs at what price?" The author of this study has surveyed this dilemma from east coast to west coast -- with particular interest in local, state and federal benefits offered to mega-retail discount chains, and only occasionally provided small business or specifically, small retailers.

What is responsible versus irresponsible economic development? The Clinton Administration is attempting to persuade pension plans to invest their vast resources in projects that offer benefits to low income communities. On June 23, 1994, the U.S. Department of Labor released Interpretive Bulletin 94-1 to encourage pension plan investments in ETI's, or "Economically Targeted Investment." An ETI is purported to be an investment that seeks to furnish a benefit to a pension plan's community, at the same time it seeks to provide the pension plan with a competitive risk-adjusted rate of return.1 Recently, they have been tabled.

While the objectives of the ETI program may be fair and worthwhile, the federal government should first see what is happening with similar financing projects, using public funds that appear to be directed to firms which receive favorable treatment far beyond the benefits received by the communities in terms of job creation and economic vitality. Secretary of Labor Reich recently, through administrative decree, has suggested 5% of the Taft-Hartley Pension Fund assets could be invested in ETI's.

It is true and sad indeed that, in the new world of trade and declining jobs, local and state governments are finding themselves trapped in bidding wars for private investment. They've been offering a "candy store" of tax abatements, credits and loan subsidies in the hope of keeping existing jobs or getting new jobs. More often than not, they're left holding the bag.

Examples of incentives offered large corporations are presented for each of the states studied with particular detail on California examples. One can see that although the particular details for each city are slightly different, the overriding long-term effect on the community is similar.

California's Experience with Respect to Incentives Provided Developers and Mega-Retail Discount Chains ("Big Boxes" and Redevelopment)

California, a state which characteristically is one of first to start new initiatives has had considerable experience in offering a "candy store" of incentives for the mega-retail discount chains. Redevelopment agencies in California gained substantial strength and influence during the 1980's. Their power was created because Proposition 13 (Jarvis Amendment) in California froze property values, thereby, making it exceedingly difficult for municipalities to generate revenues. Due to this short-fall, redevelopment agencies became the new economic engine. The

original intent was simply the revitalization of areas blighted by economic and social decay. Cities and local townships were literally coming apart at the seams; redevelopment was the thread used for resurgence, needed repair and necessary economic stimulus.

Historically, the last couple of decades have witnessed a myriad of cities and townships designating large sections of real estate into redevelopment zones. Some of these locations had little chance of recovery without the proper financial incentives needed to "push-start" their dying economies. The redevelopment agencies were established to ameliorate this problem; however, either through clever design or total disregard for original intent, large portions of redevelopment zones are now simply raw land.

This contamination of original intent, having positive value on the one hand, exacerbated the problem relating to urban blight and economic decay. As interest increased, the criteria for Redevelopment Agencies' (RDA's) zones gave little concern to proximity or economic merit within the parameters of any given municipality. Simply stated, RDA zones were spread throughout entire communities and, in many cities created several redevelopment sites. This resulted in an interesting paradox, competition now existed not only between cities but within the same cities.

The most salient aspect of the paradox was the competition created within separate RDA's in a given city. The developers, seeing an absolute "win-win" formula, took on Darwinian characteristics in their demands and "natural selection" became rule of thumb. The least attractive zones (economically and downtown areas) were now in direct competition with raw land with all its inherent advantages. Original intent was now a document for historians and considered innocuous by modern municipal standards. Underdeveloped land being more attractive due to economic realties and propinquity to freeways, throughways, interstates, et. al, were now the major objective. Social decay and blighted downtown sections constituted an anathema to new construction. The very structure of RDA'S was going through a complete metamorphosis; what would finally spin out would be complete absolute change and direction.

Downtowns were left to cascade into an economic "black hole" paradigm; like most major cities throughout America, economically blighted sections were a secondary consideration while raw land attained primacy. Small downtown emporiums were becoming an endangered species! All would agree this was never a redevelopment objective.

Revitalization

In the past few decades, the destruction of our downtown urban areas across America have unquestionably become one of the major concerns of modern society. It has bred social disorganization, crime, violence, poverty, and rates of illegitimacy to unbelievable proportions. By not addressing these problems in earnest, one can expect that in the next several years, America will become a cauldron of racial fervor, discontent, anger and hatred. Many pundits believe the process has already started. Our 16th President, Abraham Lincoln, stated, "We cannot live for long in a house divided."

Whatever the reason may be, the problem of the institutionalization of urban decay is simply pushed aside by politicians, distantly involved. Moreover, to think that inner city blight is a manifestation of the welfare state is pure sophistry.

It is through the recognition of urban blight that certain enlightened individuals on both sides of the political spectrum have embraced concepts like economically targeted areas (ETI's - Economic Targeted Investments), described earlier. By creating certain tax and economic incentives it was thought industry would find it feasible, more importantly, profitable to construct new facilities within ETI parameters. Additionally, the revitalization paradigm conceivably could parent quality jobs, opportunities and needed hope, thereby starting a process which would diminish residential flight from urban communities. The economic dynamics could be far reaching by giving cities once again a tax base where today only a vestige of traditional business appears and poverty permanently resides.

In the beginning, RDA's did their job rather effectively, but as a myriad of loopholes became available and no enforcement agency was created to monitor or correct abuses, city developers and corporations manipulated the process with impunity. Who could blame them? City attorneys simply felt they would never be challenged because the RDA had no state enforcement arm. Moreover, RDA's were so esoteric and complicated that 98% of the population knew nothing about their existence or the methods they incorporated to consummate a deal. Responsibility was so fragmented in a RDA's decision making process that there were possible abuses of power.

For example: Hemet, California, basically a farming or agriculture community approximately 70 miles northeast of Los Angeles, attempted to make 11,000 acres of raw land, a redevelopment zone. (That's over 1/3 the size of San Francisco).

> "The lament over uncontrolled growth is virtually California's state anthem. The signature method of planning -- or failing to plan -- development has always been simple sprawl."2

This illustration shows that the new dynamics of redevelopment zones have had little or nothing to do with urban blight or revitalization. It simply became a tool in which cities participated while others negotiated hundreds of millions of dollars in construction costs, infrastructure improvements, incremental financing and future tax revenues. In light of all this, the interesting question is who ultimately pays the bill? The answer is -- the taxpayer.

Concern over chaotic planning and deal-making by municipal authorities using redevelopment governmental authority and financing led to the establishment of the Bergeson Committee, chaired by Senator Marian Bergeson, Chairman of the California Senate Committee on Local Government. The 1989 Bergeson Report spread a great deal of light on the mission of "Redeveloping California; Funding the Legislative Agenda for the 1990's"3

A blatant case history of abuse stimulated California Republican State Senator Bergeson to cry foul. In the early 80's, car franchisors were building multi-faceted car dealerships (i.e. Mercury, Ford, Lincoln, Cadillac, Chevrolet, Honda and Toyota) on a single block within redevelopment zones and getting enormous financial consideration as the "carrot" to finalize the deal. Ostensibly this was okay in the beginning; however, once the dealership's incentives ran out, or came close to expiration, dealers began renegotiating with the municipalities to extend the deal (RDA can "roll over" any deal for approximately 60 years without interference). Furthermore, while negotiating with one city to extend the contract, some dealerships actually negotiated with other cities for the same economic package, thereby, putting enormous economic leverage on both cities to capitulate to demands. To State Senator Bergeson's credit, she saw this for what it was - a blatant tax shelter structured for perpetuity benefiting no one except the avarice of a few. The economic dynamism relating to this type of behavior is interesting. The question is: how does a

municipality regain the economic and moral authority within its own RDA agency - if the pre-existing tenant can renegotiate a new contract once the economic incentives expire? This could become a Pandora's Box with societal implications which are profound and which require detailed examination.

Tax Incentives

A major component of RDA projects are their abilities to orchestrate the distribution of taxes. This is a very effective tool and in many instances can be used to ameliorate economic and social dislocation. An important application that tax incentives have within agencies is their ability to use tax dollars to lure new business into communities.

The original objective was a mutually ideal investment in which both parties (city and corporate partners) create prosperity for community and business. Tax incentives grant cities a considerable ability to negotiate or structure very attractive deals in order to entice future partners. Incorporated into redevelopment agencies are a series of powerful inducements which coalesce into a catalyst to promote business. Their power is unprecedented with taxes and condemnation topping the list. It is apparent that because of this power, many restrictions have been established ostensibly to monitor and maintain control over the agencies. However, the attempts at constraint through legal measures have been weak and reluctant. According to testimony at the Bergeson Hearings, most agencies proceed with impunity and quite a few knowledgeable critics allege that these RDA's frankly, disregarded the rules with little concern since they are rarely challenged.

The mega-retail discount chains, such as Kmart and Wal-Mart and others, have also been the recipients of generous treatments, both with respect to tax incentives and other financial benefits or tax abatements in California, as well as in other states studied by the author; such as Illinois and New York (see respondent comments in Chapter IV).

Schools and Tax Distribution and Redistribution

Within Redevelopment Agencies there is a little known fact that had a "Leviathan impact" on how schools received needed tax dollars. The RDA has had almost complete power to circumvent the normal distributions of taxes. It could actually stop the tax dollars generated by sales revenues within a city from ever going back to the schools. The school's only recourse is "pass-through" agreements or lawsuits. If the school fails to challenge the RDA within 60 days of approval it has theoretically lost revenues forever.

By way of "pass-through" agreements, school districts can negotiate with redevelopment agencies for the right to obtain revenues for any new commercial enterprise. In California, a school district may be mandated a certain percentage of income through commercial development based on the square footage or the calculated profit. Via this relationship, needed monies are available to schools for new teachers, books, school repairs, athletics and new construction. Despite this, a redevelopment agency has a legal avenue to thwart this entire process, and since the early 80's, as has been documented in the Bergeson RDA studies [4]; at least 80-90% of all schools have failed to receive proper "pass-through" agreements in relation to redevelopment agencies and their projects.

Effects on School Finance

The allocation of sales tax and property tax revenues from the counties to the Redevelopment Agencies, and their further use of these funds to support the financing of developments which include the mega "Big Boxes" or Supercenters, created strong concerns in the report of the Bergeson Committee. Little has been rectified or corrected since the Bergeson public hearings.

According to Dave Rabousky 5 who testified at the Bergeson Hearings:

> "The state is a silent partner' in redevelopment finance through its financial support for K-14 schools. The diversion from the State General Fund is probably $400 million, but that is not the net cost."

Rabousky then explained to the senators that there are four factors that temper the Legislative Analyst's estimate: (1) there is already some underlying growth in assessed value in project areas; (2) some projects capture growth that would have occurred anyway; (3) redevelopment affects the location but not the level of retail activity; and (4) some redevelopment spending is not always directed against blight.

Rabousky continued by explaining how redevelopment finance interacts with State General Fund's obligations to schools under Proposition 98 which the voters approved in November 1988. Questioned by Senator Bergeson, Rabousky told the senator that when the state operates under "Test 1" redevelopment does not cause a net increase in state school apportionments to specific school districts.

If Rabousky's estimates on the shortfall in revenues to schools were $400 million 6 in 1989, it could probably have accumulated to between $800 million and $1.2 billion by 1995. RDA apparently has not only forestalled taxes being normally distributed via state or local governments to the schools, but additionally these vast funds have all gone into a myriad of redevelopment agencies throughout California.

It is apparent that "counties must be concerned by the cumulative fiscal efforts of redevelopment, incorporation, annexation and unfunded state mandates;" according to Dan Wall, who also testified at the Bergeson Hearings. "But everything is not right with the world (inasmuch) as the counties' fiscal stake in redevelopment is growing and growing rapidly."7

A number of specific agreements between developers and mega-retail discount chains will follow shortly. However, it does appear to informed observers that RDA's have legally been open to direct monies to developers, who in turn are then legally able to redistribute such funds to reimburse these national firms for capital outlay and construction. Such firms as Super Kmarts, Target, Costco, Sam's Clubs, Price Clubs, and Wal-Mart have been the recipients of RDA funds.

Short-falls in school revenues take place where a mega-retail discount chain receives an RDA agreement which permits it to retain sales taxes to pay for construction and debt service. If as a result of the new mega-retail chain activities in the area, the "Main Street" stores have their business volume decline, or they go out of business altogether, then their former collection of sales taxes is reduced substantially as is revenues to the schools.

One example is an RDA deal between the City Council of Chula Vista, California and Wal-Mart, reported on August 26, 1994.8 The Wal-Mart was proposed to open in late 1995.

"Wal-Mart Offered $1.9 Million Deal - Chula Vista"

"Wal-Mart would get $1.9 million over 15 years from the city as an inducement to build a store in a proposed shopping center at the northwest intersection of Fifth Avenue and C Street under a plan approved by the City Council, this week. The money would come from sales taxes the city collects from Wal-Mart and other stores in the 21-acre shopping center, planned by Chula Vista Center Associates, said Community Development Director Salomone. As part of the deal, the developer would build a $1.2 million bridge over the Sweetwater River to connect the shopping center to Broadway. The developer would also install traffic signals at Fifth Avenue and C Street and on Fourth Avenue and Dixieline Lumber Co. The store is projected to open in late 1995."9

Subsequently, the award of $1.9 million was disallowed by the appeal of several citizens to the Superior Court of the County of San Diego. (See discussion later in this chapter.)

Typical RDA Deals Which are Pending or Have Been Finally Consummated with Developers and Mega-Retail Discount Chains in Recent Years in California

The following RDA "packages" are entirely legal but are typical of advantages that are provided in California to large retail firms and developers and which are generally not available to small businesses. The information has been voluntarily provided by a prominent California law firm.10

Summary of California Taxpayer Aid to Box Store Development

(The author does not take responsibility for the complete details of the narrated "packages," but believes that essentially they do describe a picture of what has been made available by the RDA's to developers and chains in recent years.)

Anaheim Plaza, California
Redevelopment Agency to borrow about $6.3 million from owner to use for improving roads and other infrastructure for the project at 7% interest. In addition, Agency to pay 50% of costs of relocating existing residents. Being done to assist in procuring a mega-discount retail chain.

Cathedral City, California
Redevelopment Agency reimbursing owner for 90% of owner's acquisition costs by giving owner 75% of City's sales tax receipts. Estimated acquisition costs of $1-2 million.

Chino Hills, California (tentative agreement only)
It involves a complicated land swap, plus developer receiving refund of $1 million from sales taxes supposedly generated by project.

City of Industry, California
Redevelopment Agency was to give, in effect, a $2.5 million subsidy by purchasing land for $7.6 million and then reselling it to a mega-chain for $5.1 million. If the deal completed, the chain has a saving of $2.5 million against the true value of the property.

Covina, California
Redevelopment Agency to buy land and resell to a discount chain for $5 million. Agency to

make various public infrastructure improvements. Developer to advance funds for acquisition, capped at $9.8 million. Agency must fund any short fall, with agency to repay at 2% above, prime rate, with a maximum of 12%.

La Habra, California
Redevelopment Agency purchased land for $8.2 million and sold it for $5.3 million. Agency to borrow $4 million from developer to make improvements.

Oxnard, California
A mega-retail discount chain received a deferral of $1.4 million in city's infrastructure impact fees, plus $1 million in "reimbursements" from city.

Paramount, California
Redevelopment Agency purchases land for $10.7 million and sells it to developer for $6.4 million.

Paso Robles, California
Redevelopment Agency pays cost of $537,000 in box culvert of creek, with a mega-discount retail chain to repay only 83% of costs. Agency also pays $1.6 million for offsite improvements, primarily roads. City supports creation of a "community facilities district" in area to make road improvements which is to be funded by property tax increment. Agency to receive a portion of any "net" proceeds from sale or refinancing of land.

Porterville, California
In 1991, Wal-Mart built a Warehouse Center initially to employ 300 workers in a building of 1.2 million square feet. By locating in Porterville's Enterprise Zone the company was able to slice $19,000 per worker off in tax payments over 5 years. The tax waivers were estimated to amount to between $5 and $9 million over the period.11

Chula Vista, California
Redevelopment Agency buys land for $8.50 per square foot (cap $4.98 million) and to sell to a major chain for $6.50 per square foot (cap $3.8 million). Agency to assist the chain in getting a community facilities district formed which would use the taxes received for $9 million worth of infrastructure improvements in the area.

Impact on Small Businesses by These Pending Real Estate Packages Arranged by RDA's in California

A number of the nation's largest corporations, both retail and non-retail with annual gross revenues of almost $100 billion and upward are in effect being subsidized by municipalities, school districts and taxpayers with the employment of millions in redevelopment funds to build their stores in California and in other states with similar programs. What chance does the small retailer have for survival? Has he or she been given the opportunity to improve their downtown facilities with a similar use of funds? This is certainly "corporate welfare" at the retail level.

Return to the Bergeson Committee Report of 1989

At the Bergeson Hearing on Redevelopment, Mr. Chris Norby of Fullington, California, Co-Chairman of the Municipal Agenda for Redevelopment Reform in his comments which follow,

made clear his disillusionment with the abuses in redevelopment powers. He also made certain constructive recommendations which should be enacted.

Statement of Chris Norby12

I. "Purpose of Redevelopment is to alleviate serious urban blight and originally a good one. In doing so, however, the Legislature granted to cities extraordinary powers that have now become subject to such widespread abuse that they must be curtailed."

II. Redevelopment Powers Abused:

A. "Eminent Domain: Property rights are abused when cities condemn the property of one private interest for the benefit of another."

B. "Tax Increment Financing: In theory the tax increment is created by redevelopment efforts themselves. In reality, most of it is due to inflation and development that would have occurred even without redevelopment. All of this tax increment is funneled back into redevelopment projects and is denied to the counties, school and special districts. The State General Fund is left holding the bag."

C. "Flawed Decision-Making: Redevelopment gives cities vast powers to subsidize and acquire property on behalf of private development. City Councils and staff must make economic and development decisions for which they are not capable. Redevelopment puts cities in the development business which is the responsibility of the private sector, not a proper role for government."

D. "Anti-Competitive: Redevelopment decisions require cities to grant special favors (subsidies, land grants, etc.) to certain select businesses at the expense of others enjoying no such benefits!"

E. "Distortion of Free Market: Using redevelopment, cities often raid each other's tax basis by luring businesses to relocate through offers of redevelopment goodies.' Redevelopment-subsidized auto malls are a prime example of this. Some cities do benefit, but at the expanse of others who have used redevelopment less aggressively. Business owners make location decisions based not on traditional free enterprise considerations, but on which city offers them the highest financial incentives."

F. "Zero-Sum Game: Since redevelopment does not facilitate industrial growth but only a redistribution of sales tax revenue, there is no overall benefit to the state. Redevelopment cannot increase statewide economic activity, but only shifts it around. The state General Fund is spending huge sums under the guise of economic development that is, in fact, only an elaborate shell game."

Mr. Norby made the following strong recommendation, which if followed should end "corporate welfare" in California.13

III. "Recommended Actions: The State Legislature created Redevelopment, and only the State can reform it. Individual cities cannot be expected to control their own abuses. The Legislature must restore a level playing field for all cities so the rules for redevelopment -- if it must remain -- are clearly defined."

"Possible courses of action:"

A. "Forced Phase-out of all Redevelopment Projects: The state should intervene to be sure that redevelopment districts are speedily phased out and no new ones be created."

B. "Limits on Land Acquisitions: The Legislature should prohibit cities from becoming land acquisition agents for private developers. The power to condemn property for private development should be ended, as well as land write-downs' at public expense."

C. "Sales Tax Apportionment: Sales tax to city government should be apportioned on a per-capita basis, rather than on how much is actually raised in specific cities. This would end ruinous inner-city competition for sales tax dollars."

It is obvious from Norby's remarks at the Bergeson public hearings that the unchecked powers in development have become subject to widespread abuse and that favoring certain projects has created an anti-competitive environment "granting favors to select businesses at the expense of others enjoying no such benefits." Further, that "redevelopment does not increase statewide economic activity, but only shifts it around. It becomes, as Norby states "a shell game."

It is also clear from the foregoing discussion that when Redevelopment Agencies divert property (and other tax revenues) from school districts and community college districts, the state must ultimately replace the diverted revenue.

The Bergeson Report made a strong statement on Competition for Business.14

"We have found situations in which cities are using their redevelopment agency's funds (and other revenues such as sales tax) for subsidies to influence the location of businesses that serve a regional market but generate significant local revenues. Auto dealers and warehouse type retailers such as Price Club are typical beneficiaries of these subsidies because of the large amounts of local sales tax revenues that they generate. We doubt that these subsidies provide any net economic benefit to the state because they merely change the location of businesses within a region, sometimes to the detriment of neighboring communities."

Statement at the Bergeson Hearings by Los Angeles County (Testimony of Amanda Susskind and Diane Shamhart)15

While the County has supported numerous redevelopment projects over the years, speakers from Los Angeles evidenced frustration that present redevelopment attitudes had ignored the original purpose of the statutes, namely to redevelop "blighted areas," so that the blighted area would have a healthier economic base. Instead, "blight" and the dying "Main Street" have been ignored and developers are creating a new kind of sprawl outside the traditional business areas.

Disturbing Trends

The Los Angeles delegation at the December 7, 1989 hearing saw certain "disturbing trends."16

"Whenever a redevelopment project approaches the end of the project, near its bonded debt limit, annual tax increments limit, or it's maximum tax increment limit, the agency amends the plan to take advantage of additional tax increment."

"Agencies set bonded debt limits and tax increments far beyond what the project is estimated to generate. Limits are established not by what the project intends to do, but by what agencies estimate the project will generate in tax increment."

"Redevelopment law was never intended to permanently divert funds from various taxing entities, such as the County of Los Angeles. It was to provide a mechanism for

eliminating blight so that communities could become economically viable and productive. At the end of any given redevelopment project, the revitalized area would provide numerous benefits to taxing entities serving the community."

"The growing number of redevelopment projects and the extension of the terms of these projects (ranging from 25 to 50 years), raise serious doubts as to the realization by taxing entities of the benefits of redevelopment. In addition, redevelopment law was established at a time when limitations on taxing entities were not as stringent as they are today. It was adopted in a time when the decay of cities was at its worst and revenues sources were more abundant."

California Law AB 1290 (Health and Safety Code □33426.5) Provides That an Agency May Not Give Away Tax Dollars to Retail Projects of More Than 5 Acres on Land Not Previously Developed for Urban Uses (Citizens of Chula Vista California v. Redevelopment Agency, et al., March 31,1995)

Previously mentioned in this chapter was a $1.9 million grant to finance a Wal-Mart in Chula Vista. On March 31,1995, the law firm of Davis, Cowell and Bowe of San Francisco, California filed a suit on behalf of Bozek and Gonzales, Petitioners against Respondents-Defendants; the Redevelopment Agency of the City of Chula Vista; City Council of Chula Vista; Wal-Mart Stores; Town Center Associates; the Gatlin Development Co. Inc.; and KRB Enterprises.17

The plaintiffs wanted to enjoin the real estate project because they claimed that AB 1290 passed by the California Legislature in 1993 was enacted to restrict financial support for certain redevelopment projects by redevelopment agencies. Specifically targeted were developments on a parcel of land, 5 acres or more, which had not been previously developed for urban use (with certain exceptions noted in the case).

The suit is reproduced here because the arguments used by the plaintiffs pin-point the concerns expressed by witnesses in the Bergeson Hearings of 1989, when the purpose of RDA activities was fully explored. Also fully presented is the final judgment which gives a fairly full account of the results.

The petitioners not only wanted an injunction against Wal-Mart's building a new store on the particular site in question; but also wanted the $1.9 million subsidy to Wal-Mart reviewed as being possibly in conflict with the California AB 1290 statute, codified as Health and Safety Code 33426.5.

Details of the suit and final judgment follow:

Andrew J. Kahn #129776
Marjorie M. Alvord #135868
DAVIS, COWELL & BOWE
100 Van Ness Avenue, 20th Floor
San Francisco, California 94102
(415) 626-1880

Fern Steiner
GEORGIOU, TOSDAL, LEVINE & SMITH
600 B Street #2300

San Diego, California 92101
(619) 239-7200

Attorneys for Petitioners-Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

WALLY BOZEK; HENRY GONZALES;	CASE NO. 684525
	FIRST AMENDED PETITION FOR
Petitioners-Plaintiffs,	WRIT OF MANDATE; COMPLAINT
	FOR INJUNCTIVE AND
v.	DECLARATORY RELIEF
REDEVELOPMENT AGENCY OF CITY OF	[Cal. Code Civ. Pro.
CHULA VISTA; CITY COUNCIL OF	526a, 1085; Cal. Health &
THE CITY OF CHULA VISTA and the	Safety Code 33426.5]
members thereof, in their	
official capacity;	
Respondents-Defendants.	
WAL-MART STORES, INC; CHULA VISTA TOWN CENTER ASSOCIATES, L.P., a California Limited Partnership; GATLIN DEVELOPMENT COMPANY, INC.; KRB ENTERPRISES, INC.,	
Real Parties in Interest	

Petitioners-Plaintiffs (hereinafter "Petitioners") allege:

1. Petitioners are residents and taxpayers of the City of Chula Vista. On November 15, 1994, the Redevelopment Agency of the City of Chula Vista approved a government subsidy of $1.9 million to Wal-Mart Stores, Inc. for putting up a new store. This subsidy will violate the Legislature's recent enactment designed to prevent redevelopment agencies from giving away tax dollars to new retail developments, AB 1290, now codified at Health & Safety Code □33426.5. This provides that an agency may not give away tax dollars to retail projects of more than 5 acres on land not previously developed for urban uses (with exceptions not applicable here). Respondents' financial assistance to the Wal-Mart project violates AB 1290. Accordingly, the court must prevent the loss to taxpayers and the community.

JURISDICTION

2. This court has jurisdiction under California Code of Civil Procedure sections 526a (taxpayers' suits), and/or 1085 (writ of mandate).

GENERAL ALLEGATIONS

3. Respondent-Defendant Redevelopment Agency for the City of Chula Vista (hereafter "the Agency") is a redevelopment agency governed by the California Redevelopment Law, contained in Cal. Health and Safety Code 33000 et seq. The agency's members are the members of Respondent-Defendant City Council of the City of Chula Vista, who are sued in their official capacity (hereafter collectively "respondents").

4. Petitioners are residents and taxpayers of the City of Chula Vista.

5. Petitioners will be affected by the tax subsidy and by the construction and operation of a Wal-Mart store in their city, including effects on traffic, air quality and environmental values.

6. On or about August 23, 1994, Respondents voted to authorize their staff to enter into a Disposition and Development Agreement ("DDA") with Wal-Mart Stores, Inc. And Chula Vista Town Center Associates, L.P., concerning construction of a Wal-Mart store in Chula Vista. (A "true and correct" copy of the DDA was attached to the filing as Exhibit A.)

7. Section 2 of the DDA provided that the DDA was not effective until the City Council and Agency later decided to approve the construction project via plan amendments and conditional use permit. This entailed complying with the California Environmental Quality Act, which gave Respondents discretion to disapprove the project.

8. Prior to Respondents' vote on August 23, Petitioners' representatives urged Respondents not to offer this project a subsidy, relying on AB 1290.

9. On September 2, 1994, Petitioners' counsel telecopied a letter to Respondents' counsel enclosing a copy of public testimony against the subsidy, urging a prompt reply and requesting "an expeditious answer because I will not expose my clients to the risk of being told they are suing too late." A "true and correct" copy of this letter and enclosure was apparently attached hereto as Exhibit B.

10. On September 7, 1994, Respondents' counsel wrote back directing the attention of Petitioners' counsel to section 2.1 through 2.3 of the DDA, stating:

> "These provisions clearly provide that the DDA will not be legally effective and the Agency will have no obligation to provide any assistance, unless and until all necessary CEQA review has been completed, a Final EIR has been certified by the City and all other required entitlements have been approved. Section 2.3 expressly retains for the City its full and independent discretion to disapprove, if it so chooses, the Final EIR or any other of the proposed entitlements for the proposed Wal-Mart Project. * * *
>
> We encourage you, Mr. McMahon, and any other interested party to continue to present any and all legal and practical concerns that you may have with respect to the proposed project. It is my understanding that most of the required land use permits for the Wal-Mart project, including certification of the final EIR, are likely to be presented to the city/Agency for consideration within the next few months. Notice of these proceedings will also be published and forwarded to Mr. McMahon (and you if you so desire) in order that all interested persons are given full opportunity to express any objections or"

(A "true and correct" copy of this letter was attached as Exhibit C.)

11. Petitioners' counsel relied on Respondents' letter in believing that the statute of limitations on any challenge to the subsidy would not begin to run until Respondents had decided after public hearings whether the project to be subsidized would go forward at all.

12. Petitioners' counsel acted reasonably in so relying on Respondents' letter.

13. Respondents' letter equitably estops Respondents from asserting a statute of limitations defense.

14. Petitioners' counsel timely pursued an administrative remedy against the subsidy by urging Respondents not to approve the project due to its unmitigated effects on the environment, which were admitted to be significant. (A true and correct copy of the letter sent by Petitioners' counsel as Exhibit D.)

15. Respondents did not certify the environmental impact report or approve the necessary plan amendments until November 15, 1994.

16. Prior to November 15, 1994, Respondents had not committed themselves to extending a subsidy to retail development at this site.

17. The statute of limitations on Petitioners bringing this action was tolled until November 15, 1994.

18. Real Parties in Interest Chula Vista Town Center Associates, Gatlin Development Co., Inc. And KRB Enterprises, Inc. Are the owners of an unimproved parcel of approximately 12.94 acres of property at the northwest quadrant of Fifth and C Streets in their City of Chula Vista, County of San Diego, State of California which was formerly owned by Metropolitan Shopping Square Ltd. And others ("Metropolitan property").

19. The Wal-Mart development requires use of the Metropolitan property.

20. Prior to the filing of this action, there were never any improvements on the Metropolitan property.

21. Immediately adjacent to the Metropolitan property is an unimproved parcel of approximately 17.22 acres owned in the past by Dixieline Lumber Company ("Dixieline property"), but now owned by the Real Parties-In-Interest other than Wal-Mart.

22. The Wal-Mart development requires use of the Dixieline property.

23. Prior to the filing of this action, there were never any improvements on the Dixieline property.

FIRST CAUSE OF ACTION:
VIOLATION OF CAL. HEALTH & SAFETY CODE 33426.5

24. Petitioners reallege as though fully set forth paragraphs 1 through 23 of the foregoing.

25. In 1993, the California Legislature enacted A.B. 1290, legislation intended to restrict financial support for certain redevelopment projects by redevelopment agencies. That statute became effective January 1, 1994, and was codified at California Health and Safety Code □33426.5. This provides, in relevant part:

> "Notwithstanding the provisions of sections 33391, 33430, 33433, and 33445, or any other provision of this party, an agency shall not provide any form of direct assistance to:
>
> * * *
>
> (b) (1) A development that will be or is on a parcel of land of five acres or more which has not been previously developed for urban use and that will, when developed, generate sales or use tax pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, unless the principal permitted use of the development is office, hotel, manufacturing or industrial or unless, prior to the effective date of the act that adds this section, the agency either owns the land or has entered into an enforceable agreement, for the purchase of the land or of an interest in the land, including, but not limited to, a lease or an agreement containing covenants affecting real property, that requires the land to be developed."

26. Section 3.3 of the DDA provides for direct assistance from the Agency within the meaning of Health & Safety Code □33426.5.

27. The DDA provides for Wal-Mart to receive approximately $1.9 million in subsidies from the Agency.

28. The project will include at least one parcel of land of five acres or more which has not previously been developed for urban use.

29. The direct assistance to Wal-Mart found in the DDA violates Health & Safety Code □33426.5.

30. Respondents are under a mandatory duty to comply with Health and Safety Code □33426.5.

31. Respondents are violating that duty.

32. No award of damages could make Petitioners whole for the intangible injuries caused by the loss of public revenues. Petitioners' pecuniary losses are difficult or impossible to calculate.

33. The balance of hardships and the public interest favor the issuance of injunctive relief here.

34. In seeking to enforce the laws at issue here, Petitioners are conferring a significant benefit upon the public at large, in that they seek both to enforce a law of public benefit and to protect fiscal values. The costs of pursuing this action are considerable. This combination of public benefit and the considerable burden of private enforcement makes recovery of attorneys fees by Petitioners appropriate.

35. There is currently a live dispute between Petitioners and Respondents, in that Petitioners claim that the Agency's subsidy of the Wal-Mart project violates the Health and Safety Code, while Respondents and real parties in interest contend the subsidy is lawful.

WHEREFORE, Petitioners pray:

1. For a temporary restraining order and/or preliminary injunction during the pendency of this action barring Respondents-Defendants from providing any direct assistance towards a development on the subject properties of a store selling taxable items, absent the recipient(s) providing sufficient security to reimburse such assistance if it is subsequently found unlawful.

3. For a judicial declaration that Respondents' financial assistance to a development at this site of a store selling taxable items is void, invalid and unenforceable as violative of Health & Safety Code 33426.5.

4. For a writ of mandate and/or permanent injunction compelling Respondents not to provide any financial assistance to any development of this land of a store selling taxable item.

5. For Petitioners' reasonable attorneys' fees, pursuant to Cal. Code Civ. Pro. 1021.5.

6. For costs of suit herein;
///
///
///
7. For such other and further relief as the Court deems just and proper.

Dated: March 27, 1995

DAVIS, COWELL & BOWE
By: Andrew J. Kahn #129776
Marjorie M. Alvord #135868
Attorneys for Petitioners-Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

WALLY BOZEK; HENRY GONZALES;	CASE NO. 684525
	FINAL JUDGMENT FOR
	PETITIONERS and
Petitioners-Plaintiffs,	ORDER GRANTING
	PETITIONERS' MOTION
v.	FOR PEREMPTORY
	WRIT OF MANDATE
REDEVELOPMENT AGENCY OF CITY OF	[CCP 526a, 863 1085
CHULA VISTA; CITY COUNCIL OF	H & S 33426.5
THE CITY OF CHULA VISTA and the	

members thereof, in their

official capacity;

Respondents-Defendants.

WAL-MART STORES, INC; CHULA VISTA TOWN CENTER ASSOCIATES, L.P., a California Limited Partnership; GATLIN DEVELOPMENT COMPANY, INC.; KRB ENTERPRISES, INC.,

Real Parties in Interest

Petitioners having moved for issuance of a writ of mandate, this cause came on regularly for hearing on the papers on October 20, 1995, in the Courtroom of the Honorable Richard J. Haden, Department 37 of the above entitled court. The Court considered the arguments and evidence from all parties, and issued a telephonic ruling in Petitioners' favor directing that a peremptory writ of mandate should issue. Oral argument was requested by Respondents. Oral argument was heard by the Court on November 3, 1995, at which time additional briefing was permitted by the Court. The Court considered an amicus brief from the Chula Vista Firefighters' Association. The Court considered the arguments and evidence from all parties and issued a ruling dated December 8, 1995 confirming its ruling on October 20, 1995 that:

1. A peremptory writ of mandate shall issue to prevent Respondents from financially assisting Real Party in Interest Wal-Mart. Such assistance is prohibited by California Health and Safety Code section 333426.5(b)(1). This statute is applicable and no exemption applies.

2. Petitioners are taxpayers with standing to bring this action.

3. Petitioners did not personally need to exhaust any available administrative remedies because there were no administrative procedures in place to address claims of illegal subsidy under H & S 333426.5. There is nothing requiring findings on any subject in the statutes concerning Disposition and Development Agreements (H & S 334433), let alone findings on whether the Disposition and Development Agreement is extending direct assistance to a retail development on land not previously developed for urban use. Since there was no administrative procedure to address claims of illegal subsidy under H & S 33426.5, there was no exhaustion requirement.

4. Even if there were administrative procedures in place to address claims of illegal subsidy under H & S 33426.5, Petitioners could rely on the efforts of William McMahon (McMahon) before the Agency since a public interest claim was involved. Friends of Mammoth v. Board Supervisors County of Mono (1972) 8 Cal.3d 247.

5. The sixty (60) day statute of limitations in California Cod of Civil Procedure section 860 et seq was also equitably tolled as McMahon, a member of the public, pursued a remedy in front of the City Council by arguing the whole project should be denied for failure to comply with CEQA concerns.

6. Even if no equitable tolling exists based on the efforts before the City Council, Respondents are estopped from arguing the statute of limitations in light of the letter from the Chula Vista

City Attorney to Petitioners' counsel dated September 7, 1994. Estoppel requires knowledge of the facts by the party to be estopped, intent his conduct be acted upon, or so act that the party asserting the estoppel has a right to believe it was so intended. The other party must be ignorant of the true facts, and must rely on the conduct to his detriment. Strong v. City of Santa Cruz (1975) 15 Cal.3d 720, 725. The letter reasonably implies Petitioners would not be precluded by CCP 863 while the City Council considered the CEQA issues prior to authorizing the whole project.

7. The Semi-Exclusive Negotiating and Covenants Agreement (SENA) between Respondents and Real Party in Interest did not "grandfather" this project for purposes of H & S 33426.5 (b)(1). The SENA did not grant the City an interest in these parcels and it did not require their development. The financial assistance would improperly go to a parcel over five (5) acres not previously developed for urban use.

IT IS ORDERED, ADJUDGED AND DECREED

1. That a peremptory writ of mandate issue preventing Respondent from providing financial assistance to Wal-Mart as described in Disposition and Development Agreement by and between Redevelopment Agency of the City of Chula Vista, Wal-Mart Stores, Inc. and Chula Vista Town Center Associates, L.P. dated August, 1994. (Exhibit A to Judgment)

2. That Petitioners shall recover their costs herein.

Dated: _____

_____
Hon. Richard J. Haden
Superior Court Judge

Submitted By:

DAVIS, COWELL & BOWE

By _____
Andrew Kahn, Attorney for
Petitioners

APPROVED AS TO FORM AND CONFORMITY WITH COURT'S RULING:

Dated:
BRUCE M. BOOGAARD

_____
Attorney for Redevelopment Agency
of the City of Chula Vista and
City Council of the City of Chula
Vista

Dated:
GRESHAM, VARNER, SAVAGE, NOLAN &
TILDEN

By: _____
John C. Nolan, Attorneys for Wal-Mart Stores, Inc.; Chula Vista
Town Center Associates, L.P.

A. Corporate Welfare State in the Making?

The term "welfare state" is a familiar one when the taxpaying public hears of public assistance; aid to dependent mothers, food stamps, Medicaid and public housing subsidies; but what is involved in this type of aid is a fight against poverty, and a recognition of personal need. Of course, there are excesses in the administration of these "Great Society" programs and they need to be analyzed and corrections executed to save vast funds wasted in many instances.

Now, however, the term "corporate welfare" has come to the fore with giant corporations who are financially powerful and eminently successful, being treated to subsidies through redevelopment agencies -- not available in most instances to help small businesses.

The great debate in the current Congress is therefore about the "welfare state." However, most of the debate relates to the individual and not to the corporation or small business. Many Republicans and Democrats are convinced the "welfare state" is bankrupt, morally vanquished, and in need of a complete overhaul. Social disorganization, inner city decay and the institutionalization of welfare should no longer be tolerated in the minds of many members of Congress because such aid is alleged to destroy the very lives it was entrusted to protect. The institutionalization of welfare makes it nearly impossible to wean its recipients when one generation after another joins the welfare rolls. The creation of a sub-culture is born with little or no hope of success.

These arguments are not only powerful, but painful in their applications for renewal or revision. Well! If welfare is bad for the individual, what happens, as discussed earlier, when major corporations become corporate welfare recipients?

Interestingly enough, major corporations are among the largest recipients of welfare or taxpayer money in America. They do it without compunction and fail to see themselves "feeding at the public trough" since their joint applications with developers are entirely legal. Together, the mega-retail discount chains which may be interested in "corporate welfare" may include Wal-Mart, Kmart, Target, Sam's Clubs, Price/Costco, among many others, and collectively have annual operating revenues between $100 and $200 billion. Yet they continue to apply for Disposition Development Agreement (DDA) funds in California and similar funding in other states, despite the negative impact of their grants on the health of school districts and state finance.

As was mentioned previously, Porterville, California built a distribution center for Wal-Mart in which the government was committed to give away $19,500 in tax reductions per job or possibly up to $7 to $9 million for jobs estimated to be paying between $8,000-$12,500 a year.

Lake Elsinore, California, in supporting a major chain's development was to give away approximately $7 million in infrastructure improvements and sales tax rebates for jobs that pay between $6,000-$8,000 a year. These average earnings appear to be below the poverty line. The City of Lake Elsinore may not see any substantial revenue generated for the City for 10-20 years. Why did they do it? The simple answer, apparently, is fear. Officials were afraid the neighboring cities would negotiate a better deal and kill their opportunity for future revenues. Moreover, elected officials often are untrained in corporate and public finance and simply believe they may be doing the right thing with respect to creating jobs.

It becomes obvious that during the past several years Wal-Mart, Kmart and other major chains, through their business plans, have been committed to expanding market shares within California and particularly, Southern California. These decisions have been arrived at through careful planning and analysis. Through their analysis, real estate and construction costs have been a major consideration, as well as the demographic planning.

In a sense, professionals on the staffs of these mega-retail discount chains have been doing their jobs well; while City Council personnel, RDA officials and other public sector personnel have not been able to cope with the ever increasing sophisticated challenges of public and private finance. As a result: the expected job creation often fails to materialize; sales taxes are lost to schools; traffic congestion, pollution and other environmental problems occur; and projects get renewed with final termination many years later than visualized in the original projects. The Bergeson Hearings of 1989 have not been followed up with conscientiousness by public officials and RDA personnel.

What About Meeting the Needs of Already Established Stores?

In February 1995, incentives offered by Chula Vista, California to Wal-Mart were challenged by an important competitor -- Target. The San Diego Union story stated: " Target Stores say this City (Chula Vista) is offering big incentives to lure its competitor, Wal-Mart, to town while overlooking the needs here of Target's two established stores. Some of the incentives could hurt Target's store on Fourth Avenue which stands to lose business by having Wal-Mart open next door,' Mark Johnson, a Target administrator stated to City officials."18

Community Development Director, Chris Salomone responded by saying:

> "Target has a point. If the roles were reversed and Target were coming to town, we would help them. Chula Vista is eager to attract Wal-Mart as a source of sales and property taxes while Target, as an established business, already pays such taxes and, therefore, gets less attention from the City. It is not fair, and there's no pretense that it's fair," Salomone said. "We're all in the competitive mode to generate business."19

However, as pointed out previously, new business is not "generated," a shift in retail dollars merely occurs from the small "Main Street" retailers in many communities to a single "Big Box" mega-store in one "lucky" community. In fact, Mark Johnson, of Target, also stated that 25-30% of Target's business would be lost.20

According to the articles, the development package was to have included an almost $2.0 million dollar give away in sales tax rebates that could last for fifteen years, to simply build a bridge connecting Wal-Mart with Broadway.21

Previously discussed in this chapter was the fact that Chula Vista was being sued because the public believed their city has acted in violation of AB1290 - a new law passed in 1994.

What Do the Mega-Retail Discount Chains Bring to the Community?

Is it jobs? In a Lake Placid, New York study by a group of local citizens, "Residents for Responsible Growth," it was reported that for every part time job established in a new mega-discount chain facility, such as Wal-Mart, that one and one-half jobs will be lost by a decline in sales or bankruptcies and closing of the traditional "Main Street" stores.22 This startling comparison is even mild as against the reality described in July 1993 Inc. magazine article (quoted in the Lake Placid study) that:

> a. Don Shinkle of Wal-Mart contends that the company's work force is at least 60% full-time.
>
> b. That Wal-Mart defines full time as only 28 hours or more than the traditional 40 hours in retailing.23
>
> In discussions with retailers in California, city planners, San Diego Council persons and San Diego city financial officials, it appeared to this writer that Wal-Mart's objective might be to build over 200 stores in California alone. This is not confirmed, but based upon the RDA subsidy record for mega-retail discount chain construction to date, cities with their numerous programs through RDA projects might contribute over $100 million in tax dollars, highway improvements, sales tax rebates to these ventures to help corporate giants such as Wal-Mart, Kmart and others establish a market in California, while pre-existing small businesses have to compete with these mega-chains with no offered incentives.

Even though Wal-Mart's experiences in California have been the scenario for this exercise, Wal-Mart itself is not the issue. What it obtains from RDA grants are legal, indeed. The problem is corporate America, which through this new type of subsidy program is also feeding, as are the poorest welfare recipients, from the public trough at the expense of the taxpayers. Further, the original purpose of the RDA objectives was to rehabilitate and upgrade the downtown areas of aging urban areas and not to provide dollars for large corporations.

"Corporate Welfare" Is Beginning to Have National Implications: When Will It Stop?

What is happening in retail is also noted in other mega-corporate endeavors. In a December 1994 article in the St. Louis Post-Dispatch24 it was reported that the Commonweaith of Virginia had authorized a subsidy package for the then pending Disney development worth $163 million to create the equivalent of 2,700 full time jobs. However, residents soon found out that 73% of these jobs were "part-time or seasonal." Further wage data from Walt Disney World and Disneyland suggested that most of the Virginia jobs would have paid only $3,700 to $6,200 a year, with no health care provisions.25 In other words, at the $6,200 level, based on the subsidy package, Disney would not have paid a single dime in salary to its employees for 10 years; at the $3,700 level, Disney would have been freed of labor cost for approximately 16 years.

The article continued, "Virginia taxpayers were actually looking at a much bigger subsidy package for Disney. There would have been massive hidden costs' of a poverty level work force, including Medicaid, unemployment compensation, food stamps and earned income tax credit."26

In the Disney example, in retrospect, if the employment created were truly full-time and paid $30,000 per year with benefits, a salient economic argument could have been made for strong subsidies. The economic dynamism for Disney, community and employees would have existed and been beneficial in a myriad of applications. However, subsidies for low paying, high turnover employees are a losing proposition and the taxpayers realized it. The billions of dollars given away to financially sound, healthy corporations in terms of subsidies, both nationally and state by state are staggering. The comments by respondents in Chapter IV from businesses in Illinois and New York support the California view.

Small business respondents resist the use of state and federal funds to remove traffic from the traditional downtown area and to subsidize the "Big Boxes" on the interstate highways. Relatively few taxpayers know they are subsidizing some of the wealthiest corporations in America, but the competitive small retailer is very well informed about these inequities.

The Role of Redevelopment Law in "Box Store" Expansion

Commercial development has received millions of dollars in taxpayer subsidies from redevelopment agencies in California and in such states as Illinois, New York and in some instances in Pennsylvania. Typically these redevelopment agencies are set up by an individual city and influenced by members of its City Council. While intended to cure urban "blight," these agencies have often been set up in growing areas - hence the subsidies offered may not have been necessary to attract business to locate there. Moreover, these agencies often have simply attracted businesses which by their nature strip clients and customers from other businesses nearby, such as retail stores and hotels.

These subsidies are generally obtained by means of "tax-increment" financing -- meaning that the agency is allowed to step in and siphon off the taxes from an area which heretofore would have been paid to the City, County, School District and State. This gives the agency the funds to buy land and then sell or rent it at a discount to developers and end-users. To illustrate the concerns about "corporate welfare," the following case discussion is set forth.

Regus v. City of Baldwin Park, California (1977)[27]

A major legal precedent for instructing Redevelopment Agencies that they should stay away from "commercialism" and concentrate on eliminating "urban blight" was the case of Regus v. City of Baldwin Park, California in 1977. Kmart was involved in this case.

The precepts and principles set forth in this case have largely been ignored by RDA's and city and state officials as was borne out by a review of the 1989 Bergeson Hearings, described earlier in the chapter. More and more community and societal interest must be induced to save "Main Street" traditions and retail stores and to conserve the scarce assets of schools districts, cities, states and taxpayers.

The agencies' abuse of their powers is summarized well by a California appellate court in Regus v. City of Baldwin Park, California.

> "Under the law, blight must be found before redevelopment can be authorized, because, first, without evidence of blight there is no solid justification for compelling taxpayers in one section of the community, for example to those in the county, the school district, and in Baldwin Park outside the Project area, to subsidize the cost of development of another

section of the community by carrying a disproportionate share of the cost of local government."

"Second, unrestricted use of redevelopment powers fosters speculative competition between municipalities in their attempts to attract private enterprise, speculation which they can finance in part with other people's money."

"When the extraordinary powers of urban areas are used as a fiscal device to promote industrial, commercial, and business development in a project area that is merely underdeveloped rather than blighted, competitive speculation may be turned loose. By misemploying the extraordinary powers of urban renewal, a redevelopment agency captures pending tax revenues which it can then use as a grubstake to subsidize commercial development within the project area in the hope of striking it rich. Such schemes contemplate borrowing money by issuing bonds on the strength of assured future tax revenues, money which is then used to acquire, improve, and resell property within the project area at a loss as an inducement to business enterprises such as Kmart to locate within the project area rather than in neighboring communities. In essence, tax revenues are used as subsidies to attract new business. The immediate gainers are the subsidized businesses. The immediate losers are the taxpayers and government entities outside the project area, who are required to pay the normal running expenses of government operation without the assistance of new tax revenues from the project area."

"The promoters of such projects promise that in time everyone will benefit, taxpayers, government entities, other property owners, bondholders; all will profit from increased development of property and increased future assessments on the tax rolls, for with the baking of a bigger pie, bigger shares will come to all. But the landscape is littered with speculative real estate developments whose profits turned into pie in the sky; particularly where a number of communities have competed with one another to attract the same regional businesses. Undoubtedly, it was for these reasons that the Legislature restricted urban renewal to blighted areas, and when faced with abuses in 1976, further tightened its restrictions."

"At best, City's projected redevelopment plan possesses a particularly speculative cast in that the businesses it hopes to attract through redevelopment are primarily those of consumption rather than production, businesses such as hotels and shopping centers whose acquisition does not increase the total wealth of a region as a whole but merely redistributes the existing supply by capturing business from rival communities. The success of such strategy assumes the absence of effective counter-measurers by rival communities targeted for displacement."28

In summary, the author concludes that there is little in the redevelopment law to stop agencies from currently abusing their powers. First, as a practical matter, there appears to be no one to enforce these California laws. The tax burden these agencies (RDA's) redistribute to other taxpayers does not hit any one taxpayer hard enough to justify him or her spending tens of thousands on litigation to challenge the subsidy. Apparently, state administrative agencies fail to monitor what the local redevelopment agencies are doing. City attorneys are not aggressive in telling the city council which employs them that they may be acting either unlawfully or immorally in grabbing added revenues.

Second, the agencies succeeded in convincing the California Legislature to impose a short statute of limitations (60 days) on many redevelopment law claims by citizens -- meaning that by the

time most citizens learned about what the agency was up to and hired counsel competent to deal with the matter, it was too late.

Third, the standards governing these agencies have historically been loose. Courts generally have applied their usual rules of complete deference to "legislative" decisions and extreme deference to "administrative" decisions.

Comments from Illinois, New York and Pennsylvania

Previous chapters indicated both quantitative and narrative comments from Illinois, New York State and Pennsylvania as well as California. California has been treated in great detail and the subsidy program there with its apparent abuse became quite clear. A word about other states in the survey follows:

Illinois

Chapter IV described many critical comments from small retailers about Illinois' subsidy program for the major chains. Apparently this resentment has reached the governor's office and the following statement by Jim Edgar, Governor of Illinois in 1993, admits damage to resident retailers by favoring the incoming "giants." In a State Government News article entitled, "Are Economic Development Incentives Smart?"29 he summarizes his concern about oversupport of the "giants" and undersupport of the small businesses in Illinois:

> "State leaders have no greater charge than to promote and preserve the economic security of those they serve and the generations that will follow; yet, I am convinced that we can meet that responsibility more responsibly and more effectively by calling a truce to the bidding wars that became the centerpiece of economic development efforts in the 1980's."
>
> "The battles have been intense and well-publicized. State after state has tried to outdo its competitors in wooing new commerce by fashioning glittery giveaways that feature tax breaks and other allurements. All of us can point to success stories -- to creation of new jobs, both direct and spin off."
>
> "But at what cost? Businesses that have bolstered a state's economy and have helped support vital government services for decades have been neglected -- and worse yet, imperiled -- as competitors receive handsome subsidies to locate a few miles away. Moreover, policies and projects that promise to enhance a state's economic viability in the long term are detoured and perhaps even ditched in favor of the instant gratification, not to mention political credit, that can accrue from a short-term gain."
>
> "In Illinois, we are not disengaging unilaterally. To do so would be just as unrealistic as it would be for the United States to have withdrawn unilaterally from the nuclear arms race. However, we have retooled our economic development efforts."
>
> "We are shifting the emphasis away from luring new businesses with company-specific incentives and toward providing the basics that will help businesses in our state survive and thrive in a global economy that is becoming increasingly competitive."

New York Developments

The respondent comments in Chapter IV were quite critical of the unfairness of the New York state subsidy program with respect to resident small retailers. It was the California and Illinois resentment, disclosed once again.

Edward Regan, former Comptroller of New York State, was a crusader for subsidy accountability and wanted to disclose "hidden costs." In his 1988 booklet, Government, Inc., he argued that politicians were remiss in their duty to watch the public till because they would rather cut ribbons than scrutinize the total impact of their giveaways. (Government Inc. was published by the 14,000-member Government Finance Officers Association.)

Regan's points follow:30

> "State economists generally agree that it is in the hidden tax expenditures' of abatements and credits that corporations often get the largest subsidies. Because they are not paid in the form of outright government checks, and because they fade from public attention over many years' duration, they attract little attention. However, the cost to taxpayers is the same as if the government wrote a check."
>
> "But governors and mayors do know about these hidden values, and they are often quite touchy about the subject. Indeed, one governor summarily fired a state economist because he had dared to make a conference talk that questioned whether the state would ever break even on a lavish auto-plant deal."

Regan pointed out a pending New York State Senate Bill (text follows) which simply required that each program resulting in forgone tax revenue be reported on annually, as any other government expenditure would be, at the state, city, town, village, and county levels. Beside actual dollar costs, the bill would require an evaluation of the expenditure's effectiveness, and whether or not the program has caused jobs to shift from one part of the state to another, resulting in dislocation.

The Senate Bill in New York which began to list requirements for the behavior of subsidy recipients follows:

> **New York Senate Assembly Bill A. 6068-A, 1993-1994 Session 31**
>
> "163-B Recoupment of Financial Incentives to Certain Businesses."
>
> "1. . . . Each contract, agreement or understanding by which a person, firm, partnership, company, association or corporation within the State receives an award, grant, loan, tax abatement or other business incentive from the state, any of its political subdivisions, or any department, bureau, board, commission, authority, or other agency or instrumentality of the State or its political subdivisions . . . shall contain the following provisions:"
>
> "(a) A stated period of time within which the terms of the contract, agreement or understanding are to be fully executed and completed."
>
> "(b) A stated purpose and the amount of the award, grant, loan, tax abatement or other business incentive."
>
> "(c) Where applicable, the number of persons to be trained pursuant to the terms of the contract, agreement or understanding."

"(d) Where applicable, the number of jobs to be created or retained pursuant to the terms of the contract, agreement or understanding."

"(e) Where applicable, the extent of the operations or facilities to be developed pursuant to the terms of the contract, agreement or understanding."

"(f) Notice to the recipient that the full amount of the award, grant, loan, tax abatement or other business incentive awarded shall be payable with interest, upon a finding that the recipient has not executed or completed the stated purpose of the project within the stated time period."

The New York Economic Development Zone Law passed in 1990 further provides restrictions on the behavior of recipients.

"Section 959; Responsibilities of the Commissioner."32

"The Commissioner shall:"

"(1)(a) . . . promulgate regulations governing (I) criteria of eligibility for economic development zone designation . . . (iv) . . . so as to revoke the certification of business enterprises for benefits . . . upon a finding that . . . (2) the business enterprise has failed to construct, expand, rehabilitate or operate its facility substantially in accordance with the representations contained in its application for certification; (3) the business enterprise has failed to create new employment or prevent a loss of employment in the economic development zone provided; however, that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control; . . . (A) the date determined to be the earliest event constituting grounds for revoking certification shall be the effective date of decertification; ... the commissioner shall notify the commissioner of taxation and finance that such decertification has occurred . . ."

Also a New York Senate Assembly Bill 33 sought to add strict "clawback" language to contracts let by every single State development program. The contracts would specify how many people were to be trained or how many jobs were to be created or retained or which physical developments were to occur. They would also specify the timetable for achieving the numbers, and if a company failed to deliver, the value of the subsidy would be payable with interest back to the relevant State agency.

Pennsylvania Tax Abatements

In the Pennsylvania study reported in earlier chapters, there was resentment discerned in tax abatements provided by local governments to large discounters. For example, Carrefour, a French discount retailer, was to pay no property taxes to the City of Philadelphia for five years. After receiving all the tax abatement advantages, Carrefour left the city after 4 years.

The following bill was introduced in 1993 to correct this abuse:

Pennsylvania House Bill 199334

"Section 1. Standards for financial aid."

"Persons, firms and corporations seeking to construct or expand commercial or industrial facilities within this Commonwealth and who are applying for financial assistance from

the Commonwealth or any of its development agencies or authorities are subject to the following standards:"

"(1) Applicants are required to prove a need for financial aid."

"(2) Applicants will be held to promises made relating to the type and nature of facilities; the type and nature of the products produced; the type, nature, number and wages of any jobs promised to be created; and whether or not such jobs are truly new jobs or merely transfers of jobs from other in-State locations. Any such promise shall be legally enforceable as provisions of contracts are enforceable."

"(3) If an applicant has had operations within this Commonwealth within the past ten years, it shall be required to prepare a preferential hiring list and offer new jobs to former employees wishing to relocate and to assist financially in their relocation within a radius of 500 miles."

"(5)(ii) There shall be no discrimination in hiring based on previous union membership."

"(6) Wage rates and minimum job levels shall be negotiated in advance and shall be enforced."

As described earlier there are varying types of corporate welfare found in the sates under study. One unique example took place in Philadelphia where mega-retail discount chains such as Home Depot, Sam's Clubs and Wal-Mart wanted to open their "Big Box" stores on land abutting the Delaware River, to create a "Power Center." An influential interstate government authority, the Delaware River Port Authority (DRPA), with jurisdiction over bridges, piers, marine and related facilities was involved. This authority in 1993 was requested by real estate developers to consider financing the purchase of water front land for the mega-retail discount chains to build upon. The land was to be purchased by the DRPA rezoned and sold for development. The land in question is now occupied by Home Depot and Wal-Mart. The unique characteristics of this form of corporate welfare is that the package was created by a port authority and not a local municipality.

A New Civil War is Brewing

According to Greg LeRoy, author of No More Candy Store:35 "Whether or not the federal government ought to practice industrial policy is a much-debated issue. Industrial policy critics often characterize the debate as whether or not government can or should pick winners and losers'."

LeRoy states further:

"The fact is, however, the federal government's laissez-faire attitude towards the ruinous civil war over jobs is actively contributing to the problem of capital mobility and thereby producing lots of losers'."

"The biggest job subsidy programs such as Industrial Revenue Bonds (enabled under the federal tax code) and Community Development Block Grants (Department of Housing and Urban Development) and other Department of Commerce titles, have no anti-relocation rules at all."

"Only two current federal job subsidy programs have anti-relocation regulations: the Job Training Partnership Act (JTPA), (Department of Labor) and the Public Works title of the Economic Development."

"In any case, states routinely evade the JTPA and EDA anti-relocation rules by simply substituting state funds for the training and infrastructure purposes served by the federal funds."

"But it's all a shell' game, because state budgets rely heavily upon federal grants. The money is fungible' or interchangeable, and many of the non-regulated state programs could not really exist but for big annual federal grants."

"By allowing companies to play states against each other with federal money, the U.S. government is aiding and abetting the jobs civil war. Little regulation plus the shell game means that federal subsidies in effect subsidize runaway shops all the time. Therefore, only strict, broad federal rules plus aggressive state punishments can stop runaway subsidies."

This competition among communities and states is rightfully described by LeRoy as a "ruinous civil war." A similar accusation is made in a recent Time article describing various deals made by cities and states to lure industry. The article mentions a theory by Barry Rubin, a professor of public and environmental affairs at Indiana University, that the tax breaks that everyone competes on are not the real deal makers:

"The dirty little secret in the incentives game is that the real criteria for site selection are skill and cost of labor, proximity to customers and price of real estate. Tax breaks are rarely the deal maker. ... a firm's variable costs - charges that come on top of fixed expenses like lease payments - state and local taxes make up at most 3%. Giveaways are likely to have little impact unless other factors are virtually equal."36

However, cities and states are still afraid to not offer these incentives. Examples can be found daily in the news of deals and counter deals among states competing for industry.

As was mentioned earlier, some governments are establishing controls to keep these fights from getting completely out of hand.

"Connecticut, for example, has created clawback' agreements that require corporations that fail to meet job targets to repay tax subsidies. Minnesota scaled back $620 million in aid to Northwest Airlines after it delivered fewer than 1,000 of 1,500 promised jobs. Washington has also grown concerned. Senator Jeff Bingaman, a New Mexico Democrat, wants the Commerce Department to decide whether companies that receive tax benefits should be required to file cost-benefit analyses and stand behind their job pledges."37

Small Businesses Join the Rally

At the 1995 White House Conference on Small Business, delegates identified the 60 most important recommendations which They felt would further the economy, protect their position in the economy and society and promote growth in the social and economic welfare of the United States. Two of these recommendations highlighted the concern of these small business owners and advocates on this "civil war" and the victims (the displaced small business) of the bloody battle.

"44. State-to-State Competition for Jobs and Business: Efforts of an individual state or municipality to benefit its local economy should not be made at the expense of other states or municipalities and at the peril of the strength of the entire economy. It should be the interest of the Congress to benefit the economic security of all the citizens of the United States by working to provide the resources to expand the economy nationwide.

Therefore, Congress should ban the direct or indirect utilization of federal funds of any kind, including subsidies, grants bonds or tax exempt financing that funds, in whole or in part, any special tax, infrastructure improvement and/or financing incentive by any state or municipality to lure existing jobs and businesses from one location to another."38
"139. Small Business Relief Fund: Congress should legislate the creation of a Small Business Relief Fund to economically assist small businesses that are displaced by the establishment of a big business in their localities where the big business will contribute an annual fee for the fund."39

Interestingly neither of these recommendations were in the leading recommendations of the two previous White House Conferences on Small Business in 1980 and 1986. This speaks to the growing concern of small businesses about the impact of mega-retail discount chains and the corporate welfare' they receive. Unfortunately, no action has been taken by the Administration or Congress on either recommendation at this time.

Recommendations to Congress for Federal Legislation to Combat and Restrict "Big Box" Abuses

The following recommendations, hopefully would restrict "Big Box" abuses by mega-retail discount chains, developers and Redevelopment Authorities operating under existing state redevelopment laws, by taking away state and local tax giveaways; and provide a vehicle for Congressional Hearings.

The idea is to attach strings to federal monies given states and localities: for example, such strings are often attached to highway monies. This would make sense here because these "Big Box" stores create additional burdens on federal highways, as they are often built in areas accessible only by federal highways.

The legislation would say that highway money would be reduced to any state which allowed these stores to go up in any of the following circumstances:

(1) if the development received state or local tax incentives;

(2) if it was within x miles of a federal highway;

(3) if the developer/retailer did not pay the government for the full social costs of building such a store (not just for repairing highways more often, but also cleanup of air pollution) (a study to determine those costs should be required); or

(4) if a required "small business impact report" showed existing small businesses would be injured significantly.

Ideas for titles could be: Small Business Survival Act; Retail Overdevelopment Act; Tax Financing Restraint Act (or any combination of these).

Further, since the Internal Revenue Code is filled with provisions which aid, help or restrict the activities of certain industries; it is a natural place to consider to curtail the redevelopment agency, developers and "Big Box" abuses.

The idea might be to impose an excise or penalty tax on any state or local tax giveaways these "Big Boxes" wangle out of state and local governments. The legislation could possibly apply only to retailers with an income over x billion dollars or upon those with facilities over a certain

size. Our logic is this: the federal agencies and Congress are the only people who can stop the states and cities from cannibalizing each other as each gives away more and more in the form of tax breaks to win these mega-retail discount stores; only to rob their neighboring town or state of tax revenues (and jobs) from the existing retailers. Again, in total, sales revenues are not increased, they are merely shifted.

Only states or the federal government can step in to stop the current warfare; warfare which makes local governments more dependent on Washington, D.C. No new net jobs are created, and because the mega-retail chains pay their employees less and eliminate jobs at others retailers, they cause the federal government to receive less in income taxes. This should certainly interest Congress and the U.S. Treasury Department.

It is obvious that there are also incidental costs to the federal government for "Big Box" store development. They tend to expand near interstate highways adding additional traffic which certainly this costs the federal government more.

The mega-retail discount chains generally don't provide health insurance to employees, adding these people to the governments' burden. These chains are quite profitable, so an excise tax would not put them out of business.

Further, the environmentalists and preservationists should see the need to reduce the tax incentives for "Big Box" development. Finally, those in favor of reducing the federal deficit should be eager to embrace new sources of revenue.

CHAPTER IX

THE EMPLOYMENT PICTURE OF THE UNITED STATES

Expected job loss in the traditional retail sector creates serious concern when these losses are coupled with corporate downsizing and the negative impact to date on American employment by NAFTA and GATT as well as American trade policy. While the newly elected Clinton administration has an optimistic view on employment and the stability of employment, nevertheless, there continues to be significant downsizing strategies employed by major corporations. These actions and plans have adversely affected the career paths of tens of thousands of middle and upper middle class employees. Many of the "new" jobs that the Clinton Administration claims to have created in recent years may in fact simply be former career employees who now occupy two to three retail jobs to take home, hopefully, a living wage.

The major metropolitan areas of the United States are in deep trouble. These centers formally had diversified manufacturing employment with hundreds of thousands of stable tenure jobs from the blue collar level to middle and executive levels. Manufacturing jobs have been disappearing steadily though mergers, consolidations and movements of the manufacturing operations to low labor cost locations, such as Mexico, the Caribbean, Portugal, Spain, India, parts of the Far East and Africa. NAFTA and GATT and government policy have contributed to a steady export of jobs.

Jobs

The elimination of quality jobs through downsizing by major corporations has hit epidemic proportions. Corporate philosophy to run a leaner, meaner ship delivered a shock wave throughout this country in the 1980's and in the 1990's. The big three auto manufacturers, General Motors, Chrysler, and Ford, reduced workforces considerably from 1978 to 1995. The manufacturing sector in the United States lost approximately 2.8 million jobs over the same period. In 1996, AT&T announced that they would eliminate an additional 44,000 workers (they subsequently lowered the figure to 31,000) while defense contractors lost 500,000 jobs over the last decade. The effects of downsizing, according to Lester Thurow in his new book The Future of Capitalism illustrates empirically his opinion of the downsizing effect.

In the first downsizing wave, 12% of the outplaced workers left the workforce completely, 17% remained unemployed after two years. Of those finding new employment, 31% took a wage reduction of 25% or more and 32% of worker's wages were reduced by one to twenty-five percent while only 37% found no wage loss. What are the economic dynamics when 63% of people finding replacement jobs are taking such drastic reductions in their standard of living? Moreover, what are the consequences of social services, health care or even defense when diminishing taxes are collected? An extreme example is cited by Thurow, that in studying RJ Reynolds Nabisco's hostile takeover and subsequent layoffs, one discovers 72% of the workers found new positions at an average of only 47% of their old wages. Corporations now have started their own out sourcing networks. These out sourcing workers are paid at a much lower wage with little or no health benefits.[1]

In the past, full time employees working for major corporations had health care benefits and pension funds, by out sourcing, corporations free up these costs, thereby, improving earnings per

share and stock prices. A number of the mega-retail discount chains as well fail to provide the usual health and other fringe benefit packages provided by the displaced "Main Street" retailers. The societal implications of America with a large percentage of its workforce going part-time is unthinkable in its impact. Ultimately these costs for family security will have to be faced by the general taxpaying public.

Wages

Ravi Batra, author of The Myth of Free Trade, stated that the watershed year for the American standard of living was 1973. It was the year when real wages started its long decline, family poverty rates increased and rising inequality between rich and poor materialized. Batra clearly stated that "economists concede that GNP and per capita income are not ideal measures of national prosperity."2 The President's Economic Report for 1992, for instance, makes the statement that growth in real GNP or GDP cannot assure an increase in the level of living. This is especially true when applied to real wages. A truer measurement, Mr. Batra states, is the weekly earnings paradigm which is applicable to production and non-supervisory workers, who according to the United States Bureau of Labor Statistics, constitute 80% of all employees. Therefore the GDP and per capita figures fall flat or distort the real picture. These statistics exclude executives, managers and professionals such as lawyers, doctors, etc. According to Batra's calculations, real wages increased by 15% between 1950-55; 7% between 1955-60; and only 6% between 1970-73.

Since 1973, real wages have fallen steadily. More importantly, this decline has impacted at least 80% of the work force even before increases in Social Security and taxes are calculated into the equation. Thus take home pay is seriously impacted in an adverse way thus requiring families to have multiple wage earners. During the period between 1975-1995, the inflation rate rose 183%, while blue collar and white collar workers earnings across all private industry increased a mere 142%. Average salaries in 1995 were $20,559 dollars. This average earnings unfortunately will buy $3,500 less than could have been purchased in 1975. Real wages for most workers in America are falling rapidly.3 The change in lesser buying power is not bringing the Third World closer to our standard of living but in fact is reducing our standard of living in the direction of Second and Third World levels. Extensive competition among underdeveloped countries guarantees future cheap labor markets. Many of these Second and Third World nations disregard constructive environmental regulations and utilize child and prison labor, as well as paying wages which can be as low as $1.00 per day.

As the quality jobs continue to decline at such giants as Ford, General Motors, Chrysler and AT&T, new jobs are being created by the tens of thousands by mega-retail discount chains. However, when you do a comparative analysis on the employment picture (GM vs. Wal-Mart), the facts become obvious and startling. In a three week series in The Philadelphia Inquirer on "The American Dream," which ran in September 1996, a clear picture of the future of American jobs was presented. From 1978 to 1995, the big three (GM, Ford, Chrysler) had reductions from 667,000 to 398,000 hourly employees. Not to worry, as Washington and many economic pundits point out, new jobs are being created to replace the old ones. Employment by Wal-Mart alone accounted for a 2890% increase over the past 20 years. In 1978, Wal-Mart had 21,000 workers and revenues had reached the $100 million dollar plateau; by 1995, it had over 628,000 workers and revenues were approaching the $100 billion mark. According to the data, apparently, one out of every 200 American civilian jobs is being created at Wal-Mart. The Inquirer series explains a qualitative analysis is important. For example, 30% of Wal-Mart workers are part-time (full-time

is 28 hrs., therefore, the 30% is exceedingly conservative figure by traditional standards). Positions at major corporations such as the big three are full-time, i.e. 35 - 40 hrs/week and overtime pay is not unusual. As for pay, a GM assembler earns a minimum $18.81/hour in wages; a tool and die maker $21.99/hour. Most Wal-Mart workers earn a dollar or two above the former minimum wage of $4.25 an hour. Then there's the matter of benefits. The auto workers have a guaranteed annual pension. The Wal-Mart employees do not. The auto workers receive fully paid health benefits. Wal-Mart part-timers receive no company paid benefits and "full timers" must pay for part of their health insurance. The Inquirer series also states that new jobs should have been created replacing the old by new technologies, such as in cellular phones; however, manufacturers in those high technology industries seem to prefer lower cost overseas production.4

Looking at the quantitative and qualitative analysis in Chapters III and IV of this report, one can clearly see that small businesses throughout the United States are deeply concerned about their future ability to survive the dramatic increase in competitive power of the mega-retail discount chains. Sixty percent of the Californians responding predicted losses in employment with 21% predicting those losses to total 50% or more. Illinois showed 48% predicting job losses with 13% estimating losses of 50% or more. Sixty-two percent of Pennsylvanians responding predicted job losses, with 18% concerned about job losses of 50%or more. New York showed 57% predicting job losses with 16% estimating losses of 50% or more. These small business are also looking at lost profitability, reduced sales volume and lower employment.

Small business owners have been the major backbone of the U.S. economy providing necessary goods and services while transferring sales tax benefits toward public schools, libraries, fire and police and a myriad of the municipal functions. Many of these small business are suffering attacks by the mega-retail chain stores, with their large volume buying power, and seemingly unlimited resources. Globalization and free trade may be a panacea for the transnational corporation; but small businesses, with their limited buying power and potential loss of wholesalers, are at the mercy of the very business with which they are in competition.

The Changing Economy

Polling national opinion in the 1950's and 1960's, one would find that approximately 29% of Americans thought the country was managed specifically to help rich Americans. In 1992, 80% of Americans believed this to be true. Whether these ideas are factual or not is irrelevant, the impression or perception created is becoming a mind set in America. The lead article in The Philadelphia Inquirer series mentioned earlier does support the 80% point of view. The middle class in America, according to the Inquirer journalists, is under attack. In 1970, just 26 years ago, 57% of the population was considered middle class - by 1993 only 47% was in that category. While the middle class has been shrinking, two other segments of society have been increasing. The poor category increased from 39% to 45%, while the affluent (very rich) class doubled in size from 4% to 8%. Moreover, the top 1% of households controlled over 1/3 of the nation's net worth, and the next 9% holds 36.8%. Summarizing these statistics, 10% of the population controls over two-thirds of the wealth, while 90% holds the remaining one-third.5

The following quotation from a recent article in The Wall Street Journal, "Retail's Shrinking Middle," confirms through consumer behavior what the Inquirer stated earlier in its series: "Traditionally, the middle' was the power position in America business. They perfected the one-size fits all' business model, offering moderate service, prices and information to customers who

had fairly similar demands."6 The major theme of the article points out that over the past 10 years consumers are moving to both extremes. Businesses such as Price Club, Wal-Mart, Sam's, Dell Computer and discount brokerage firms have flourished, satisfying consumers looking for no frills at low cost. At the other extreme, companies like Saks' 5th Avenue and Nordstroms thrive satisfying the affluent consumers for whom cost is not an issue. It is the middle of the road corporations like J. C. Penneys, Broadway (now bankrupt), Sears, and Montgomery Ward which have stagnated. The success of the mega-retail discount chains, such as is a direct manifestation of the "shrinking middle."

Thurow states in his book, The Future of Capitalism, that "When the distribution of income is altered, who sells what to whom quickly adjusts. Marketing and production shift to focus on the groups that have been gaining purchasing power."7 The others simply lose market share and eventually fade away. In Mr. Thurow's opinion, the shifts have been occurring due to fewer numbers of customers with middle class incomes. It would follow that the success of the mega-retail discount chains might possibly contribute to the destruction of the middle class.

In Thurow's example, stores like Sears, J.C. Penney's et. al. were locked into a fixed formula concentrating on middle class buyers; thus they exhibited an inability to adapt either upward or downward which created economic problems and hardship for those companies. Thurow hypothesized that in the future such mega-retail discount chains as Target, Kmart and Wal-Mart might have problems because their market is the bottom 60% of families. With real earnings now falling for these families, their purchasing power will also decline.8

Trade Policy

In the Inquirer series on "The American Dream," it was noted that from 1980-1995 the United States has compiled a perfect record - 16 straight deficits in 16 years. It is without equal . . . the worst performance in the world. During the same period Germany achieved a $658 billion dollar surplus while Japan's surplus exceeded $1 trillion dollars. Reiterating an earlier figure, the American trade balance with Mexico prior to NAFTA acceptance was a surplus of $1.7 billion. Since the agreement incorporating lower tariffs with less restrictions, the surplus has turned red to the tune of $15.4 billion. China's trade deficit was a mere $1.6 billion in 1986, today it has catapulted to a $33.8 billion surplus - an increase of over 2000%.9

In the past several decades, every President from Johnson to Clinton has made the claim that for every billion dollars worth of exports, 20,000 jobs are created at home. To follow this logic, for every billion dollars in imports, 20,000 jobs should never materialize or would be lost to foreign countries. During the years 1980 - 1995, the United States amassed a trade deficit of $1.7 trillion, while during the same period, Japan was able to create a surplus in trade of $1.1 trillion. Using the formula of job loss of 20,000 employees to $1 billion in trade deficit - it is obvious why American jobs in manufacturing and other industries have disappeared. Add to this the threat of retail job loss stimulated by the mega-retail discount chains - what is the future for American employment? Is our government realistically concerned with the future?

If it is agreed that a favorable trade balance of $1 billion is equal to a gain of 20,000 jobs, then an unfavorable trade balance of $1 billion would mean a loss of 20,000 jobs and result in a negative impact on the nation's GDP. In a given situation, if 20,000 jobs are gained, the net gain to the economy could be much larger than 20,000 jobs because of the regenerative purchasing power of the 20,000 employed. For example, in addition to the gain of 20,000 jobs there could be an

additional 20,000 jobs generated between secondary and tertiary economic activity. Basic payroll generates additional payroll due to the respending patterns. The multiplier can also be applied to the situation of a loss of jobs and secondary and tertiary respending. The greater impact could be as much as three to one. In other words, the loss of jobs and payroll resulting from the displacement of small retailers by mega-retail discount chains, not only affects the retail employment picture but also all others employment companies in the area. The loss of jobs because of the multiplier effect is staggering when one looks at the raw numbers of jobs disappearing but to consider double to triple the amount is unthinkable. Yet this is the impact of these policies.

The Negative Impact of Employment Economics on Community Security

As a nation we complain continuously about the moral crisis in America; where character is diminished, children are having children, and crime increases with few exceptions. Our inner cities, as explained in Chapter VIII on corporate welfare, are under economic attack with no jobs available. When the United States, viewed by some as the moral light for the free world, signs agreements and gives "most favored nation" status to nations that use child labor, political prisoners and slave labor in order to manufacture goods which compete directly with American workers, and one fails to note a voice of indignation or disapproval, one must examine the contradiction. Our "conditioning" or "blindness" to these situations is shameful. When it is publicized that mega-retail discount chains are allegedly using child labor either directly or through surrogates in Honduras or in other Second and Third world countries, the listener simply listens for a few minutes returns to business as usual. In New York and Los Angeles sweat shops are discovered using illegally smuggled children to manufacture goods for American corporations - and little is done.

America's Trade Deficit Continues to Grow As We Export Jobs

In the last twenty five years, America's trade deficit has ballooned to $1.9 trillion dollars. Every foreign country on the Pacific Rim has used the United States as its stepping stone economically into the 21st century. Japan, Taiwan, China, Indonesia, Singapore, Korea, and Bangladesh among others. The one significant economic commonality, with the exception of Japan, is cheap labor with few political and economic restrictions. How does the American worker compete? In the last twenty years attributable to American trade policy, millions of manufacturing jobs have vanished. In 1970 along the Mexican border there were sixty-five employers (Maguiladoras) with 22,000 workers: in 1991 more than 1,700 employers hired over 500,000 workers. The incorporation of NAFTA in 1994 was supposed to produce new jobs and to be a gateway to the future with the vehicle being free trade.10

An October 1996 article in U.S. News and World Report reported upon earlier showed that the trade balance with Mexico before NAFTA was a positive $1.7 billion and after NAFTA, a negative $15.4 billion with a negative trade balance continuing at one billion per month. Imports from Mexico before NAFTA were $40 billion; after the agreement $61.7 billion.11 While the United States Trade Office estimates that NAFTA has cost only 44,000 jobs, the number appears to be ridiculously low based on the writer's own experiences with reports from American corporations going to Mexico after downsizing in the United States. According to the article, the average starting hourly wage in Mexico is 69$ compared to an average hourly wage in similar plants in the United States of $15 or even the minimum wage of $4.35.

Two contradictory schools of thought have developed in America over the last 25 years. One school of thought continues to argue for free trade, globalization, NAFTA, GATT and the World Trade Organization, while the opposing school of thought cites a decline in real wages, downsizing by corporations, greed, elimination of manufacturing jobs and the eventual extinction of the middle class. With a disappearing middle class there will be a widening gap between two separate distinctive societies (the very rich and the very poor). What complicates the debate is a political process that has been completely polarized due to inherent differences in political philosophy.

In today's political arena, ideas are no longer analyzed but destroyed, along with its messenger. These politicians and statesmen who warned of the dangers of NAFTA, GATT and the loss of American jobs have been accused of backward thinking and put in the historical position of advocating a Hawley-Smoot manifest picture going back to the Great Depression. Republicans and Democrats alike often respond by killing the message with the messenger.

The 1996 presidential campaign never again revisited or brought to light the argument of how contemporary trade policies affect the American worker. Furthermore, with political contributions coming from abroad by the millions, both parties seem to view any discourse on the subject pure sophistry.

Concessions

The nation is not only losing jobs because of "free trade policies" which certainly do not result in a level playing field but also lose the prospective economic dividends which come from innovation and entrepreneurship. Helene Cooper, a staff reporter for The Wall Street Journal stated that: "for the first time U.S. defense related subcontractors can quantify how much money they are losing when foreign governments demand trade concessions and technology transfers in exchange for contracts." The United States Department of Commerce reported: "U.S. defense contractors have entered into 49 offset transactions valued at $2 billion dollars."12

In May of 1996, The Wall Street Journal brought attention to the fact that dozens of deals had been completed involving billions of dollars in technological transfer to foreign manufacturers. It was reported that McDonald Douglas and Lockheed Martin Corporation had allegedly been engaged in transfer deals with foreign entities. These companies, and businesses like them, built F-16 and F-15 fighters for the Air Force and the Navy. Importantly, the research and development for these aircraft has been paid for by U.S. taxpayers. Incomprehensible as it may seem, U.S. proprietary technologies possibly are now being used to develop a new aerospace industry in foreign countries, competing directly with American corporations and destroying many of our remaining aerospace jobs. What has the United States Department of Commerce determined the long term effect to be on the aviation industry? Have they even considered it? Never mind the moral dilemma which will faced when U.S. service personnel encounter our own advanced technologies in armed conflict. What is the motivation for America's transnational corporations and corporate executives to sell proprietary American technology? The United States Department of Commerce apparently condones the aforementioned policy, according to Ms. Cooper.

Summary

In the coming decade we will enter a new millennium and important economic, political and philosophical decisions will have to be made affecting the direction this nation will travel. Trade agreements (i.e., GATT, NAFTA) have been made in concert with the government's orthodox free trade policy which appears to be operating to the disadvantage of the United States. Moreover this appears to be a recognition of the validity of statistical data indicating that the American middle class is disappearing. Yes, lower paying jobs, somewhat menial in nature in the service sector are being created, but quantity is no substitute for quality. With the average weekly earnings rate falling by 19% over the last twenty five years, trade deficits approaching $2 trillion dollars and domestic manufacturing employment dropping sharply; it appears that the United States Congress is abdicating our sovereign rights on the altar of "free trade."

As we approach this new century and before "two roads diverge in a yellow wood" it is time to evaluate our future plans regarding trade, jobs and corporate policy by constituting a bipartisan commission. If in fact free trade, as defined by contemporary standards, is damaging the American workers, should the country know the truth? Economists like Ravi Batra have unequivocally stated

> "free trade has done to America what even the Great Depression could not do. Even during the economic cataclysm of the 1930's, earnings rose with productivity because the United States was still a closed economy with high tariffs. But since 1973, weekly earnings have declined, while productivity has continued to rise. Eventually, free trade could be more devastating than even the Great Depression."13

Mr. Batra clearly blames the shrinking middle class squarely on the shoulders of free trade. The whole idea behind free trade is the creation of quality jobs, and that simply hasn't happened when a comparative analysis is done. More disturbing is that any disagreement launched at free trade brings on the economic spin masters who attempt to distort the issues and destroy the messenger. Moreover, if in fact free trade is diminishing the middle class and jobs being created are just above the poverty line, what are the societal implications? Hypothetically, what if American corporations become fond of exploiting cheap labor worldwide? Would the next step be domestically? Many believe this is already happening and to some degree statistical data agrees. The corporate response will be rather predictable . . . it will go something like this: "As a corporation we can no longer compete successfully in a global economy when domestic wages are 30-60% an hour higher." The Free Trade Economist (a powerful special interest group) and companies will contrive the argument by postulating and clearly demonstrating how through free trade the global standard of living is rising, in fact they are (as Adam Smith "Invisible Hand" states) actually humanitarian in their efforts.

American Corporations are entitled to make billions in profits for shareholders, but if capital is going overseas for the building of new facilities, and jobs are being created for foreign workers, while the American middle is shrinking, we have a serious national problem. Up to this time there is a scarcity of reliable positive data showing that America will gain in jobs by NAFTA and GATT. Free trade as it exists is of the sort that leaves American producers operating on an unlevel playing field.

What are the real ramifications of free trade and what sector of society is truly the winner? What is the future of small business when multi nationals have all the advantages economically? This

CHAPTER X

CONCLUSIONS AND RECOMMENDATIONS

The writer has devoted almost three years to this study. He has sent out approximately 6,000 questionnaires to small retailers asking their views on strategies for survival in the face of the formidable gains of the mega-retail discount chains.

The questionnaire returns have been analyzed statistically and data has presented a picture of fear, sadness and disillusionment about the chance for small retailers to survive the impact of the mass discounters. This data is available in Chapter III.

Most of the returns included essay type answers explaining concerns about the survival of small business and the lack of serious efforts on the part of the federal, state and local governments to save their family businesses as well as the jobs and investments created over many years of hard work and sacrifice.

Much of the resentment was focused on redevelopment agency plans in many states where tax funds have been made available to the mega-retailers to pay for capital outlay and debt service for these "Big Boxes" which have destroyed the viability of the "Main Street" merchant, while denying the small business merchant the use of development funds to end center city blight. This type of subsidy for the mega-retail discount chains has been described as "corporate welfare." In many instances the retention of sales taxes for 10-15 years has deprived school and other local governments of needed revenues. It is clear that there is only so much demand in a given area, and where a supercenter opens, the result is often the closing of the smaller competitors. While the chain retains the sales taxes, the ultimate closure of the small retailers eliminates a traditional flow of revenue to the schools, counties and state governments.

The writer also visited and studied the commercial activities of the "Main Streets" and malls in California, Illinois, New York, and Pennsylvania. In the urban areas, the closing of apparel stores, drug stores, shoe stores, sportswear stores and hardware stores has destroyed the economic balance of the enclave or neighborhood. These stores have been unable to compete with the mega chains, such as Wal-Mart, Kmart, Target and others; and jobs have been lost within the enclave and neighborhoods. A lack of jobs in small family type businesses reduces the purchasing power of the neighborhood and eventually affects even the prosperity of regional chains such as Bradlees and Caldor, both having declared bankruptcy within the past few years. Moreover, Kmart has recently reported serious losses which have been noted on Wall Street. Problems have also been reported at Charming Shoppes and other regional and national chains.

The author also visited malls which 5 or 10 years ago were clean, bright, prosperous and bustling with customers. In many of these malls, the appearance in past five years has changed radically for the worst. There now could be a 30% to 40% vacancy rate. The traffic flow has become weak. The boarded, closed stores are loaded with graffiti and the malls have a slum-like appearance.

How Could This Happen?

Suppose a Kmart or a Target was an anchor store opening in the mall 5-10 years before. The square footage of the store ranged from 30,000 to 60,000 feet. Suppose several years later a Supercenter, such as Wal-Mart, with perhaps 200,000 plus square feet were to be constructed one-half mile away, soon, the auto traffic in the older mall lessened. The Target or Kmart with only 45,000 sq. feet closed and surrendered. The anchor store then remained vacant and the decline of the mall accelerated. Throughout the United States, formerly prosperous malls or strip centers have given up. The areas have become desolate and look abandoned and the customers depart for the newest supercenters and their parking areas.

The Potential Negative Impact Considering the Multiplier Effect on a Regional Economy

Previously mentioned and described in this study is the new phenomena of the "Power Center" which has been gaining momentum in the mid 1990's. The Power Centers have been described as "Big Box" farms where there are a half-dozen or more mega-stores and smaller superstores set around vast (upwards of 1200 spaces) parking lots with total retailing space nearing one-half million square feet.

The effect of the centers multiplies that of the single mega- or super-store. These stores and centers draw customers from a radius of 10 - to 15- miles in major metropolitan areas and even larger areas in rural ones. By increasing their drawing range, these mega-retail discount chains are also increasing their negative impact on "Main Street" retailers as well as the smaller retail discount chains that during the past year have been plummeting into bankruptcy or dissolution.

In California, we have begun to see another approach. Wal-Mart, who has received opposition in some communities to building new structures has begun to renovate empty mall department stores or attach their new buildings to an existing mall. They are easily able to accomplish this since the community infrastructure is already in place - parking, roadways, water, and sewers. Their economic argument is that they will enhance the traffic to the mall; hence increasing overall business and the local GDP.

But how is this constructive result possible when Wal-Mart provides direct competition to at least 50% of the small businesses already in the mall. Look at the example of the Huntington Beach mall (stores listed below in Table 15) where there are 31 relatively small stores in addition to three larger ones (anchors).

Table 15
Huntington Beach Mall

Spencer Gifts	Wet Seal	Musicland
Great Earth	Lechters	Sunglass Hut
GNC	Mon Ami	Claires
See's Candy	Burlington Coat Factory	Hudson Goodman Jewelers
Diamond Jewelers	Learhers Cloth	Kinney Shoes
KayBee Toys	Walden Books	GTE-Phones
Regis Hairstyle	Lane Bryant	Radio Shack
Hallmark	Ward's Department Store	Silver Lace
Athletic Press	Ashley Jewelers	Intrigue
Shoe Witz	Post Office	Express Emporium
Sizes Unlimited	General Store	Mervyn's Department Store
Horizon Beauty Supplies		

It is reasonable to assume that since Wal-Mart does present strong direct competition and a major challenge to many of the current mall tenants, that many of these tenants may not continue in business. The argument or assumption that Wal-Mart will increase traffic must be questioned. The reverse is more likely to be true. A consumer, who traditionally shops at the mall in some of the smaller businesses or chains may be now more inclined to visit Wal-Mart while in the mall. However, the traditional Wal-Mart shoppers will not leave the store to see what else is available. They are drawn to Wal-Mart in the first place because their needs are met from a selection and price standpoint. Therefore, those traditional mall stores offering the same or similar merchandise as Wal-Mart will lose traffic and eventually close. Their closing may have a ripple effect on other non-competing mall stores as the "traffic" flow weakens.

Let us presume that as a result of a mega-retail discount "Big Box" moving into a mall, it created a loss of 250 full time equivalent jobs. A calculation of the average salary expense including salary and fringe benefit expense per employee would total $6.250.000. However this estimate is based upon direct wages and benefits paid to mall employees. If one were to then consider the multiplier effect of these wages using a conservative multiplier of 2, the result on the regional GDP would be $12,500,000 without income gains in GDP brought by the new mega-retailer. Obviously the gains would not match the losses here. Moreover, the "Main Street" impact of these small businesses which will close can be seen in the facts presented by the House Committee on Small Business:

> "The establishment of a small business has a large, positive effect on the local economy. A small business with 100 employees in a town adds: 351 more people: 79 more school children: 97 more families; $490,000 more bank deposits: one more retail establishment; $565,000 more retail sales per year and $1,036,000 more personal income per year."[1]

These figures attest to the power of the multiplier, an issue which is seldom raised when describing the impact of the "Big Box" upon the mall or the community.

Now, if 50% of the mall's stores were to close as a result of a mega-retail discount chain's opening, there would be a negative impact of GDP. It is true that the new mega-retail discount chain such as Wal-Mart or Kmart will bring jobs to the area; however, as it has been discussed, an average mega-retail discount chain job is not full-time with full benefits. The multiplier effect or buying power generated by a "Big Box" job can not fully compensate for the loss of a traditional retail job.

There will be a net effect on regional GDP from the competition presented by this mega-retail discount chain and it believed that it will be negative for the reasons presented above. The "new" jobs created by the mega-retail discount chain will not compensate for the jobs lost from the traditional retailers who will close from direct competition. Added to this is the effect on the non-competitive mall stores and the surrounding restaurants and businesses to the mall.

Superstore Sprawl and Its Potential Harm

The 1994 publication of the National Trust for Historic Preservation, entitled How Superstore Sprawl Can Harm Communities....., (and what citizens can do about it) describes the fact that rosy promises of increased revenues for cities, more jobs, affordable prices and good products don't always arrive as promised. Were it true, there would not be the hundreds of citizen groups throughout the nation attempting to hang on to the "land we love."

Gene Davidson, a resident of Berea, Ohio wrote the following in a letter to the National Trust for Historic Preservation:

> "I believe that the land that we love' is literally vanishing before our eyes. The present new construction rate of Wal-Mart, Super Kmarts, Meijers, and others of superstore' breed guarantees others an inevitable destruction of much of what we hold dear. Add to the new construction starts of the superstores all of the franchise operations, such as Sub-Way, McDonalds, Taco Bell, etc., and you can project ten years down the road an intolerable situation. This country would eventually be virtually unrecognizable from what we knew as the United States just one generation ago."2

While the sixties and seventies were replete with new regional shopping malls in the suburbs, the eighties and nineties ushered in the "Big Boxes" of Wal-Mart and Kmart, Home Depot and other sprawling discount stores located near the intersections of major highways.

The new discount stores were in many cases funded by redevelopment funds that were denied to "Main Street" merchants struggling to survive the exodus from downtown. The economic vitality of the downtown oozed out as the highway interchanges were the place to go.

As the downtown businesses closed, there was a desecration of civic and cultural life affecting families, education, crime and violence. The new mega-store required municipal and state investments in roads, water and sewer lines, police and fire protection and other governmental services.

As one travels through the towns and cities of America, it is easy to note negative change with abandoned buildings, unsightly parks, declining majesty of public buildings and general malaise.

Interviews with surviving owners of retail stores disclose a hopelessness. They say "the traffic is gone"; the "future is bleak" --- "I may have to close."

In the four states the author visited, he saw numerous instances of community groups fighting supercenter sprawl. Often they resented the financial packages (RDA) funds offered to developers and chains. They feared the increase in pollution and traffic congestion that would affect school crossings. They deplored a lack of downtown planning that permitted illogical zoning changes. They feared the new chain stores would not add to the size of the consumer market -- but only cause commercial glut until the small retailer was eliminated. They were concerned about the negative impact upon the environment as well as the cultural, scenic, fiscal and economic impacts.

The National Trust for Historic Preservation designated the state of Vermont as "endangered." They wanted to make the nation more aware of the destructive phases of urban sprawl. The Trust's report was a "wake-up call" to communities to evaluate prospective changes in their way of life.

Was it always necessary to create huge sprawling developments or rezone farm land and industrial land several miles from a compact and traditional "Main Street" set of enterprises?

Since many of the mega-retail discount chains have built their supercenters with federal and state redevelopment funds; would it not be possible to apply RDA funds to rehabilitate old strip shopping centers and old malls? Could they not be given financial and physical "face lifts" -- to continue their desirability, both commercially and aesthetically?

Sprawl is not synonymous with planned growth development. If for example, a new Supercenter employs one worker for 20 hours and the impact on a small competitor is to create the loss of 1 full time jobs -- is there a benefit to the community?

Development that exceeds a community's ability to absorb it will ultimately result in abandonment of prior and public investments -- and possibly the new supercenter will also close as the joblessness in the town increases. Lastly, the major discount chain may close because of losses in the town's purchasing power. The chain then opens in the next county, leaving the town desolate and abandoned. This is more and more becoming true in the United States as new large chains open stores not realizing the demographics and other limits of the market.

Are Large Chains Doomed as Well as Small Stores in the Discount Race?

News of Caldor's and Bradlees' bankruptcies put to bed the belief that small retailers can survive the retail policies of the Wal-Marts. Certainly, it would appear that Caldor and Bradlees, each with several hundred stores and professional staffs, have the resources to compete successfully with a Wal-Mart or Kmart. Yet they have begun to flounder.

Moreover, Kmart, Wal-Mart's major discount competition has suffered a series of operating losses for the better part of the last two fiscal years. After a 1995 fourth quarter loss of $420 million, the company seems to be rebounding. Much of the loss was due to the write off of their subsidiary, Builders Square. Company executives contend that these write-offs and divestments are a necessary step in their turnaround. This was guardedly confirmed by Kurt Barnard,

president of Barnard's Marketing Report: "They are not out of the woods, but their strategy is starting to take hold."3

A 1994 study co-authored by David T. Kresge of Dun and Bradstreet Information Services and retail consultant Gary A. Wright of Denver stated: "Despite predictions that small retailers are doomed, specialty stores are thriving in some important niches, says a new study of retailing. In those retail sectors where personal service, location or expertise are valued such as the women's fashion, accessories and gifts, smaller retailers are doing very well, said co-authors Kresge and Wright."4

The study discounts predictions that at least half of all retailers in business in 1990 will be gone by 2000.

In the same Philadelphia Inquirer article the opposite position was taken by a Wall Street investment expert following the retail chain picture:

> "Senior retail analyst Walter Loeb of Loeb and Associates says the larger firms such as Wal-Mart are gaining increasing sway, with enormous control over pricing, the competitive environment and suppliers."
>
> "When Wal-Mart is growing at 18-20 percent a year with the (economy) growing only about 3 percent, somebody is giving up business," he added."5

The study discussed in the article recommended personalized service as means by which small retailers could survive. On the other hand, the authors warned that powerful chains such as Home Depot were also offering personalized service.

The future of the small retailer is growing desperate, despite recommendations about personalized service, unique product differentiation, and a move from the destroyed "Main Street" of America to more appropriate locations. How can those small retailers, with less than a million in sales, finance a lease termination and the expense of a move to a more desirable location?

The proof of the pudding that the major discounters will sooner or later eliminate most of the small retailers is the fact that even the medium size firms are in trouble.

In their study, Kresge and Wright state that medium size firms with sales from $20 to $50 million annually could suffer the most (in the next century.) "They neither have the buying power of large firms nor the personalized approach of the small firms."6

The bankruptcy of Bradlees and Caldor are perfect illustrations of which way the wind is blowing. Someday a Wal-Mart may possibly have the entire retail market. As Mr. Loeb says, "if Wal-Mart grows at 20% a year and the economy only at 3%, somebody's giving up business."

If we examine the "Main Street" malls and the strip centers we can note the devastation of former prosperous retailers. There's only so much demand in a community and hence there may be only one or two powerful survivors left. Where will the jobs come from to provide the purchasing power to keep the "Big Boxes" viable? Soon they will leave for another town or county, and the same cycle begins once again.

Susan Dentzer in a May 1995 article in US News & World Report, entitled "Death of the Middleman?" points out the growing centralization of power between manufacturers, suppliers and discount retailers. As was stated many times in this study, small retailers have lost the wholesalers that sold to them. Many now buy from Sam's Clubs and other club stores. Dintzer states:7

> "The rising competition has prompted consolidation among the largest wholesale and distribution firms; creating giants like Fleming Cos. an Oklahoma City based grocery wholesaler with sales of $16 billion."

Further, after tax profit margins (for some wholesalers) now average 0.5% to 2% and a survey by the National Association of Wholesale Distributors shows that most players think that these razor-thin margins will fall further.8

In addition to the problems of obtaining wholesale resources, small retailers have been hit by the information revolution. This has not only affected small retailers but also substantial companies like supermarkets.

Just collecting data is only part of the new power equation, though. Supermarkets have been capturing scanner data for years. But it has been mass-merchandising chains that figured out how to use such data most effectively. Between 1985 and 1992, notes J. Mark Harran, a senior vice president at Kraft General Foods Inc., outlets such as club stores, mass merchandisers and deep-discount drug chains took seven to eight points of food sales away from traditional supermarket -- a massive shift in such a slow-growth business.9

A major edge was information with Wal-Mart Stores, Inc. being the trend setter, using computers to take the guess work out of wholesale buying, to slash inventory cycles and to keep popular items in stock. Wal-Mart turned the tables on the suppliers, telling them what products it wanted, where and when, and driving them harder than ever on prices.

Now supermarket chains are hoping to emulate Wal-Mart's efficiency. Early last year, consulting firm, Kurt Salmon Associates Inc., released a study concluding that grocers could cut their costs -- and prices -- by 11 percent or more than $30 billion a year, by moving toward "paperless" links with their suppliers. The scheme, dubbed Efficient Consumer Response (ECR), would mean more effective merchandise assortment and store promotions and eventually a continuous replenishment of shelves based on what's actually sold each day.

However, it won't be an easy transition. The big players in the grocery business -- particularly wholesalers -- make much of their money by stocking up on discount merchandise that the manufacturers offer. Fleming Cos., for instance, a $13 billion food wholesaler, makes roughly a third of its profits through such forward buying. The big discount deals would be cut sharply under ECR. And even if ECR eventually brings Wal-Mart-like efficiency, nobody wants to give up today's profits first. That's a major reason why progress toward this much needed streamlining has been slow.

Yes, the middleman is an endangered species because of the EDI hookups between manufacturers and large discounters. But here again, the small retailers may become a thing of the past, lacking funds and information to survive.

Retailing in Transition

In a study several years ago, the following forecast was provided: "By the end of this decade, more than half of today's retailers will be out of business." They explained: "there is too much retail space for the market, too much "copy cat" sameness among retailers, and far too much leverage on the books. These conditions leave no room for marginal performers." They further predicted: "that by the end of the century, some lines of trade will virtually be owned' by only four or five major players."10 It now appears that this prediction made in 1990, is being corroborated by the retailing change of power in the mid-nineties.

In the retail discount field such performers as Wal-Mart, Kmart and Home Depot, among other discount chain leaders, have set the pace which ultimately will eliminate thousands of smaller retailers in drug stores, family clothing, general merchandising, hardware and lumber stores.

According to studies by consultants, G.A. Wright, Inc. of Denver Colorado, there at first glance

> "does appear to be evidence to support the contention that the retail industry is consolidating.' The largest firms are in fact controlling a larger and larger share of the industry. Large retail firms (those with sales over $100 million) increased their share of industry employment from 35% in 1985 to 39% in 1989 and to 45% in 1993."11
>
> "In 1985, small firms (sales under $1 million) employed 21% more workers than the large firms; but by 1993 the small firms employed 22% fewer workers than the large firms."12
>
> ".....it does indeed appear that the (retail) industry is increasingly falling under the control of a relatively small number of very large firms."13

As an example of the domination of the large retail firms, The Wright report cited that employment growth in retail women's clothing and apparel in large firms increased by 18,000 employees between 1989 and 1993, while small firms cut employment by 19,000 and medium size firms cut by 16,000 employees. The only light at the end of the tunnel was shown by small retailers in women's apparel with concentration on selling accessories and specialized apparel. It is clear that large retail discount chains like Wal-Mart, Toy "R" Us and Home Depot will continue to extend their lead in sales and growth, unless small firms can perform miracles in providing specialized services. Given the ghetto-like influences on the dying "Main Streets," the specialized successes appear realistically impossible in a substantial way in the near future.

Data supplied by G.A. Wright, Inc. based upon U.S. Government SICs show the steady successive gains in chain store employment and declines in small retail employment when comparing 1985 with 1993.

Table 16
U.S. RETAIL EMPLOYMENT SHARE
Large vs. Small Retailers 1985-199314

Sales Volume	1985	1993
$1 million or less	37.4%	35.5%
$1- 10 million	14.9%	13.1%

$10- 100 million	6.1%	5.7%
$100 million and over	30.9%	43.4%
Sales not available	10.7%	2.3%
TOTAL	**100%**	**100%**

It is easy to see from Federal SIC data where employment grew in the years 1989 to 1993 and where employment fell.

In men's and boy's apparel retail chains with sales near $100 million, employment grew by 32% while in similar stores with sales of $1 million or less, employment fell by 9.1%.

In women's wear, the over $100 million chains had employment increases of 16.4% over the 1989 to 1993 period, while smaller retailers with $1 million or less in sales saw employment fall by 12.4%.

In drugs, the larger chains with sales over $100 million had an employment increase in the years, 1983 to 1993 by 30.2%; while the independent drug stores, with sales of $1 million or less saw employment drop by 28.7%.

According to the Wright studies, the consistent losers in sales, growth and employment are retailers in the sales classes of $1 million and $100 million. Thus, the concerns about the survival of the small retailer, must be added to the concerns of the survival of retailers in the $100 million sales class. The national retail discount chains by year 2000 and beyond will have a major negative impact on retail employment. The Wright study examined the closure or termination rate of retailers during the nineties. They provide great concern with the following:

> "If the company closure rate for the industry of 2.9% per year for the first four years of the 90's were extrapolated to the year 2000, it would yield a closure rate of 29% for the 10-year period of the 90's. It is important to note that this is not 29% of the retail companies that start the decade, since many of the closures are likely to be businesses that were start-ups during the 90's."

"The major group of companies with the greatest closure rate is apparel stores. The 90's is experiencing a 5.4% per year closure rate in this group that compares to an 8.0% rate for the 80's. Extrapolating the 5.4% rate to the year 2000 would yield a 54.0% closure rate for the decade. Again, this is not 54% of those starting the decade."15

Not only are the small and medium sized retailers being hammered by the major retail discount chains but the medium sized discount chains are falling by the wayside as attested to the bankruptcy applications of Caldor and Bradlees, and now even the giant Kmart appears to be suffering. Charming Shoppes with over 1400 retail stores is reported to be in real trouble, while Silo's has closed all stores.

In retailing, analysts say, discount is no longer synonymous with success. "The days are gone when a discounter could be unique or alone in any market," says Allan L. Pennington, a Chicago retail consultant with McMillan/Doolittle. "It's become a difficult business to be in."

Analysts trace the trend to a redrawing of battle lines. Until recently, discounters of every stripe sought to steal customers from full-price independent, mass merchants such as J.C. Penney Co. and department stores such as R.H. Macy & Co.

But the expansion into nearly every market of the so-called Big Three -- Wal-Mart Stores, Inc., Kmart Corp. and Dayton Hudson Corp's Target chain -- has pitted discounter against discounter in a competition that favors size. Wal-Mart and Target, in, particular are thriving. "The smaller chains are getting caught in a battle between the Bigs." says Linda Kristiansen, a New York retail analyst with Wertheim Schroder.16

The Role of the National Trust for Historic Preservation

The author has endeavored to assess the contributions of the mega-retail discount chains as well as the negative implications of their unprecedented growth.

It's important at this time as the writer comes to the end of his study to once again review the role of the National Trust for Historic Preservation and the challenge it sets forth to governments, citizens, planners, developers and local and national economists and sociologists.

The Trust sees the mega-retail discount chains as inputting such negatives as:

1. Sapping the economic vitality of downtowns and "Main Street" by shifting the retail center of gravity out to highway interchanges on the edge of town.

2. Displacing existing businesses, especially independently owned small businesses that contribute significantly to local civic life, by building stores vastly out of scale with town's ability to absorb them.

3. Setting the stage for higher property and state income taxes by creating developments that are costly to serve and require new roads, water and sewer lines, police protection and other public services.

4. Causing the waste or abandonment of previous public and private investments in existing buildings, streets, parks and other community assets.

5. Homogenizing America by building stores that have no relation to their surroundings.

While these points have been made in Chapter 1 of this study, they must be reemphasized as part of the conclusions of this work.

What other challenges did the Trust provide in its formidable 1994 study?17

The National Trust for Historic Preservation asks the mega-retail discount chains to answer the following challenge:

> "Can the consumer benefits provided by the superstore be achieved only through the creation of more urban sprawl and all the sprawl brings: traffic congestion, automobile dependence, air pollution, dispirited or dead downtowns, despoiled country sides and weakened community ties? Or could some of the benefits be provided without so much damage to the environment and local communities? We think these are questions that should be asked."19

The Trust also poses an equally important challenge to the many communities facing the invasion of the super "boxes:

> "And communities have choices. They can encourage or discourage certain types of development. If a community doesn't want superstore sprawl, it can take steps to prevent it. If a community wants a superstore, it faces a whole host of other questions relating to whether the store comes in on the communities terms. Where should the store be located? How big should it be? How much new retail space can the local economy absorb without suffering fiscal and economic impacts created by a commercial glut? Can the store be designed to help preserve the communities livability and attractiveness? How can the store minimize negative environmental, cultural, scenic, fiscal and economic effects? Above all, what is the long term impact of the decision?"19

Supercenters and Comparative Labor Costs

Earlier in this study, PaineWebber was quoted as having a negative opinion of "one stop" shopping. They apparently did not care for alternative advertising and promotion with an additional example from Kmart's ads as "We've got juice, jumper cables and jeans" and "Shop here for carrots and car mats." PaineWebber may have mistakenly believed that only a small minority of Supercenter customers would "shop both sides of the store."

PaineWebber earlier suspected that Kmart would have financial and management problems which have come to the fore prior to the completion of this study. As the writer indicated in Chapter II, PaineWebber had stated: "Kmart's well-known corporate problems give it a negative image among consumers as well as developers." As of late 1995, Kmart's per share price on the New York Stock Exchange appeared to be dropping sharply while Wal-Mart's securities prices appeared to be relatively stable.

The PaineWebber study also reported that Kmart's decision to use third party food wholesalers saved much needed capital, but put Super Kmart at a substantial disadvantage in fulfilling the Supercenters' low price positioning.

Furthermore, this author indicated in Chapter II that he did not accept the premise that Wal-Mart would have similar problems to Kmart's in executing the supercenter program. Wal-Mart's national management and store management appears quite strong. Wal-Mart, unlike several major supermarket chains, is unconstrained by corporate problems and appears to be going with 100% self-distribution.

Most supermarket chains self-procure and self-distribute. Apparently, when Kmart opened new Super Kmarts, utilization of outside food wholesalers strained Kmart's staff resources in opening new locations with the intense travel required as well as essential staff training requirements.

A major advantage for Wal-Mart's Supercenter, generally, is its lower labor costs as compared to both the unionized and non-unionized supermarkets. Wal-Mart is presently non-union. Kroger, the dominant supermarket chain, is unionized; nevertheless, it, unlike many supermarkets, continues to be strongly managed, effective and highly profitable. Wal-Mart's low labor costs, high productivity and control of its managerial and inventory processes have weakened not only Kmart, but many regional discount chains as well as supermarkets.

Both investors and Standard & Poors, which lowered its ratings on Kmart's $3.7 billion in debt, point out that Kmart is in a defensive position against competitors like industry leader Wal-Mart Stores, Inc. For example, Kmart plans to pare its 1995 capital spending by an as-yet undetermined amount from a previously projected $1 billion, while Wal-Mart plans to boost its spending to $4.5 billion from $4 billion.

Up to now the small retailer has been threatened by the power of the mega-retail chain -- now it appears that the same thing will be true of national as well as regional, and in some cases, mature supermarket chains. What will this mean for joblessness and the U.S. retail employment picture in the next five years?

The New Emphasis Upon the Food Industry in Supercenters Being Opened by Mega-Retail Discount Chains

The American food industry is the finest in the world. Its distribution of goods, and quality of service are the shining example world wide. Its products, from produce to paper towels, are available night and day for everyone's convenience. Primary locations make shopping easily accessible for all concerned customers. Different types of stores service all the needs of customers culturally, aesthetically, and most importantly, economically. And now, this industry is in jeopardy.

For example, in Southern California, 90% of the market share in the food industry is under a collective bargaining agreement. Labor contracts between the United Food and Commercial Workers and food employers such as Ralphs, Food-4-Less, Hughes, Vons, Albertsons and Luckys have been negotiated through collective bargaining over the past several decades. The end result of these deliberations, as one might expect, has been a livable wage plus important benefits. Here the community is truly the beneficiary with healthy, independent tax paying residents who contribute to the tax base rather than drain it. A full-time wage earner working at Ralphs, paid at top scale, will earn a more than livable salary with health costs and dental coverage paid additionally.

Wal-Mart and Other Mega-Retail Discount Chains Enter the Food Industry in a Most Powerful Way

As we discussed earlier in this report, recently a number of mega-retail discount chains (Wal-Mart, Kmart and Target) have decided to enter the food business. However, financial analyst opinions conclude that Wal-Mart will become the largest player. According to industry estimates, Wal-Mart's 239 Supercenters (combination food/retail stores) account for sales of about $13.5 billion or about 14.5 % of the company's fiscal 1996 sales of $93.6 billion. Supercenters are spread over 23 states with approximately 110 new stores planned for 1996. Most stock analysts believe Wal-Mart will become the largest food company in America with sales exceeding $30 billion dollars a year. Wal-Mart has been evaluating the potential of Supercenters at both ends of the spectrum from a 109,000 square foot center in Arkansas to a 220,000 square foot center in Tennessee. A 136,000 square foot model has all the same departments as a larger Supercenter, but it is laid out in a smaller box and has a more compressed variety. Wal-Mart officials told Supermarket News, "the decision to grow with a smaller size prototype is a clear indication that Wal-Mart plans to expand Supercenters into smaller towns of 10,000 to 12,000 people where there is less population density and less competition."[21]

In the near future Wal-Mart will probably enter the food business in California and several other states and what may be at stake will be the additional loss of many quality high paying jobs now found in supermarkets. Wal-Mart's increasing assimilation into the food industry is apparently motivated by the drive to increase total retail sales. According to company statements, total retail sales should increase some 30% due to the synergies established at combination stores. Furthermore, it has been suggested that Wal-Mart might use food as a loss leader in order to increase store traffic. There will be a positive transfer effect in the sale of general merchandise by having more visitors to the store, particularly if the sales of food are in the "loss leader" category. The impact that this will have on the food industry will parallel the effect it has had on the traditional retail industry. The problems created for employees within the traditional food industry could be nothing short of catastrophic. Supermarkets work on very thin margins, and their shrinking market share resulting from the combination of cheap labor and low prices will have murderous impact on the traditional food stores, large or small. The fallout could be compared to that of GM, Chrysler and Ford; not in overall job loss, but in weekly earnings, while company paid health benefits and retirement plans now prevalent in supermarkets might disappear. The shift in health benefits costs will go directly to the taxpayer while desperate worker who can't get jobs and retirees without pension funds may be adversely impacted and may have to be taken care of by federal, local and state governments. With a Social Security system already in jeopardy, increased drains will only shorten its lifespan. The elderly will certainly become more dependent on government subsidies as the shrinking "middle" will be further demonstrated.

The Supercenter's impact on the food industry will not be transparent to the causal observer. The entry of mega-retail discount chains like Wal-Mart, Kmart and Target into the food business is to increase their retail sales possibly by as much as an estimated 30% - in the case of Wal-Mart. However, there will be a further negative impact upon the local, state and federal economies as jobs go from full time to part-time and as wages drop and fringe benefits disappear.

Effects on the Community

The Midwest Center for Labor Research(MCLR) studied the tax revenues now generated at existing supermarkets in San Jose, California which might well be lost if three super stores (combination retail/food) were to locate in the city. According to the MCLR:

> "The presence of three such non-union super stores would take away work from supermarket workers already employed throughout the city. The grocery sections of the new super stores would employ the equivalent of three hundred sixty supermarket workers. Their presence would result in a decline in the hours of work of existing supermarket workers. (MCLR) examined three areas of impact: (1) The higher wages of existing supermarket workers, almost all of whom are unionized, and the wages of other workers whose jobs are supported by the multiplier effect,' which result in increased consumption in the area: (2) Higher employment attributable to this increased consumer expenditure; and (3) The increased taxes paid to the government as a consequence of the higher wages."22

Increased Consumption and Increase Jobs

The study estimated that there is a $2.7 million dollar additional consumption in Santa Clara County, California because of the higher level of prevailing wages paid by the existing

supermarkets compared to the average wages that will be paid by the new Supercenters which generally might only amount to one to two dollars above the minimum wage. Of this additional consumption(GDP), 82.7% comes from the higher prevailing wages of the supermarket workers, while the remaining 17.3% comes from the "multiplier effect," previously described, and the wages of workers who benefit by the secondary and tertiary respending of higher supermarket salaries.23

When a group of workers are paid more they consume more, thereby raising the overall consumption of goods and services in an area, in other words an increase in GDP. This consequently augments the number of jobs in the community. The MCLR study found that in Santa Clara County, for every 100 supermarket jobs where the prevalent wage rate was paid, nine additional jobs were created. Of course, there is then a multiplier effect from the wages of these newly created jobs and the taxes paid by these citizens.24

In another study concerning San Jose, California, the Sidway Kotin Mouchly Group estimated $350,000 in new sales taxes would be derived from each of the new superstores locating in the county. However, they failed to measure the overall economic dynamics, i.e., declining tax revenues for pre-existing supermarkets and a net loss of jobs. The MCLR study predicted a loss of $1.3 million because of the difference in wages between prevailing (traditional supermarkets) and non-prevailing (mega-retail discount chains) wages. The taxes created by the new super stores will be offset by the failure of pre-existing supermarkets, the loss of jobs and revenues.

Results in Four States: Pennsylvania, California, Illinois and New York ; Respondents to Most Questions on the Shils Questionnaire Almost Uniformly Indicated Pessimism About Their Chances for Survival When Faced Competitively by the Mega-Retail Discount Chains

The pessimism is shared by none other than our own President Bill Clinton who, in an address at the 1995 White House Conference on Small Business, on June 12,1995, stated that while more small businesses had sprung up in 1993 and 1994 than in any previous year since World War II, he was concerned about their ability to stay alive. He expressed concern about the high rate of failure and bankruptcies among small business.

Chapter III disclosed that when the respondents were queried as to what the anticipated effect upon the firm's economic health might be if a mega-retail chain were to relocate nearby, the answers were overwhelmingly, "negative" and "very negative." Forty percent anticipated the results as "negative" and an additional 33% answered "very negative." Thus 73% viewed their future in a most despondent, negative manner.

The respondents generally mixed pessimism with facts. Fifty-eight percent of the respondents visualized serious losses in employment were a major chain to move into the area selling similar products. Forty percent of the respondents saw their retail venture losing 5% to 35% of their employees. Eighteen percent visualized losing more than 50% of their employees. Only 4% saw a gain in employment. Thirty-seven percent anticipated "no effect." The author believes that the "no effect" data stemmed from a lack of hard data on the part of the respondents -- but in no way expressed optimism about the future.

The respondents were then asked to rate the negative or positive impact on sales volume by the imminent competition of a mega-retail discount chain. Eighty percent of the respondents

anticipated "sharp" to "drastic" reductions in sales volume; while only 14% saw "no effect." Only 6% saw a rise by virtue of a new competitive entry of a major retail discount chain.

Data appeared consistent as to the expected reduction in sales volume as well as serious estimates of future profitability. Twenty-four percent of the respondents visualized profits dropping by more than 50%. In fact, 76% anticipated serious reductions in profitability as a result of the imminent competition of the mega-retail discount chains. Only 8% saw an increase in profitability, with these estimates being mostly conservative i.e., 10% or less. Sixteen percent saw "no effect."

Respondent retailers saw the reduction in the number of wholesalers, or those middlemen willing to sell to small retailers, as affecting their business negatively. Over 50% saw the direct selling to mega-retail discount chains by suppliers as being "negative" of "very negative." Kmart's and Wal-Mart's recent ventures into the Super Kmarts and Supercenters' food and grocery departments are creating new competition for the small grocer and the more traditional supermarket. Small retailers see these ventures as further threatening the survival of countless small food retailers. Many of whom (lacking wholesale resources) are now buying from Sam's Clubs or other clubs.

Small retailers anxious to survive do not have the relative financial ability to compete with the mega-discount chains in advertising, promotion, public relations or radio and television. They rely on the small business techniques replete with flyers, leaflets, brochures, using the yellow pages of the telephone book and the local newspaper. This, despite the fact that many proponents for the mega-retail discount chain movement believe that small retailers can survive by employing specialization, improved marketing, utilization of information and computerized systems and other MBA driven techniques. The average "Main Street" retailer in general fails to have these resources or capabilities.

Small retailers sell most of the products sold by Kmart, Wal-Mart, Target and many other major chains. Each store, however, was limited with respect to national brands, inventory and product lines; one might specialize in apparel; another in food; another in auto mechanics and supplies and so on.

In his 1993 study, Kenneth E. Stone, Professor of Economics at Iowa State University, stated that "businesses that sell the same goods as Wal-Mart sells tend to experience some reduction in sales after Wal-Mart opens." The study used sales tax data to document changes in trade area size in 32 Iowa towns with populations between 5,000 and 300,000 over a five year period.

Stone described a state with a "static population, resulting in a fixed size "retail pie." He stated, "in this situation when a large well-known retail store enters a town, it captures a significant slice of the pie, thus leaving less sales for the other businesses." He also indicated that in smaller towns, with less than 5,000 in population, sales were lost even more rapidly.

Professor Stone's early studies (1992) anticipated the result of Wal-Mart's national growth into the east and west. There is simply not enough customer demand for smaller retailers to survive the competition of Wal-Mart, Kmart, Target and other discount chains where the retailers essentially sell the same products as are found in the major retail discount chains.

In his earlier paper, "Strategies for Co-existing in a Mass Merchandising Environment,." Professor Stone was very direct in his admonition to small retailers. "Try not to handle the exact same merchandise . . . (or if it's a similar product) then sell another brand."26

Both Chapters III and IV presented the ever increasing concerns of small retailers for survival. The data in Chapter III was quantitative, while the narrative explanations as to why some 500 to 600 respondents were fearful about survival, was indeed qualitative.

When one mixes the anger of not having adequate and free downtown parking with the tax abatements and other grants provided the large chains -- yet generally denied to rehabilitate downtown businesses -- the reason for the anger comes through loud and clear. The customer base of the retail respondents, described in Chapter III, depends greatly on highways and parking. Naturally the major chains locating outside of "Main Street" have the advantage of parking lots; ease of access; freedom from parking meters and downtown traffic congestion. Added to that, the fear of crime and violence in downtown evening shopping creates major disadvantages for the small "Main Street" retailer.

A major question addressed to the small retailer related to strategies they might apply in competing more effectively with the major discount chains. While the staff received an 84% response rate, it was lower than the answers to other questions. The respondents appear fragmented in their choices as well as frustrated, confused, pessimistic and having trouble concentrating on how to answer this question.

Fifty-six percent selected alternative strategies that could be defined as somewhat "positive"; such as to "increase staff"; "increase visibility"; "provide fuller service" and "expand product lines." Forty-four percent of the choices were "defensive" strategies, going from "raising or lowering prices"; "decreasing staff"; "liquidating or selling the business" or "going into bankruptcy."

There was not a great deal of difference among the four states' as to "positive" strategies. Illinois was the most positive with 60%; New York with 56%; California 55% and Pennsylvania with 50%.

The author is confident that the profile of small retail business as portrayed in Chapter III showed consistency and validity, not only nationally but also as among the four states studied. Surprisingly, respondents have generally been in business longer than might be the popular notion with a large proportion having been in business for more than 10 years. Small retailers, on the whole, showed serious concern about their future viability and evidence of job loss, liquidation and bankruptcy.

The State of Mind of the Small Retailer in America; His Fears and Concerns about Survival

As was indicated in Chapters II and III, there was approximately a 10% return of questionnaires mailed to Pennsylvania, California, New York and Illinois. The research staff had categorized these responses which provide comments and suggestions on how to cope and prepare for the survival of the small retailer. The categories were grouped by state returns and indicated the types of product lines or services provided by the respondents.

Chapter IV revealed the depths of fear and discouragement of the small retailers who were desperately concerned with their chances of survival in the face of mega-retail discount chain competition of other powerful retail chains.

The narrative comments and quotes in Chapter IV have been compiled from retailers responding to the 6,000 questionnaires sent by the author in 1994 to firms in Pennsylvania, California, New York, and Illinois. They represented all of the subjective responses to the completed questionnaires returned which were about 10% of the original addressees.

Part I of Chapter IV was a response to the excellent book authored by Taylor and Archer. Our staff recognizes this serious work as well meaning -- but finds the "Ten Suggested Strategies to Survive" almost impossible to implement at the current stage of frustration, retail failure and stagnation. These small firms simply do not have the financial resources, staff or leadership to snap back in the ways suggested by Taylor and Archer. Were there a reason to start a new business with more than adequate management experience and venture capital, their "Ten Strategies to Survive" would be both helpful and essential. It is possible that some individual retailers might survive in the face of "Big Boxes" by following Taylor and Archer's "Ten Commandments" or strategies. However, for the most part, the dying breed of "Main Street" merchants require external and enormous help from their local, state and federal governments as well as specialized agencies such as zoning boards, planning commissions and community development authorities who are prepared to provide incentives and subsidies to small retailers currently available to the mega-retail discount chains who generally build their "Big Boxes" on former agricultural or industrial land. For example, a mega-retail discount chain store is given the right to retain sales taxes collected for a given number of years in order to help finance construction of and debt service for the "Big Box." As small retailers close, the sales taxes they formerly collected are no longer available to local government. These entrepreneurial subsidies and dozens of other incentives as well as tax abatements are not generally available to the small retail merchant.

Taylor and Archer are among those writers and journalists who attribute the failure of the traditional "Main Street" retailer to other causes than the price competition of the mega-retail discount chains. Taylor and Archer authored a provocative and interesting volume which appears well meaning in identifying ten survival strategies to enable the small retailer to compete more effectively with a giant Wal-Mart or other mega-chain retailers. Their book, published in 1994, Up Against The Wal-Marts (How Your Business Can Prosper in the Shadow of the Retail Giants, was first cited in Chapter IV.

One cannot argue with time honored principles taught at the nation's illustrious business schools, i.e., Wharton, Harvard, Stanford - but these schools prescriptions are far away from the financial constraints of small businesses. Those principles being such as "satisfy your customers"; "study the success of others"; "gather and analyze management information regularly"; "sharpen your marketing skills"; "increase the customers perception of value"; "position your business uniquely"; "eliminate waste"; "find something to improve every day," for example, the Kaizen, Japanese method of incremental improvement; "embrace change with a positive attitude"; and pull the trigger and start the battle."

The writer has visited many strip centers, "Main Streets" and malls, in number of states and has interviewed a number of valiant survivors. In Part II of Chapter IV, the reader certainly has to

recognize the discouragement and disillusionment of the respondent retailers about the end of their "American Dream."

Taylor and Archer, while truly attempting to encourage small retailers to survive, nevertheless did recognize the present devastation going on in malls, strip centers and the former "Main Streets" of middle America. Furthermore, it is easy to see that observers are shocked by the decline and elimination of most small retail stores in the ethnic and minority enclaves of our very large cities in the East, Midwest and the West. The elimination of small retail stores in the neighborhoods results in job loss and contributes to the ultimate conversion of a formerly socially stable neighborhood into a ghetto, beset by violence, crimes, drugs and an underground economy.

Predatory Pricing - A State and Federal Legal Review

Chapter V introduced the subject of legal review of mega-retail discount chain behavior in the pricing area. In the case of American Drugs, Inc. v. Wal-Mart Stores, Inc., an Arkansas predatory pricing case, Wal-Mart lost in the lower Chancery Court.

This introduced the subject of "sales below cost" claims, and whether or not anything could be learned that might provide reviews of below cost pricing under the Sherman, Clayton, Robinson-Patman or Federal Trade Commission Acts. Up to this point, it appears that "sales-below-cost" claims appear easier to maintain under state laws rather than under federal antitrust laws. The subject is tremendously complicated. Also, monopolization and predatory pricing under federal antitrust laws should not be confused with potential remedies under state unfair trade laws.

In Arkansas, the Chancery Court rejected the "market basket" approach to analyzing "sales below cost." Rejection of the "market basket" approach means that an aggrieved plaintiff can recover in a state "sales below cost" claim regarding a particular product overall even if the retailer maintains a healthy profit margin.

Additionally, in the Arkansas case (in the lower Chancery Court), the judge determined that the plaintiffs need not show monopoly power to do damage to competition (involving complicated expert analysis of relevant markets and so forth). Instead the plaintiffs only needed to show the company had an intent to injure the competition, which could be inferred more directly from the company's stated policies and purposes. However, Wal-Mart won its appeal at the Arkansas Supreme Court level. Both the majority decision and the dissenting opinion in the Supreme Court case did create interest in the subject of predatory pricing and should stimulate the Federal Trade Commission and possibly the U.S. Justice Department to review appropriate federal regulatory statutes which might result in greater protection for the small retailer. Further, most states have enacted "baby" Sherman Acts which track the federal statute and the below-cost sales provisions. These are often contained in more general pricing statutes which are similar to the federal Robinson-Patman price discrimination law -- either of which may be used advantageously to challenge truly predatory pricing behavior. Chapter V, also mentioned that a group of retailers took a different tack on pricing differentials by suing both manufacturers and wholesalers. This study shows that more and more of the chain's ability to lower prices is due to the massive discounts available to them for large volume purchases. Not only are these unit prices not available to small retailers, but wholesalers, who used to sell the small retailer are disappearing, as the chains buy "direct" from the manufacturer.

In August 1994, the House Small Business Committee met and listened to witnesses who were concerned about the survival of the small retailer in the face of growing power of the mega-retail discount chains. Should not the 1995 and 1996 Small Business Committee of both the House and Senate continue this type of public hearing?

Materials from the U.S. Congressional Budget Office (CBO) were included in Chapter V for the purpose of opening the question (in public forums) as to which regulatory statutes are available at the federal level that might pertain to the behavior and growing power of chain stores. Their interpretative comments and analyses of the Robinson-Patman Act were particularly valuable. CBO describes "how in the 20's and 30's, large chain retail stores rose to prominence. The market power of some of these chains enabled them to negotiate lower prices from manufacturers than could be obtained by the traditional small independent retailer. For that and other reasons, the small retailer found it difficult to compete, leading to pressure on Congress to do something to help them. The dissatisfaction with the lack of success of the Clayton Act in preventing price discrimination, led to the passage in 1936 of the Robinson-Patman Act."

There appears to be many similarities in the retail market today as was noted by CBO for the period of the 20's and 30's. Then it was the large chain that threatened the small retailer; today it is the mega-retail discount chain.

Predatory Pricing and What Was Learned from the Majority and Dissenting Opinions in Wal-Mart's Victorious Appeal to the Arkansas Supreme Court

Chapter VI analyzed in some detail Wal-Mart's arguments to set aside the Chancery Court's decision against it. Wal-Mart believed that there was no rational basis for the Arkansas Court to have ruled against the company. Further, in the appeal, Wal-Mart believed the Arkansas Act was preempted by federal law by the Robinson-Patman Amendments to the Clayton Act which specifically addressed the weapon of predatory pricing by monopolies.

The discussions in Chapter V and Chapter VI do suggest that it would be appropriate for the Small Business Committees of the House of Representatives and the U.S. Senate to hold hearings on the growing power of the mega-retail discount chains.

The Court's concluding comment in the dissent is reproduced here:

> "We would hold that the Appellant has failed to prove that the Chancellor used an improper legal standard with respect to the inference of intent to injure competitors and to destroy or substantially lessen competition. We also find that the Chancellor could have found an intent to injure competitors from the evidence in the record and particularly from the testimony of David Glass, President of Wal-Mart Stores, Inc. who used language such as aggressive,' to do whatever it takes,' kill the competition's momentum,' and war zones.' Appellant failed to establish that the Arkansas Act violates rights guaranteed by the Arkansas Constitution, Article 2, Section 2. Appellant also failed to establish that the Arkansas Act was preempted by federal law.28

The Supreme Court, despite a strongly worded dissenting opinion by three justices, reversed the Chancery Court's victory for American Drugs Inc. and dismissed the original plaintiff's case and awarded in favor of Wal-Mart, the Appellant.

In Chapter VI, the author provided great detail in the dissenting opinion because of references to the predatory pricing features of Robinson-Patman Act; particularly with respect to the several different approaches to calculating below cost sales on the "market basket" approach or the "single product" approach. The majority opinion in the Supreme Court reversal also acknowledged that, "Admittedly, there is point where competitive pricing ends and predatory pricing begins." Further, Justice Robert L. Brown's majority decision in favor of Wal-Mart also pointed out that the Eighth U.S. Circuit Court of Appeals had discussed the difficulty in distinguishing the two in the context of the Sherman Act; i.e. "Competitive pricing" vs. "Predatory pricing." Moreover, while a finding that a defendant has engaged in selling below cost, is not the equivalent of finding specific predatory intent; nevertheless, it could be a basis from which such intent might be inferred.

In the August 1994 House Small Business Committee Public Hearings and in Subsequent Congressional Sessions, the Committee Lashed out at the Mega-Discount Superstore for Hurting Small Businesses and Entire Communities with Predatory Pricing, Unfair Labor Practices and Market Saturation

In Joyce Barrett's article on August 11, 1994 in Women's Wear Daily she reported on the first Congressional probe of the retailing phenomenon that was changing local markets nationwide. The mega-stores were blamed for everything from crushing local competition to altering the product distribution chain.

As the largest retailer in the nation, according to Barrett, Wal-Mart Stores Inc. drew most of the criticism, although Representative John LaFalce (D., NY), Chairman of the House Small Business Committee said he had hoped the discussion would not target specific retailers. Wal-Mart's projected volume for this year was $85 billion.

Representative LaFalce said he aimed to explore three ways of protecting small business from the super-chains.

1. Increase publicity about expansion of the mega-stores.
2. Curb federal money, such as industrial revenue bonds, that goes toward retail development.
3. Insure that federal antitrust and banking laws are tough enough and are enforced.

LaFalce acknowledged that the federal government can do little to affect the recent course of retailing, but said he was concerned that superstore development was coming at the expense of smaller merchants.

At the hearings, which were commented on in Chapter VII, there was a litany of complaints about the superstores. Thomas Muller, a Fairfax, VA, economist and the author of a report on the impact that three proposed Wal-Mart stores would have on northeastern Vermont communities, said Wal-Mart charged higher prices in communities where it has eliminated the competition. Also, Wal-Mart and other mega-stores don't increase the dollar volume of sales, but instead redistribute sales. Further he pointed out that the claim that Wal-Mart creates jobs also is wrong. Muller added that in communities with a Wal-Mart the result could be fewer retail jobs. He also said that full-time jobs in the mega-retail were often based on a 28-hour work week, instead of the usual 40 hours. He also observed that based on its current marketing strategy, Wal-Mart could open another 5,000 stores within the next 10 to 15 years. Muller further estimated:

> "...that Wal-Mart had reached optimum penetration levels' in Arkansas, Mississippi and Oklahoma, and now appears to be targeting urban and rural areas in other states. The new Wal-Mart approach for areas close to saturation, as well as others, is to revamp the older stores as supercenters," Muller said. "These combine the general merchandise store with a full-line grocery store, using the checkout counters."31

Muller continued,

> "The experience of Wal-Mart has been that these superstores have increased per-square-foot general merchandise sales. With its superstores Wal-Mart sales could easily double, even in states where current stores are close to saturation. In a few years, given that current trends will continue, one corporate entity may have a substantial share of all retail trade in the United States."32

The author recommends that the current Committees on Small Business in both the U.S. House of Representatives and the U.S. Senate continue to hold hearings on the applicability of such regulatory statutes as the Sherman, Clayton, Federal Trade Commission and Robinson-Patman Acts upon these mega-retail discount chains and their effect on the weakening condition of small retailers in the United States, due in part to the ever increasing power of the chains to procure the lowest of prices from manufacturers and suppliers.

While predatory pricing might have to be viewed differently in the federal area compared to state litigation, nevertheless the increasing power of the chains requires federal review in terms of applicable statutes and regulations designated to protect small business and to provide free market opportunities. Further, the opportunities of the large chains to secure "corporate welfare" in terms of financial assistance for building their huge stores should be re-examined by Congress, since many of the grants are basically part of federal funding.

An End to "Corporate Welfare" - Recommendations to Congress for Federal Legislation to Combat and Restrict "Big Box" Abuses

The following recommendations set forth in Chapter VIII, hopefully would restrict "Big Box" abuses by mega-retail discount chains, developers and redevelopment authorities operating under existing state redevelopment laws by taking away state and local tax giveaways and providing a vehicle for Congressional Hearings.

The idea is to attach strings to federal monies given states and localities: for example, such strings are often attached to highway monies. This would make sense here because these "Big Box" stores create additional burdens on federal highways as they are often built in areas accessible only by federal highway.

The legislation would say that highway money would be reduced to any state which allowed these stores to go up in any of the following circumstances:

(1) If the development received state or local tax incentives;

(2) If it was within x miles of a federal highway;

(3) If the developer/retailer did not pay the government for the full social costs of building such a store (not just for repairing highways more often, but also cleanup of air pollution) (a study to determine those costs should be required); or

(4) if a required "small business impact report" showed existing small businesses would be injured significantly.

Ideas for titles such as Small Business Survival Act; Retail Overdevelopment Act; Tax Financing Restraint Act (or any combination of these).

Further since the Internal Revenue Code is filled with provisions which aid, help or restrict the activities of certain industries, it is a natural place to consider curtailing the redevelopment agency, developers and "Big Box" abuses.

The idea might be to impose an excise or penalty tax on any state or local tax giveaways these "Big Boxes" wangle out of state and local government. The legislation possibly could apply only to retailers with an income over x billion dollars or a minimum of square foot. Our logic is this: The federal agencies and Congress are the only people who can stop the states and cities from cannibalizing each other as each gives away more and more in the form of tax breaks to win these mega-retail discount stores, only to rob their neighboring town or state of tax revenues (and jobs) from the existing retailers.

Only states or the federal government can step in to stop the current warfare; warfare which makes local governments more dependent on Washington D.C. No new jobs are created, and because the mega-retail chains pay their employees less and kill jobs at other retailers, they cause the federal government to receive less in income taxes. This should certainly interest Congress and the U.S. Treasury Department.

It is also obvious that there are incidental costs to the federal government for "Big Box" store development. They tend to expand near interstate highways, adding additional traffic which certainly costs the federal government more.

The mega-retail discount chains generally don't provide health insurance to employees, adding these people to the governments' burden. These chains are quite profitable, so an excise tax would not put them out of business.

Further, the environmentalists and preservationists should see the need to reduce the tax incentives for "Big Box" development. Finally, those in favor of reducing the federal deficit should be eager to embrace new sources of revenue.

Greg LeRoy, previously cited in Chapter VII, made it very clear that the state and federal governments have been wasting large sums on "corporate welfare" for enormously powerful and rich retail corporations. Whether it is a tax abatement or the right to retain sales tax revenues to pay for capital outlay or debt service; these are funds, which based upon earlier objectives, should have been applied in great part to rehabilitation of the "Main Streets" of the United States. Further, as Greg LeRoy pointed out, the grants help build structures which are often abandoned while the companies receiving the financial assistance move elsewhere.

The Need to Combat Urban Sprawl (The Work of the National Trust for Historic Preservation)

It is clear that the cities and towns of America, are gradually succumbing to urban sprawl. Moreover as described in many places in this study, the same type of sprawl is taking place in

malls and strip centers away from the downtown areas. All of the abandonments of stores that were a delight to see ten years ago have taken place in great part due to the restless mobility of such competing giants as Kmart, Target, Wal-Mart and other mega-retail discount chains, as they feverishly move from area to area building larger and larger superboxes in a desire to kill off their competition. Soon the nation will appear to be scenes of desecrated malls looking like ravaged cemeteries, abandoned, looted, boarded up and loaded with graffiti.

Can better planning on national, state and local levels help with respect to zoning and involving the community and their citizenry?

The following long term strategy for combating sprawl may be found in the work of the National Trust for Historic Preservation released in 1994.33

> "One of the best long term strategies for combating sprawl is to revitalize the downtown, the community's traditional center of commercial, cultural, and social activity. Making downtown "the place to be" helps to attract businesses, shoppers, and appropriate development to Main Street'."
>
> "Sometimes a downtown's problems seem overwhelming to local citizens. By flooding the community with more commercial space than can reasonably be supported and by diluting the downtown's economic vitality, sprawl can add to those problems. Yet downtown's problems are not insurmountable. Rebuilding the historic commercial district's economic strength simply requires persistence, collaboration, and a clear vision of what you hope to achieve."
>
> "By identifying the downtown's major problems, then breaking large tasks down into smaller, achievable steps that gradually bring about positive, incremental change, a community can restore the downtown's economic vitality and make downtown, an exciting place to shop, conduct business, dine, live, and visit."

A Successful Downtown Revitalization Program Will Usually Have These Characteristics

1. A clear focus on a historic or traditional commercial district (either a downtown or a neighborhood commercial district).

2. Comprehensive and coordinated design, promotion, organization and economic development activities.

3. Strong support from both public and private sectors.

4. Broad-based community involvement and support.

5. A strong historic preservation ethic and a commitment to preserve the district's historic commercial buildings.

6. Willingness to take risks and try new approaches.

7. Trained, professional staff, whose primary function is to coordinate the activities of committed volunteers.

8. An active and effective board of directors and committees.

9. An evolving track record of individual and overall successes in preservation-based commercial revitalization.

10. Ongoing contact, sharing information and affiliation with other local, state and national preservation-based commercial revitalization programs, through correspondence, memberships, volunteer service and conferences.34

The National Historic Preservation Trust Tells Communities, How Should You Get Started?

In their publication, the National Trust for Historic Preservation, pulls on successful strategies in combating Superstore sprawl and offers the following advice on methods communities can use:

> "*Publicize the issue*. Talk with community leaders. Hold a community meeting. Put together a slide show illustrating the successes other communities have had in revitalizing their downtowns, and show this to civic groups, school classes, local businesses and others. Ask the local newspaper to write a series of articles about the downtown and its revitalizing efforts."
>
> "*Recruit participants*. The downtown program must involve groups and individuals throughout the community in order to be successful. Main Street revitalization requires the cooperation and commitment of a broad-based coalition of public and private sector groups: Business; civic groups; local government; financial institutions; the chamber of commerce; consumers; and many others. It also involves mobilizing a large number of volunteers to implement activities."
>
> "*Form an organization*. Sometimes an existing organization or institution can take on the downtown revitalization initiative. It is usually more effective, though, to create a new organization that focuses exclusively on the revitalization process and that is unhampered by an existing reputation or by the expectations and particular interest of existing members. The new organization should include broad-based community representation."
>
> "*Identify barriers to downtown development*. Ultimately, it should be as easy for a new business to locate downtown as it is to locate out on the strip. Examine your community's planning and land-use policies, financial programs, building codes, and other tools to see if there are regulatory or financial incentives that encourage sprawl instead of downtown development. List other problems affecting the downtown as well."
>
> "*Develop a realistic, incremental work plan*. Articulate what the community wants the downtown to achieve. Develop a written mission statement and three or four major goals. Then identify some high-priority, but achievable activities the organization can do to meet these goals. In the early years try to include highly visible physical improvements and promotional events. Remember that you can't tackle all the downtown's problems in one year. Some of the problems may take years to overcome. Take one step at a time."
>
> "*Measure your progress*. Keep track of the amount of money invested in physical improvements and of the number of new jobs created and new businesses that open. Track the downtown's vacancy rate. Count the number of people who take part in promotional activities. Ask downtown businesses to let you know if their sales are increasing. Publicize the progress the downtown revitalization is achieving."

"*Be persistent*. Downtown revitalization doesn't happen overnight. It's a gradual, incremental process. As your organization succeeds in mobilizing resources to tackle small problems, it will strengthen its capacity to confront bigger challenges."35

Key Actions in Fighting Sprawl

The National Trust for Historic Preservation advises community groups as follows; "Don't let anyone tell you that sprawl is inevitable...The biggest enemy is a sense of hopelessness."36

Small businesses must stress the idea that fighting sprawl or rebuilding the "Main Street" is anti-competitive. The superstores spend a great deal of money to secure rezoning, win referenda and influence local decisions. Small business has to collectively make a decision to invest in its own future.

Key actions proposed by Beaumont which were taken from the Sierra Club Guide on this issue are as follows:37

"1. Obtain a copy of the developer's proposal and analyze it.

2. Find out if the proposed development complies with relevant federal, state and local laws.

3. Make a flow chart of the development review process and include time deadlines.

4. Think your objectives through carefully set priorities.

5. Organize a committee and delegate responsibility.

6. Develop a well-reasoned position on the proposed development and back up your position with careful research.

7. Develop grass-roots organizing and media strategies.

8. Generate letters to the editor and opinion pieces in the local paper early.

9. Meet with local officials and opinion leaders. Draw their attention to facts they need to know.

10. Turn out and speak out at public hearings.

11. Ask the city council to analyze the development's probable fiscal, economic, environmental, traffic and other impacts. Make sure long-term impacts are considered.

12. Circulate petitions.

13. Distribute similar fliers clearly summarizing your position and the reasons for it.

14. Raise money to pay for radio spots, newspaper ads, bumper stickers, and other ways of getting your message across.

15. Above all, build broad public support for your position. Work to reach different segments of the community, especially local business and civic leaders."

CONCLUSION

The author concludes this extensive review of the impact of the mega-retail discount chains on the economics and sociology of urban, suburban, "rurban" and rural areas with strong concern

-ATTITUDINAL SURVEY-

MEASURING THE IMPACT OF THE LARGE, NATIONAL DISCOUNT RETAILER ON SMALL BUSINESS

The following questions will be used in a research study concerned with measuring the projected impact that large, national discount retailers such as K-Mart, Wal-Mart, Target, Pace, Sam's Clubs, Home Depot etc. will have on the economies of various, selected Southern California communities. This survey should take 15-20 minutes to complete. Please read each question carefully and answer them to the best of your ability. When you have completed the questionnaire, place it in the enclosed, pre-stamped and pre-addressed envelope and mail it directly to us as soon as possible. We would like to receive the finished questionnaires by June 17, 1994 or very soon thereafter. The success of this study strongly depends on your cooperation.

(1.) What type/form of business is your establishment? (Please check off the category below that best identifies your business/s.)

____ Sole Proprietorship, Partnership, or Family-Owned Business
____ Franchisee
____ Chain Unit - Regional
____ Chain Unit - National
____ Retail Concessionaire

(2.) How many years has your business been in operation?

____ 0-2 yrs.
____ 2-5 yrs.
____ 5-10 yrs.
____ 10-20 yrs.
____ more than 20 yrs.

(3.) Please estimate how much area per square feet your operation occupies. If you have more than one operation, try to make an average estimate to the best of your ability.

____ 0-500 sq. ft.
____ 501-1000 sq. ft.
____ 1001-5000 sq. ft.
____ 5001-10,000 sq. ft.
____ 10,001-50,000 sq. ft.
____ 50,001-100,000 sq. ft.
____ over 100,000 sq. ft.

(4.) If a large, national discount retail chain that sells similar products/services opened near your present business location, what would you estimate its ultimate impact to be on the economic health of your business?

____ Very Positive (helpful)
____ Positive
____ Neutral or No Effect

____ Negative
____ Very Negative (not helpful)

(5.) Please indicate the number of employees that you currently employ:

____ 0 - 5 people ____ 41 - 50

____ 6 - 10 ____ 51 - 75

____ 11 - 20 ____ 76 - 100

____ 21 - 30 ____ 101 - 200

____ 31 - 40 ____ over 200

(6.) If a large, national discount retail chain that sells similar products/services opened near your present business location, what would you estimate the percentage effect to be on your TOTAL EMPLOYMENT after the national discount retail chain's arrival:

Increase(up to %)	**Decrease(up to %)**
____ +0%	____ -0%
____ +5%	____ -5%
____ +10%	____ -10%
____ +15%	____ -15%
____ +20 %	____ -20%
____ +25%	____ -25%
____ +30%	____ -30%
____ +35%	____ -35%
____ +50 %	____ -50 %
____ more than 50%	____ more than 50%

(7.) Please estimate your current annual SALES VOLUME:

____ $0 - $50,000
____ $50,001 - $100,000
____ $101,000 - $250,000
____ $250,001 - $500,000
____ $500,001 - $1,000,000
____ $1,000,001 - $3,000,000
____ $3,000,001 - $10,000,000
____ over $10,000,000

(8.) If a large, national discount retail chain that sells similar products/services opened near your present business location, what would you estimate the percentage effect to be on your SALES VOLUME after the national discount retail chain's arrival?

Increase(up to %)	Decrease(up to %)
____ +0%	____ -0%
____ +5%	____ -5%
____ +10%	____ -10%
____ +15%	____ -15%
____ +20 %	____ -20%
____ +25%	____ -25%
____ +30%	____ -30%
____ +35%	____ -35%
____ +50 %	____ -50 %
____ more than 50%	____ more than 50%

(9.) If a large, national discount retail chain that sells similar products/services opened near your present business location, what would you estimate the percentage effect to be on your PROFITABILITY after the national discount retail chain's arrival?

Increase(up to %)	Decrease(up to %)
____ +0%	____ -0%
____ +5%	____ -5%
____ +10%	____ -10%
____ +15%	____ -15%
____ +20 %	____ -20%
____ +25%	____ -25%
____ +30%	____ -30%
____ +35%	____ -35%
____ +50 %	____ -50 %
____ more than 50%	____ more than 50%

(10.)There appears to be a trend on the part of the large, national discount retail chains to buy directly from manufacturers. As a result, middlemen or intermediate distributors seem to be disappearing. How will this affect your purchasing practices?

____ Very Positive (helpful)
____ Positive
____ Neutral or No Effect
____ Negative
____ Very Negative (not helpful)

(11.)What methods do you use to promote your business? Please check off the methods that you rely on the most:

____ flyers/leaflets/brochures ____ national newspapers
____ canvas personally ____ magazines

____ telemarketing ____ radio

____ telephone book/yellow pages ____ T.V.

____ local newspapers

(12.)Please rate the days of the week as to which are your busiest and which are your slowest. Circle your responses.

0 = closed on that day

1 to 3 = degrees of slow - 1 being the slowest

4 = moderately busy

5 to 7 = degrees of busy - 7 being the busiest

DAY	SLOWEST BUSIEST
SUNDAY	0 1 2 3 4 5 6 7
MONDAY	0 1 2 3 4 5 6 7
TUESDAY	0 1 2 3 4 5 6 7
WEDNESDAY	0 1 2 3 4 5 6 7
THURSDAY	0 1 2 3 4 5 6 7
FRIDAY	0 1 2 3 4 5 6 7
SATURDAY	0 1 2 3 4 5 6 7

(13.) Please chart your store hours. Identify whether the hour is A.M. or P.M.

	SUN	MON	TUE	WED	THU	FRI	SAT
OPEN	____	____	____	____	____	____	____
CLOSE	____	____	____	____	____	____	____

(14.)Please provide the following information on an average basis. Approximate to the best of your knowledge:

a.) Average number of customers appearing in business daily - ____ /DAY

b.) Average number of customers appearing in business monthly - ____ /MONTH

c.) Estimated total number of customers per year - ____ /YEAR

(15.)Below is a standard list of products/services normally sold in a large, national discount retail chain. We want to assess what kind of competition exists between small business and this type of mega-retailer and how it will affect you. Please check off the categories from below which pertain to you. Beside the items that you check off, please put an estimate of the percentage of TOTAL SALES that that category maintains relative to all items that you sell/service. The percentage total of all the items that you check off should not be greater than 100%.

Example: _X_ DRESS/SUITS _30_ %

CATEGORY-% of TOT. SALES

MEN'S WARDROBE:
___ DRESS/SUITS ___%
___ CASUAL WEAR ___
___ ATHLETIC WEAR ___
___ UNDERGARMENTS ___
___ DRESS SHOES ___
___ CASUAL SHOES ___
___ ATHLETIC SHOES___
___ ACCESSORIES ___

WOMEN'S WARDROBE:
___ DRESS APPAREL ___%
___ WORK APPAREL ___
___ CASUAL ___
___ ATHLETIC ___
___ LINGERIE ___
___ DRESS SHOES ___
___ CASUAL SHOES ___
___ ATHLETIC SHOES___
___ ACCESSORIES ___

INFANT/CHILDREN:
___ CLOTHING ___%
___ SHOES ___
___ FURNITURE ___
___ CARE PRODUCTS ___
___ FOOD PRODUCTS ___

PETS:
___ FOOD ___%
___ SUPPLIES/TOYS ___
___ FISH/AQUATIC ___
___ SMALL ANIMALS ___

FOOD PRODUCTS:
___ NON-PERISHABLES___%
___ FROZEN FOODS ___
___ PRODUCE ___
___ MEATS/POULTRY ___
___ OTHER ___
___ BEVERAGES ___
___ SNACKS/CANDIES___

CATEGORY-% of TOT. SALES ELECTRONICS:
___ VIDEO/EQUIP. ___%

___ AUDIO/STEREO ___
___ COMPUTER/EQUIP.___
___ GAMES ___
___ OTHER EQUIP ___

GAMES AND HOBBIES:
___ BOARD GAMES ___%
___ TOYS ___
___ HOBBIES ___
___ ARTS/CRAFTS ___
___ SEWING/FABRICS___

SPORTS PRODUCTS:
___ ATHLETIC EQUIP.___%
___ HUNT/FISH EQUIP___
___ BIKES/EQUIP. ___
___ OTHER ___

PAPER PRODUCTS:
___ STATIONARY ___%
___ GREETING CARDS ___
___ GIFT WRAPPING ___
___ PARTY SUPPLIES___

HEALTH AND BEAUTY:
___ OTC DRUGS ___%
___ Rx. DRUGS ___
___ HYGIENE PROD. ___
___ COSMETICS ___

DOMESTIC PRODUCTS:
___ FURNITURE ___%
___ BATH/LINENS ___
___ CLEANING PROD.___
___ SM. APPLIANCES___
___ KITCHEN ___
___ PAPER PROD. ___

CATEGORY-% of TOT. SALES HOME IMPROV/BUILD SUPPLIES:
___ LUMBER ___%
___ TOOLS ___
___ PAINTS ___
___ WALLPAPER ___
___ CARPETING ___
___ DRAPERIES ___
___ FLOORING ___
___ ROOFING ___
___ INSULATION ___
___ DOORS/WINDOWS ___

___ PLUMBING ___
___ LIGHTING/ELECT.___
___ KITCH./CABINETS___
___ LAWN/GARDENS ___

AUTO EQUIP/SERVICES:
___ MECHANIC SERV.___%
___ AUTO PARTS ___
___ TIRES ___
___ SUPPLIES ___

OTHER PRODUCTS:
___ JEWELRY ___%
___ WATCHES/CLOCKS___
___ BOOKS/MAGS ___
___ CIGARETTES ___
___ OTHER ___

OTHER SERVICES:
___ OPTOMETRY ___%
___ PHOTO PROCESS.___
___ FAST FOOD VEND.___
___ HAIR SALONS ___
___ DRY CLEANING ___
___ OTHER ___

TOTAL SALES **100%**

(16.)Please fill in the following lines with those geographic areas or neighborhoods where your customers primarily come from. (Your numbers should add up to 100%):

For example:

New York	Illinois
30% Seneca Falls	30% Des Plaines
20% Geneva	20% Streamwood
50% Waterloo	10% Schaumberg
	40% Elk Grove Village

% of Customer Base Geographic Area

____ _____
____ _____
____ _____
____ _____
____ _____
____ _____

100% Total Customer Base

(17.) What methods would you employ in order to compete more effectively with a large retail discount chain that sells similar products/services; or, what decisions would you make to alter, survive or terminate your business? Please check off your alternatives from the list below. It is permissible to check off more than one.

____ raise prices
____ lower prices
____ increase working hours
____ decrease working hours
____ increase staff
____ decrease staff
____ increase visibility with better marketing, advertising, and/or promotions
____ provide a fuller, more personalized service
____ expand product lines/services
____ narrow your product line/services to a more specialized market
____ consolidate business (if you currently have more than one operation)
____ liquidate business
____ bankruptcy, chapter 11 or chapter 7
____ move business to a more geographically desirable location
____ sell business
____ merge business or take on a partner

(18.) If you have ideas or opinions, please use the next few lines to make comments. This is strictly confidential and voluntary. Both negative and positive comments are welcome:

* It is OPTIONAL to sign your name and give your phone number and address. These surveys will be kept in the strictest of confidence and no names, addresses or quotes will be divulged. We are interested in being able to contact you in the future since an occasion may arise where your business input may help us in our research paper and our recommendations for corrective state and federal legislation to assure the survival of small business:

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Davis, Tracy

From: Meier, Maria
Sent: Tuesday, May 21, 2002 8:18 AM
To: Eppley, Christopher
Cc: Davis, Tracy
Subject: Audio of 05/20/02 City Council Meeting
Importance: High

Chris -

I listened to the tapes this morning to verify that the audio was taped accurately. The first tape covers the beginning of the meeting through most of Steve Ferrarini's testimony. There is some unrecorded testimony from the second half of Steve Ferrarnin's discussion with Councilor's to the middle of Tom Jones' testimony. Luckily, I think the break was in-between that time also, so we didn't lose too much time. The testimony of Chris Stanley was not recorded. I have notes from this part of Council and I can share them with Tracy when she tries to do the minutes.

Maria C. Meier
City of Keizer, Planning Director

930 Chemawa Road NE
Keizer, Oregon 97303
Ph: (503) 390-3700, ext. 159
Fx: (503) 393-9437

Tracy - 5/20/02
This is written testimony submitted at the beginning of Council with open testimony - issue, parks). Two letters.

— MARIA

Also -
During Activity Center public hearing, limited copies of written testimony were submitted to the record. I am working with Cathy to make copies + will provide to you a.s.a.p.

MARIA

Please see e-mail to Chris (cc. you) regarding a time lapse in the audio tapes. I have notes from the testimony that was skipped (about 15 min). The second tape did not automatically switch, + we realized a little late. I listened to the tapes + it's not bad. When you do the minutes, let me know when you skip to Tape 2. I can help.

May 20 2002

First I like to thank the City Council for giving me the opportunity to speak. Let me emphasize that I, Wayne Sturgill, my wife Lova, and my neighbors Dawn and Larry Monagon very much want to see a quality City Park be placed within the Keizer City limits, west of River Road. However we are in opposition to the suggestion by the Keizer Parks Advisory Board, that a park be placed on high quality farmland outside of the City limits of Keizer. This is a parcel of 47 acres that the city wants 10 acres of, according to City Manager Chris Eppley which was appraised at a value of $13,000 per acre. That's a total of $130.000 dollars to purchase this land for a park if the owner, Scott Erickson wants to sell it.

There was a piece of land originally a total of 37 acres, but part of it was sold to a developer to build more homes near McNary Estates. Now let me refer to the 20.29 acre parcel of land that is left, Tax Lot #700 located in West Keizer City Limits, at address 6000 Windsor Island Road N. just across from the sewage treatment plant. This parcel of land is owned by the City of Salem, and is appraised by the Marion County Assessors Office at the amount of 124,880 dollars. A park at this location would make a great buffer zone from the sewage treatment plant, and a city park for Keizer benefiting both Salem and Keizer.

So let me restate this: 130,000 dollars for Scott Erickson's 10 acres of farmland outside of Keizer City limits vs. 124,880 dollars for 20.29 acres of land owned by the city of Salem and located inside Keizer City limits. Now according to mathematics, 10 acres of the city of Salem land should cost only roughly around 62,044 dollars. So why shouldn't the city of Keizer purchase these 10 acres of city of Salem land for 62,044 dollars vs. 10 acres of Erickson land at double the price of 130,000 dollars?

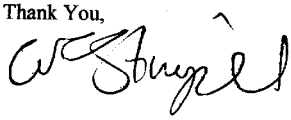
What is the catch 22 here? It is because the city of Salem acreage boarders on the expensive, and exclusive McNary estates. Obviously if the City of Keizer has developers building the remaining 20 acres of land into luxurious houses, they can increase their tax base handsomely and reap a profit for this land on the property taxes, year after year after year.

What I am asking is for the City of Keizer and the City of Salem to do, is to do the right thing. Get together, work together. Do it for the people of Keizer who need a quality park. Do the right thing by not going outside of the Urban growth boundary. Do the farmers right, do the 1000 Friends of Oregon right, do the Friends of Marion Co. right. Do the Farm Bureau right. Do the thousands of children and the parents of these children in this city right. Don't give into the developers at the expense of the citizens of Keizer. So for this one time, do the people right.

There is a plaque located in the fork of the road on Broadway and River Road that states "Salem-Keizer, Working Together." I'd really like to see that happen for the people and not for the sake of the dollar.

Anyone listening in this council chamber today, or listening at home via telecast, Keizer, residents, Salem Residents, Marion Co. Residents, parents, kids, farmers, if you care about parks, then write Good Buddies of Keizer Parks, P.O. Box 20712 Keizer Oregon, 97307. That's Good Buddies of Keizer Parks, P.O. Box 20712. If the city of Keizer and the City of Salem can work together and a 10 acre park becomes a reality at 6000 Windsor Island Rd. N. in Keizer, then Good Buddies of Keizer Parks will personally vouch to purchase 50 trees to plant in this park and will plant them, free of charge. We propose that this park be called "Dedication Park", dedicated to the cause of Salem-Keizer and the people working together.. If you like this idea, if you want to offer your help with playground equipment, anything, then please write. Propose any help you may wish to offer. We would like to hear from people that have ideas on developing and improving Parks for the City of Keizer.

Thank You,



Wayne Sturgill

* - - Property Data Selection Menu - -

Prop ID : R20275 (Real Estate)
Map Tax Lot: 063W34 00700
Legal : ACRES 20.29

Owner: CITY OF SALEM
(35969) 555 LIBERTY ST SE
SALEM, OR 97301

Situs : 6000 BLK WINDSOR ISLAND RD N
KEIZER, OR 97303
Name(s) :
Code Area : 92420220
Sale Info : 05/21/01 $0
Deed Type : WD
Instrument: 17890242
2001 Tax Status * No Taxes Due *
Current Levied Taxes : 0.00
Special Assessments :
2002-03 SB125 Taxes :

Year Built :
Living Area:

2001 Roll Values

Improvements	$	0	(+)
Land	$	124,880	(+)
Appraised	$	124,880	(=)
Exemptions	$	124,880	(-)
Taxable RMV	$	0	(=)
M50 Assessed	$	0	

(A)lt Disp (Y) primarY (S)econdary (L)and/Impr
(G)en Appr (O)wnership (H)istory (.) More

Enter Option from Above or <RET> to Exit: __

LEGEND

LINE TYPES

TAX LOT BOUNDARY	OLD PROPERTY LINE
ROAD RIGHT-OF-WAY	VACATED RIGHT-OF-WAY
RAILROAD	RAILROAD RIGHT-OF-WAY
STREAM, LAKE, ETC. TAX LOT BOUNDARY	STREAM, LAKE, ETC. NON-BOUNDARY
SUBDIVISION BOUNDARY	PARTITION PLAT BDY.
TAX CODE BOUNDARY	EASEMENT

SYMBOL TYPES

D.L.C.

CONTROL POINTS

SURVEY MONUMENTS

G.L.O. CORNERS

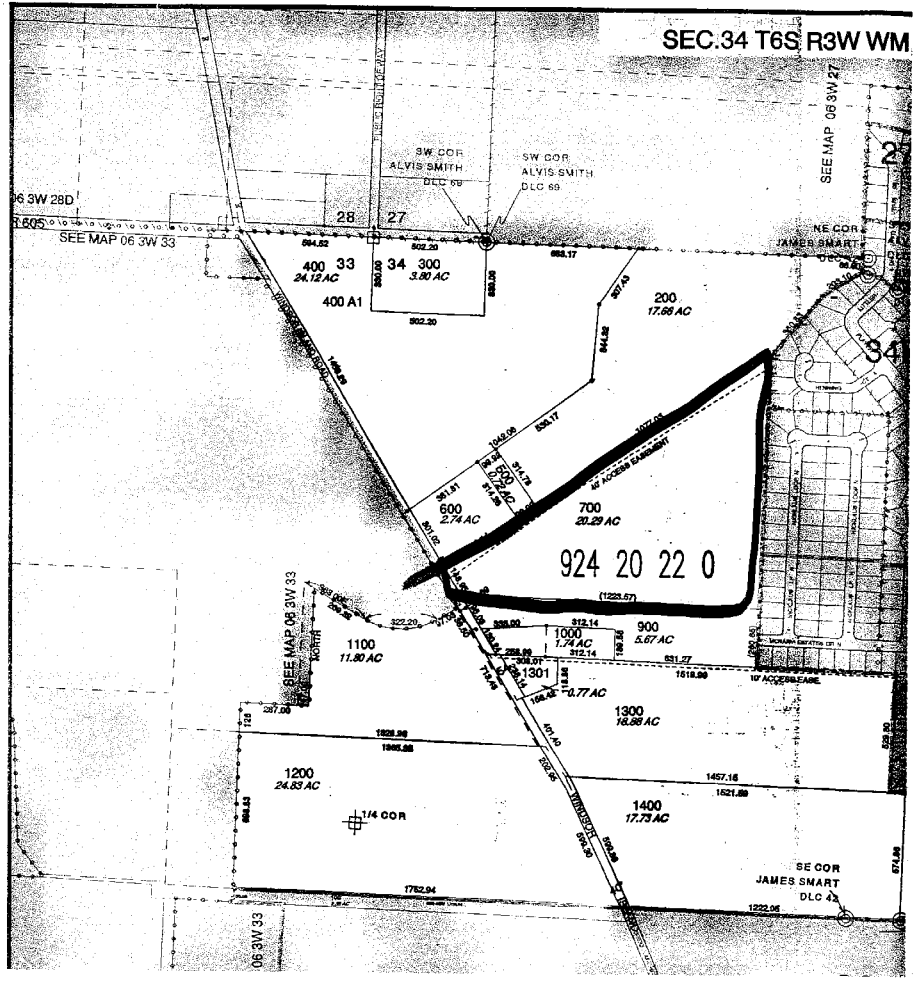
SECTION 9 10 16 15 | 1/4 SEC 1/4 COR | 1/16 SEC 1/16 COR

NUMBERS

TAX CODE NO.

000 00 00 0

ACREAGE – ALL ACREAGES EXCLUDE ANY PORTION THAT MAY LIE WITHIN THE INDICATED PUBLIC RIGHT OF WAYS.



May 20, 2002

City of Keizer Council,

It has been said by Keizer Residents that the City Council and the Developers walk hand in hand, and that it is the Keizer Residents that get the short end of the stick.

I do not come to attack any of the City Council personally. I do not know any of you. I come because I and others know that the concerns we feel strongly about must be addressed before this council in order for anything to be done. There are things that are worth fighting for and coming before this Council is an important step. For each of you have the power to make these changes, that is why we come before this Council.
It is said that if you do not stand for something than you stand for nothing.

I ask that the each of the Council listens to us with an open mind and heart. Please do not let the concerns of the people fall on deaf ears or minds that have already been made up.

I would like to ask the City Council a few questions. If you cannot answer these questions tonight, I ask that they be addressed and answered at the next City Council meeting.

1. If the City of Keizer has 93 acres of Park land that they cannot complete, nor maintain, than why are they looking to buy High Value Farm land, which is irreplaceable outside of the Urban Growth Boundary, and why is the City of Keizer writing Parks completely out of their 2002-2203 budget?

2. Each time a housing development goes in, there is SDC money that goes to the City Council budget. It is my understanding that this money can be used for buying Park land and equipment for a Park. The only thing it cannot be used for is maintenance of a Park. My question is this: The SDC money that comes from the homes built including the Whalen Woods

Project. How much is it? Which funds will this money go into? How much to each fund? I would like to know the amounts and % of each.

3. If the Keizer City's Budget is so tight, than why are the Developers not required by the City Council to set aside a section of land in each of these developments for a Park? Example: The Whalen Woods Project which is on the west side of River Rd in Keizer off of Golden Lane. They are currently tearing down a Walnut Orchard that will not ever be replaced, to put in at my last count 86 homes. During the hearing process it was mentioned along with many other valid concerns from Keizer Residents, that the developer should leave out some of the homes in the middle for a Park. Why couldn't all the developers be required to provide an adequate piece of land for a Park, with the understanding that the city would buy the equipment for the Park and provide the maintenance. Why could there not be agreements with each home owner in the vicinity to help with maintenance of the park, by taking turns mowing and picking up trash helping to keep the park clean. I am sure that there would be volunteers to help provide and plants trees, shrubs and even raise money for park equipment. Would all these things not help with the City of Keizer's Budget? The City of Keizer Council has the power to do this. Having parks with community involvement not only brings a unity and team work, it also builds strong families and unites the city in a common goal. Parks are good for the Emotional, Physical, Spiritual well of all. From the infants to the elderly.

In the last 10 years I have seen too much High Value farm land inside of the Keizer City Limits eating up for development of track homes. Orchards, Trees cut down with no means of ever replacing them. The older homes in Keizer actually had a back yard for kids to play in, but the new homes have little to no yard for children and teens.

It's a well known saying : **A FARMER CAN SURVIVE WITHOUT A CITY, BUT THE CITY CANNOT**

SURVIVE WITHOUT THE FARMER. You do not cut off the hand the literally feeds you. By the continuing of eating up High Value farmland, you are doing just that. It is the farmers of Oregon that help to feed the people of Oregon, and not just the large farms. The small farms play a very important role in feeding Oregon residents too. They provide fresh fruit, vegetable, juices, nuts just to name a few. The need of the many out weight the need of the few. The many being the Keizer Residents and the few being the developers. Many of the Keizer Residents moved out of cities like Beaverton, Hilsboro, Gresham, Troutdale and others because they did not want to raise their children and live in those type of towns. Do not make the same mistake with the City of Keizer. Support the downtown business, Parks, Build a Strong City for families. Deal with the concerns of the people of Keizer such as traffic problems before bring in a Station Plan that will create more chaos.

Thank You,
Lova Sturgill
Lova Sturgill

May 20, 2002 Public Hearing

vidio

1) PC Chair Bruce Anderson:
   History of Activity Center & # of commercial acres
   Review Process – Legislative Review. Review of Goals & Criteria.

2) Jacob Rostoff - Transportation Advocate "A-69" Shils Report
   Chapters I, III, IV, IX

3) Bob Thompson - Attorney, (?) Northwest National LLC.

4) Charlie Matcheck – Architect

5) Steve Ferarini - Economic Analyst (5 min)

break 15 m.

6) Chris Stanley - Traffic Engineer.
   2 traffic studies will be done – 1st level based on zoning
   2nd level on uses when ok'd.
   most intensive use considered for both proposed/current zone.
   volume
   V to Capacity
   Lochhaven Drive. – 5 lanes.
   Analysis considers actual impact based on zoning.
   .87 acceptable ~~LOS~~ V to Capacity.

* 7) Tom Jones - Service Capacity Issues: sewer, water, fire, storm, treatment

8) Frank Angelo.

9) Wendy Kellington.

10) Kelly Walther. KZ Chamber of Commerce Exhibit A-19.

CITY OF KEIZER MISSION STATEMENT

KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES TO THE COMMUNITY IN A COORDINATED, EFFICIENT AND LEAST COST FASHION

AGENDA

KEIZER CITY COUNCIL
REGULAR SESSION
Monday June 3, 2002
7:00 p.m.
Robert L. Simon Council Chambers
Keizer, Oregon 97303

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PUBLIC TESTIMONY**

   This time is provided for citizens to address the Council on any matters other than those on the agenda scheduled for public hearing.

4. **COMMITTEE REPORTS**

   a. Library Task Force Report

   b. Council Liaison Reports
      - Traffic Safety Commission – Councilor Lee
      - Emergency Operations Committee – Council President Moir
      - Claggett Creek Watershed Council – Council President Moir
      - Keizer Urban Renewal Board – Councilor Gaynor
      - Focal Point – Councilor Lee

5. **OTHER BUSINESS**

   This time is provided to allow the Mayor, Council members or staff an opportunity to bring new or old matters before the Council that are not on tonight's agenda.

   a. New Business

   b. Old Business

6. **PUBLIC HEARINGS**

   a. Chemawa Activity Center/Keizer Station Plan – Text Amendment/Comprehensive Plan Change/Zone Change Case No. 01-50 (cont from May 20, 2002)

   b. **RESOLUTION** – Adopting City of Keizer 2002-2003 Budget, Making Appropriations, and Imposing and Categorizing Taxes

7. ADMINISTRATIVE ACTION

a. **RESOLUTION – Authorization of Interfund Loans to the General Fund and Street Lighting District Fund**

b. **RESOLUTION – Establishing Administrative Costs for Formation and Maintenance of Street Lighting Districts (Repealing R99-1106)**

c. **RESOLUTION – Authorizing City Manager to Enter Housing Consortium Agreement with City of Salem**
RESOLUTION – Authorizing City Manager to Enter Intergovernmental Agreement with City of Salem for Administration of housing Rehabilitation Program

8. CONSENT CALENDAR

a. **RESOLUTION – Certifying that the City of Keizer Provides Four or More Municipal Services**

b. **RESOLUTION – Declaring City's Intention to Receive State Revenue Sharing**

c. **Approval of Change of License Type and Trade Name for Kat's Korner Billiards and Sports Lounge**

d. **Approval of April 22, 2002 Work Session Minutes**

9. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications.

10. AGENDA INPUT

June 10, 2002
5:30 p.m. City Council Work Session
- **Marion County Juvenile Facility Tour**

June 17, 2002
7:00 p.m. City Council Regular Session
- **2001-2002 Supplemental Budget**
- **Increasing Sanitation Franchise Fee**
- **Establishing Sewer Franchise Fee**
- **Audit Services Agreement**

July 1, 2002
7:00 p.m. City Council Regular Session

11. ADJOURN

Upon request, auxiliary aids and/or special services will be provided. To request services; please contact us at 503-390-3700 or through Oregon Relay 1-800-735-2900 at least two working days (48 hours) in advance.

City of Keizer, Oregon

AGENDA ITEM 6a

June 3, 2002

CHEMAWA ACTIVITY CENTER /KEIZER STATION PLAN – TEXT AMENDMENT/COMPREHENSIVE PLAN CHANGE/ZONE CHANGE
CASE NO. 01-50

To: Mayor Christopher and City Council

From: Maria Meier, Planning Director

Through: Chris Eppley, City Manager

Date: May 30, 2002

Re: Text Amendment/Comprehensive Plan Amendment/Zone Change Case No. 01-50; Amendment to Chemawa Activity Center Plan – Proposed Keizer Station Plan

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On May 20, 2002, the Keizer City Council continued the public hearing for Text Amendment/Comprehensive Plan Amendment/Zone Change Case No. 01-50; Amendment to Chemawa Activity Center Plan – Proposed Keizer Station Plan. Additional testimony may be received and continued to a date certain as defined by Council.

In addition to other materials for the record, staff will be compiling the Salem-Keizer Area Planning Advisory Committee (SKAPAC) record to enter in to the legislative review record for Council consideration. For these reasons, staff recommends the City Council to not have this issue on the June 17th Council agenda, and to continue the public hearing to July 1, 2002.

City of Keizer, Oregon

AGENDA ITEM 6b

June 3, 2002

RESOLUTION – ADOPTING CITY OF KEIZER 2002-2003 BUDGET, MAKING APPROPRIATIONS, AND IMPOSING AND CATEGORIZING TAXES

CITY COUNCIL MEETING: June 3, 2002

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

THROUGH: CHRIS EPPLEY
CITY MANAGER

FROM: SUSAN GAHLSDORF, CPA
FINANCE DIRECTOR

SUBJECT: RESOLUTION ADOPTING FISCAL YEAR 2002-03 BUDGET, MAKING APPROPRIATIONS, AND IMPOSING AND CATEGORIZING TAXES

BACKGROUND:

The Budget Committee comprised of the Council and seven citizens, reviewed, modified and, on May 14, 2002, approved the Manager's Recommended Budget for Fiscal Year 2002-03, as amended. The Committee Approved Budget was published in a local newspaper as required by Oregon Budget Law. After publication, the law requires the governing body to conduct a public hearing on the Committee Approved Budget. The Council must adopt the upcoming fiscal year budget by June 30.

RECOMMENDATION:

Staff recommends that the City Council hold a public hearing on the Committee Approved Budget. After which staff recommends the Council deliberate on the City Budget as shown on the attached resolution, if it so wishes, and adopt the budget with amendments, if any.

CITY OF KEIZER, STATE OF OREGON

RESOLUTION R2002-_____

ADOPTING THE FY'03 BUDGET, MAKING APPROPRIATIONS
AND IMPOSING AND CATEGORIZING TAXES

BE IT RESOLVED, that the City Council of the City of Keizer hereby adopts a budget for fiscal year 2002-03 in the sum of $16,559,927 now on file at City Hall.

BE IT FURTHER RESOLVED that the amounts for the fiscal year beginning July 1, 2002 and for the purposes shown below are hereby appropriated:

General Fund			
	Administration	426,480	
	Parks	129,238	
	Community Development	303,565	
	Municipal Court	268,820	
	Police	4,088,564	
	Stadium Operations	36,561	
	Transfers	62,792	
	Contingency	333,384	
TOTAL GENERAL FUND			**5,649,404**
Revenue Sharing			
	Capital Outlay	205,722	
TOTAL REVENUE SHARING			**205,722**
PEG			
	Materials & Services	60,000	
	Capital Outlay	86,426	
TOTAL PEG			**146,426**
Housing Services			
	Materials & Services	162,728	
TOTAL HOUSING SERVICES			**162,728**
Street			
	Personal Services	212,379	
	Materials & Services	730,820	
	Capital Outlay	1,895,126	
	Debt Service	133,983	
	Contingency	150,000	
TOTAL STREET			**3,122,308**

911 Communications			
	Materials & Services	191,811	
	Contingency	38,945	
TOTAL 911 COMMUNICATIONS			**230,756**
Parks Improvement			
	Capital Outlay	155,000	
	Contingency	50,000	
TOTAL PARKS IMPROVEMENT			**205,000**
Utilities			
	Personal Services	151,702	
	Materials & Services	3,296,705	
	Capital Outlay	3,554	
	Debt Service	7,562	
	Contingency	30,000	
TOTAL UTILITIES			**3,489,523**
Street Lighting Districts			
	Personal Services	39,722	
	Materials & Services	330,297	
	Capital Outlay	474	
	Contingency	15,000	
TOTAL STREET LIGHTING			**385,493**
Water			
	Personal Services	780,961	
	Materials & Services	703,395	
	Capital Outlay	78,881	
	Transfers	200,000	
	Contingency	60,000	
TOTAL WATER			**1,823,237**
Water Facility Replacement Reserve			
	Capital Outlay	761,000	
	Contingency	48,516	
TOTAL WATER FACILITY REPLACEMENT RESERVE			**809,516**
Sewer Reserve			
	Capital Outlay	270,000	
	Contingency	59,814	
TOTAL SEWER RESERVE			**329,814**
TOTAL ALL FUNDS			**16,559,927**

All Funds Combined

Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
$ 2,544,367	$ 2,190,617	$ 3,123,832	Beginning Fund Balance	$ 3,270,004	$ 3,270,004	$ -
			RESOURCES			
2,461,628	2,594,387	2,748,142	Taxes & Assessments	3,048,314	3,048,637	323
1,455,839	1,718,496	1,949,023	Licenses & Fees	1,994,422	1,994,422	-
2,391,749	2,367,468	2,242,008	Intergovernmental	2,048,775	2,058,621	9,846
413,823	391,003	389,633	Fines & Forfeits	388,755	388,755	-
4,929,535	5,063,958	5,333,713	Charges for Services	5,256,711	5,256,711	-
-	-	-	Bond Proceeds	4,475,000	4,475,000	-
268,194	342,143	269,306	Miscellaneous	205,734	205,734	-
						-
281,746	15,000	588,732	**TRANSFERS IN**	262,792	262,792	-
$14,746,881	$ 14,683,072	$ 16,644,389	**TOTAL RESOURCES**	$ 20,950,507	$ 20,960,676	$ 10,169
			EXPENDITURES			
$ 4,479,370	$ 4,486,232	$ 5,070,792	Personal Services	$ 5,239,056	$ 5,238,447	$ (609)
5,752,485	6,076,769	6,785,274	Materials & Services	6,672,385	6,675,301	2,916
1,427,762	562,774	2,029,291	Capital Outlay	3,486,183	3,456,183	(30,000)
391,005	390,439	8,330	Debt Service	141,545	141,545	-
$12,050,622	$ 11,516,214	$ 13,893,687	**TOTAL EXPENDITURES**	$ 15,539,169	$ 15,511,476	$ (27,693)
176,530	15,000	698,336	**TRANSFERS OUT**	262,792	262,792	-
			FUND BALANCE			
-	-	425,892	Contingency	779,525	785,659	6,134
-	-	742,397	Reserves	3,409,860	3,409,860	-
2,519,729	3,151,858	884,077	Undesignated Ending Fund Balances	959,161	990,889	31,728
$14,746,881	$ 14,683,072	$ 16,644,389	**TOTAL EXPENDITURES & FUND EQUITY**	$ 20,950,507	$ 20,960,676	$ 10,169

General Fund Summary

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 447,439	$ 294,851	$ 338,523	Beginning Fund Balance	$ 549,522	$ 549,522	$ -
2							
3				**RESOURCES**			
4							
5	2,166,795	2,288,962	2,380,865	Taxes	2,493,317	2,493,317	-
6	1,038,399	1,279,854	1,623,524	Licenses & Fees	1,725,771	1,725,771	-
7	692,409	573,146	514,226	Intergovernmental	512,493	522,339	9,846
8	413,823	391,003	389,633	Fines & Forfeits	388,755	388,755	-
9	115,716	239,265	145,586	Miscellaneous	104,138	104,138	-
10							
11	5,216	15,000	-	**TRANSFERS IN**	-	-	-
12							
13	$ 4,879,797	$ 5,082,081	$ 5,392,357	**TOTAL RESOURCES**	$ 5,773,996	$ 5,783,842	$ 9,846
14							
15				**EXPENDITURES**			
16							-
17	$ 3,417,850	$ 3,502,690	$ 3,925,267	Personal Services	$ 4,054,292	$ 4,053,683	$ (609)
18	1,078,329	1,012,607	1,218,170	Materials & Services	1,195,224	1,199,545	4,321
19	88,800	4,000	11,000	Capital Outlay	-	-	-
20							
21	$ 4,584,979	$ 4,519,297	$ 5,154,437	**TOTAL EXPENDITURES**	$ 5,249,516	$ 5,253,228	$ 3,712
22							
23				**TRANSFERS OUT**			
24							
25	$ -	$ -	$ -	To PEG Fund	$ 53,792	$ 53,792	$ -
26	-	-	-	To Revenue Sharing Fund	9,000	9,000	-
27	$ -	$ -	$ -	**TOTAL TRANSFERS**	$ 62,792	$ 62,792	$ -
28							
29				**FUND BALANCE**			
30							
31	-	-	1,089	Contingency	327,250	333,384	6,134
32	-	-	97,258	Reserve for PEG Equipment	-	-	-
33	294,818	562,784	139,573	Undesignated Ending Fund Balance	134,438	134,438	-
34							
35	$ 4,879,797	$ 5,082,081	$ 5,392,357	**TOTAL GENERAL FUND**	$ 5,773,996	$ 5,783,842	$ 9,846

31 Original FY 01-02 budget had $50,000 contingency which was appropriated for facility maintenance to address environmental concerns.
FY 02-03 contingency includes $51,500 as provided for in the long range plan, $275,750 for potential revenue shortfalls and $6,134 in appropriation reductions.

GENERAL FUND

General Support Resources

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 447,439	$ 294,851	$ 338,523	Working Capital Carryforward	$ 549,522	$ 549,522	$ -
2							
3				**LICENSES & FEES**			
4							
5	126,547	149,218	200,429	Salem Electric	199,156	199,156	-
6	267,933	324,632	457,325	PGE	430,729	430,729	-
7	127,804	208,498	213,007	NWNG	258,026	258,026	-
8	91,957	69,235	160,475	QWest	159,994	159,994	-
9	234,438	264,836	244,776	AT & T Cable	280,295	280,295	-
10	46,021	46,326	46,058	Lorens Sanitation	86,484	86,484	-
11	28,023	29,467	30,174	Valley Garbage	58,583	58,583	-
12	-	26,240	89,011	Water Sales Assessments	90,948	90,948	-
13	-	-	-	Sewer Franchise Fee	68,699	68,699	-
14	20,148	84,691	97,258	PEG Fees	-	-	-
15	6,825	8,282	7,260	Cell Tower Rent	7,896	7,896	-
16	-	-	2,208	Systems Development Admin Fee - Sew	750	750	-
17	-	3,689	10,560	Systems Development Admin Fee - Park	5,000	5,000	-
18	-	4,249	6,000	Driveway Permits	5,174	5,174	-
19	3,276	2,767	3,373	Licenses/Permits	2,813	2,813	-
20	-	-	-	Lien Search Fee	6,913	6,913	-
21	$ 952,972	$ 1,222,130	$ 1,567,914	Total Licenses & Fees	$ 1,661,460	$ 1,661,460	$ -

Notes:

5-6 The City increased franchise fees from 3.5% to 5% in FY 00-01. According to both companies, electrical rates are expected to be the same as FY 01-02.

7 The City increased franchise fees from 3% to 5% inf FY 00-01. The company bases rates off of BPA and expects rates to remain about the same in FY02-03.

8 Based on "settlement" revenue figures provided by Qwest in Fy 01-02.

9 A recent regulatory ruling determined that cable modem services will not be charged a franchise fee. This ruling has less than a 2/10% affect on the City's cable franchise revenues or $600.

10-11 Franchise fees are expected to increase from 3% to 5% on 7/1/02 as provided for in the City Council approved long-range plan.

12 Water sales franchise fee is 5% for FY 02-03.

13 Franchise fees are expected to go into effect on 7/1/02 at 2% of sales as provided for in the Council approved long-range plan.

14 Revenues are to be used exclusively for public television access related expenditures and have therefore been moved to a special revenue fund.

16 2% of sewer system development fees are to be paid to the general fund for administration.

17 New Parks system development fees went into effect in FY 01-02. The new fees provide for 10% of the revenues to be paid to cover administrative costs.

18 Driveway permit fees went into effect in FY 00-01 at $50 per permit.

20 Lien search fees have been moved from miscellaneous revenue.

GENERAL FUND

General Support Resources

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
22				**INTERGOVERNMENTAL**			
23							
24	246,529	280,424	266,938	Liquor Tax	270,783	270,783	-
25	70,256	64,733	65,687	Cigarette Tax	66,593	66,593	-
26	$ 316,785	$ 345,157	$ 332,625	Total Intergovernmental	$ 337,376	$ 337,376	$ -
27							
28				**MISCELLANEOUS**			
29							
30	2,665	1,860	2,070	Rentals	2,070	2,070	-
31	13,964	99,876	56,672	Interest	24,015	24,015	-
32	25,219	30,895	15,000	Misc. Revenue	21,981	21,981	-
33	$ 41,848	$ 132,631	$ 73,742	Total Miscellaneous	$ 48,066	$ 48,066	$ -
34							
35				**TRANSFERS**			
36							
37	-	15,000	-	From Utility Fund	-	-	-
38	5,215	-	-	From Urban Renewal	-	-	-
39	$ 5,215	$ 15,000	$ -	Total Transfers	$ -	$ -	$ -
40							
41	$ 1,764,259	$ 2,009,769	$ 2,312,804	TOTAL GENERAL SUPPORT RESOURC	$ 2,596,424	$ 2,596,424	$ -
42							
43				**TAXES**			
44							
45	$ 51,421	$ 51,372	$ 50,000	Hotel/Motel Tax	$ 38,831	$ 38,831	$ -
46	63,858	84,967	84,633	Prior Year Taxes	108,291	108,291	-
47	2,051,516	2,152,623	2,246,232	Tax Base	2,346,195	2,346,195	-
48	$ 2,166,795	$ 2,288,962	$ 2,380,865	TOTAL TAXES	$ 2,493,317	$ 2,493,317	$ -
49							
50	$ 3,931,054	$ 4,298,731	$ 4,693,669	**TOTAL RESOURCES**	$ 5,089,741	$ 5,089,741	$ -

Notes:

24 Liquor Tax revenues are expected to increase 2.4% over FY 01-02 actual revenues.

25 Cigarette tax revenues are expected to increase 1.9% over FY 01-02 actual revenues.

31 The economic downturn has caused a reduction in interest earning in FY01-02. FY 02-03 is estimated at current year actuals projected out to year end.

32 Miscellaneous revenues include one time revenues that are not characterized by line-item descriptions.

45 Occupancy rates are down significally at the City's only hotel.

46-47 Since FY 00-01 actual delinquent tax payments from property taxpayers have increased above previous amounts. This trend continued in FY 01-02, therefore, FY 02-03 budget reflect this trend.

GENERAL FUND

Administration

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
				RESOURCES			
1	$482,951	$ 335,406	$ 530,724	**GENERAL SUPPORT**	$ 433,672	$ 426,480	$ (7,192)
2							
3				**EXPENDITURES**			
4							
5				**PERSONAL SERVICES**			
6							
7	52,682	26,532	32,433	City Manager	23,433	23,433	-
8	41,231	37,448	36,493	Administrative Support Staff	36,244	36,244	-
9	42,527	50,738	53,001	Human Resources Director	55,926	55,926	-
10	14,308	14,954	15,444	Finance Director	15,823	15,823	-
11	6,270	5,650	5,281	Facility Maintenance Worker	5,782	5,782	-
12	97	101	1,000	Overtime	1,000	500	(500)
13	2,376	2,136	2,147	Medicare	2,123	2,116	(7)
14	16,603	19,157	25,430	Retirement	26,396	26,294	(102)
15	15,570	15,514	15,854	Insurance Benefits	14,890	14,890	-
16	-	-	1,575	Unemployment Insurance	1,575	1,575	-
17	827	431	314	Workers Compensation	570	570	-
18	$192,491	$ 172,661	$ 188,972	TOTAL PERSONAL SERVICES	$ 183,762	$ 183,153	$ (609)

Notes:

17 Worker's compensation costs are expected to increase 20%-25% in FY 02-03. Budget estimates also changed because of allocation changes.

GENERAL FUND

Administration

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
19							
20				**MATERIALS & SERVICES**			
21	$ 12,400	$ 8,806	$ 10,139	Materials & Supplies	$ 10,140	$ 9,140	$ (1,000)
22	438	-	450	Safety Committee	450	450	-
23	4,607	6,810	8,990	Postage & Printing	9,811	9,811	-
24	17,337	19,393	19,350	League/COG Dues/Subscriptions	26,265	26,265	-
25	8,548	3,855	4,778	Training & Travel	5,042	5,042	-
26	5,202	5,144	6,947	Advertising	3,340	3,340	-
27	42,898	45,452	33,273	Legal Services	43,000	43,000	-
28	9,581	-	11,762	Contractual Services	31,025	28,845	(2,180)
29	8,389	5,324	5,400	Audit	5,772	5,772	-
30	-	1,572	-	Engineering Services	-	-	-
31	10,157	8,541	8,823	Janitorial	6,905	6,905	-
32	3,578	5,708	7,878	Utilities	6,809	3,406	(3,403)
33	8,542	2,925	3,855	Telephone	6,249	6,249	-
34	4,759	4,930	5,550	Insurance	6,938	6,938	-
35	-	-	-	Software Maintenance Agreements	7,076	7,076	-
36	4,198	4,999	1,337	Computer Maintenance	22,936	22,936	-
37	4,620	5,129	9,961	Equipment Maintenance	5,066	5,066	-
38	-	2,446	67,000	Facility Maintenance	25,404	25,404	-
39	22,563	-	97,258	PEG Equipment	-	-	-

Notes:

23 The US Postal Service will have a 9% rate increase beginning 6/30/02.

24 Citywide costs are comprised of memberships to Council of Governments, League of Oregon Cities, Local Government Personnel Institute, local newspapers, Chamber of Commerce, Rotary and International City/County Management Association. Costs are then allocated to each fund based on FTE.

26 Costs are for recruitments and public notices. $1000 is for the Senior Planner recruitment to be paid 1/3 from General Fund, Street Fund and Urban Renewal.

27 Costs are based on current year actuals projected to 6/30/02.

28 Costs were paid from the Revenue Sharing fund in FY 00-01. FY 02-03 increases are for the compensation study due this year and a City Hall facilities study as directed by the Council on 4/15/02.

31 Janitorial costs have increased over the FY 01-02 budget to provide for a more thorough cleaning.

32 During FY 01-02 staff discovered that the meter numbers on the electricity bills for the City Hall building and Police Department were switched. Other operating funds were paying the Police Department bills and visa versa. There is a significant dollar difference between the two meters. Monthly bills have been approximately $1400 per month at the Police Department since the rate increase in October 2001.

34 The City's insurance carrier projects a 20%-25% increase in insurance costs.

35 Costs are separated from Computer maintenance beginning FY 02-03.

38 The Council appropriated a supplemental budget in FY 01-02 increasing facility maintenance from $22000 to $67000 to address environmental issues.

39 PEG expenditures have been moved to a Special Revenue Fund.

GENERAL FUND

Administration

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
40	10,284	10,274	10,000	Fire District - Hotel/Motel Tax	7,766	7,766	-
41	10,000	10,000	10,000	KAVA - Hotel/Motel Tax	7,766	7,766	-
42	2,834	312	5,000	Neighborhood Association Expense	3,000	3,000	-
43	1,362	2,104	1,000	Volunteer Recognition	1,000	1,000	-
44	-	-	1,000	Power - Salem Keizer School District	1,000	1,000	-
45	3,000	375	750	Youth Compact	750	750	-
46	1,112	1,136	1,251	Miscellaneous Expense	1,250	1,250	-
47	5,251	7,510	10,000	Emergency Management Expense	5,150	5,150	-
48	$201,660	$ 162,745	$ 341,752	TOTAL MATERIALS & SERVICES	$ 249,910	$ 243,327	$ (6,583)
49							
50				**CAPITAL OUTLAY**			
51							
52	$ 88,800	$ -	$ -	PEG Equipment	$ -	$ -	$ -
53	$ 88,800	$ -	$ -	TOTAL CAPITAL OUTLAY	$ -	$ -	$ -
54							
55							
56	$482,951	$ 335,406	$ 530,724	**TOTAL EXPENDITURES**	$ 433,672	$ 426,480	$ (7,192)

Notes:

40-41 Payments are 20% of the Hotel/Motel Tax revenues.

42 Historical trends show funds expended were significantly less than budgeted. Funds expended through 4/02 are less than $100, therefore, this line item has been reduced.

46 Miscellaneous costs are one time expenditures that are not characterized by existing line-item descriptions.

50 Capital outlay costs associated with the general fund are budgeted in the Revenue Sharing Fund.

GENERAL FUND

Parks

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
				RESOURCES			
				LICENSES & FEES			
1	$ 670	$ 1,480	$ 850	Parks Fees	$ 1,320	$ 1,320	$ -
2							
3	113,373	83,578	126,497	GENERAL SUPPORT	127,918	127,918	-
4	$114,043	$ 85,058	$ 127,347	**TOTAL RESOURCES**	$ 129,238	$ 129,238	$ -
5							

Notes:

1 Fees are based on current year actuals projected out to 6/30/02.

GENERAL FUND

Parks

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
6				**EXPENDITURES**			
7							
8				**PERSONAL SERVICES**			
9							
10	$ -	$ -	$ -	Public Works Superintendent	$ 2,978	$ 2,978	$ -
11	31,713	33,834	35,376	Municipal Utility Worker	36,240	36,240	-
12	7,028	8,096	8,337	Administrative Support Staff	5,278	5,278	-
13	9,855	8,858	13,000	Seasonal Help	13,000	13,000	-
14	761	-	-	Overtime	-	-	-
15	745	798	872	Medicare	884	884	-
16	6,253	6,987	8,406	Retirement	8,839	8,839	-
17	7,025	7,132	8,216	Insurance Benefits	7,885	7,885	-
18	-	314	-	Unemployment	1,300	1,300	-
19	2,278	(62)	1,190	Workers Compensation	1,534	1,534	-
20	$ 65,658	$ 65,957	$ 75,397	TOTAL PERSONAL SERVICES	$ 77,938	$ 77,938	$ -
21							
22				**MATERIALS & SERVICES**			
23							
24	$ 288	$ 512	$ 400	Office Materials & Supplies	$ 400	$ 400	$ -
25	7,551	11,067	11,000	Parks Materials & Supplies	11,000	11,000	-
26	26	242	300	Dues	-	-	-
27	70	302	500	Travel & Training	850	850	-
28	201	3,040	1,600	Legal Services	1,600	1,600	-
29	-	650	-	Insurance	-	-	-
30	38,694	629	35,000	Contractual Services	35,000	35,000	-
31	489	455	700	Computer Maintenance	-	-	-
32	(78)	1,071	600	Vehicle Maintenance	600	600	-
33	95	353	600	Equipment Maintenance	600	600	-
34	1,049	780	1,250	Youth Recreation	1,250	1,250	-
35	$ 48,385	$ 19,101	$ 51,950	TOTAL MATERIALS & SERVICES	$ 51,300	$ 51,300	$ -
36							
37	$114,043	$ 85,058	$ 127,347	**TOTAL EXPENDITURES**	$ 129,238	$ 129,238	$ -

Notes:

10 Public Works Superintendent salary is now allocated to all programs where effort is expended. See Supplemental information "Staffing Allocations".

19 Worker's compensation costs are expected to increase 20%-25% in FY 02-03. Budget estimates also changed because of allocation changes.

25 The Parks Donation Program brought in $4400 through March 2002. These donations help offset possible expenditure cuts in this line item.

26,29,31 Citywide costs have been moved to the General Fund Administration budget

30 Most contractual services were paid from the Revenue Sharing fund in FY 00-01.

GENERAL FUND

Community Development

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
				RESOURCES			
				LICENSES & FEES			
1	$ 27,532	$ 28,875	$ 26,260	Land Use Application Fees	$ 22,916	$ 22,916	$ -
2	23,592	10,090	9,600	Building Fees - Zoning	13,275	13,275	-
3	33,633	17,279	18,900	Building Fees - Sinking Fund	26,800	26,800	-
4	$ 84,757	$ 56,244	$ 54,760	Total Licenses & Fees	$ 62,991	$ 62,991	$ -
5							
6				**INTERGOVERNMENTAL**			
7							
8	$ -	$ 1,592	$ -	Land Conservation Grant	$ -	$ -	$ -
9							
10				**MISCELLANEOUS**			
11							
12	$ -	$ 204	$ -	Nuisance Abatement	$ -	$ -	$ -
13							
14							
15	$ 84,757	$ 56,244	$ 54,760	TOTAL ACTIVITY GENERATED	$ 62,991	$ 62,991	$ -
16							
17	135,953	174,849	205,964	GENERAL SUPPORT	240,574	240,574	-
18	$ 220,710	$ 231,093	$ 260,724	**TOTAL RESOURCES**	$ 303,565	$ 303,565	$ -

Notes:

2-3 A large portion of permit fees were for remodeling projects in FY 01-02. The same is expected for FY 02-03.

GENERAL FUND

Community Development

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
19							
20				EXPENDITURES			
21							
22				PERSONAL SERVICES			
23							
24	$ 11,683	$ 33,747	$ 35,892	Planning Director	$ 37,874	$ 37,874	$ -
25	32,884	15,274	29,563	Planner	41,892	41,892	-
26	35,908	31,872	27,509	Code Enforcement/Zoning Tech	29,236	29,236	-
27	-	-	-	Senior Planner	9,604	9,604	-
28	8,209	8,096	8,337	Administrative Support Staff	8,796	8,796	-
29	11,331	16,142	15,716	Permit Specialist	16,588	16,588	-
30	7,323	3,015	3,000	Overtime	2,000	2,000	-
31	1,635	1,726	1,846	Medicare	2,244	2,244	-
32	13,903	15,957	20,433	Retirement	28,634	28,634	-
33	13,711	14,882	18,300	Insurance Benefits	22,884	22,884	-
34	643	1,032	368	Workers Compensation	673	673	-
35	$ 137,230	$ 141,743	$ 160,964	TOTAL PERSONAL SERVICES	$ 200,425	$ 200,425	$ -

Notes:

27 Hire Senior Planner 1/1/03. Salary subject to compensation study to be completed if position approved.

34 Worker's compensation costs are expected to increase 20%-25% in FY 02-03. Budget estimates also changed because of allocation changes.

GENERAL FUND

Community Development

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
36							
37				MATERIALS & SERVICES			
38							
39	$ 3,579	$ 3,776	$ 5,000	Materials & Supplies	$ 4,000	$ 4,000	$ -
40	412	394	1,200	Mapping Supplies & Services	1,200	1,200	-
41	3,290	4,993	7,500	Printing & Postage	4,000	4,000	-
42	676	354	500	Dues & Subscriptions	-	-	-
43	1,327	1,567	2,710	Travel & Training	4,540	4,540	-
44	6,923	8,132	6,000	Legal Advertising	3,000	3,000	-
45	37,141	43,815	35,850	Legal Services	50,000	50,000	-
46	12,919	6,251	26,000	Contractual Services	21,500	21,500	-
47	10,827	3,640	5,400	Hearings Officer	5,400	5,400	-
48	-	10,955	-	Engineering Services	4,500	4,500	-
49	4,323	1,702	4,600	Computer Maintenance	-	-	-
50	155	556	5,000	Nuisance Abatement	5,000	5,000	-
51	1,908	3,215	-	Land Conservation Grant Expenses	-	-	-
52	$ 83,480	$ 89,350	$ 99,760	TOTAL MATERIALS & SERVICES	$ 103,140	$ 103,140	$ -
53							
54	$ 220,710	$ 231,093	$ 260,724	**TOTAL EXPENDITURES**	$ 303,565	$ 303,565	$ -

Notes:

40 Costs include aerial photo fly-overs. Planning & Public Works will share cost for digital photos for GIS.

41 For costs directly associated to planning. Citywide costs attributed to General Fund Programs are budgeted in the Administration budget.

41,42,49 Citywide costs have been moved to the General Fund Administration budget

45 Increase of $10,000 for foreseen hourly service for Chemawa Activity Center Appeal to LUBA. Increase of $5,000 for increased potential hourly services.

46 Engineering costs are now in a separate line item. Added increase in cost for services expected by Data Center.
Will need $2000 for Vehicle Maintenance if the Planning Dept. cannot purchase a new vehicle as recommended in Revenue Sharing budget.

GENERAL FUND

City Recorder - Municipal Court

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
				RESOURCES			
1	$271,342	$ 273,153	$ 254,751	GENERAL SUPPORT	$ 268,820	$ 268,820	$ -
2							
3				**EXPENDITURES**			
4							
5				**PERSONAL SERVICES**			
6							
7	$ 41,306	$ 41,041	$ 42,353	City Recorder	$ 43,394	$ 43,394	$ -
8	27,963	30,145	30,240	Administrative Support Staff	24,756	24,756	-
9	35,518	37,315	39,000	Court Clerk	39,960	39,960	-
10	24	12	500	Overtime	500	500	-
11	1,596	1,728	1,723	Medicare	1,670	1,670	-
12	16,764	17,818	19,483	Retirement	20,288	20,288	-
13	16,454	17,765	19,374	Insurance Benefits	15,952	15,952	-
14	553	307	244	Workers Compensation	273	273	-
15	$140,178	$ 146,131	$ 152,917	TOTAL PERSONAL SERVICES	$ 146,793	$ 146,793	$ -
16							
17				**MATERIALS & SERVICES**			
18							
19	$ 2,821	$ 1,751	$ 2,500	Materials & Supplies	$ 2,500	$ 2,500	$ -
20	2,986	3,021	3,075	Travel & Training	3,400	3,400	-
21	1,325	3,693	1,400	Legal Services	1,400	1,400	-
22	16,987	13,850	17,000	Professional Services - Judge	23,866	23,866	-
23	2,840	3,222	3,500	Contractual Services	3,500	3,500	-
24	-	352	-	Telephone	-	-	-
25	1,996	2,668	2,500	Computer Maintenance	-	-	-
26	9,907	19,862	10,000	Collections Cost	10,417	10,417	-
27	17,653	12,240	10,758	CC Assessments	13,381	13,381	-
28	74,649	66,363	51,101	Unitary Assessment	63,563	63,563	-
29	$131,164	$ 127,022	$ 101,834	TOTAL MATERIALS & SERVICES	$ 122,027	$ 122,027	$ -
30							
31	$271,342	$ 273,153	$ 254,751	**TOTAL EXPENDITURES**	$ 268,820	$ 268,820	$ -

Notes:

14 Worker's compensation costs are expected to increase 20%-25% in FY 02-03. Budget estimates also changed because of allocation changes.

22 24 hrs/month @ $82/hour + $250 training as provided for in the contract

23 Primarily for court interpreter

25 Citywide costs have been moved to the General Fund Administration budget

27& 28 Costs equal 4% and 19% of municipal court fine revenues, respectively, including Past Due Fines.

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GENERAL FUND

Police

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
				RESOURCES			
				INTERGOVERNMENTAL			
1	$ 73,047	$ 75,238	$ 129,934	SRO Contract	$ 133,117	$ 142,963	$ 9,846
2	302,389	151,159	51,667	Grants	42,000	42,000	-
3	188	-	-	Crime Prevention	-	-	-
4	$ 375,624	$ 226,397	$ 181,601	Total Intergovernmental	$ 175,117	$ 184,963	$ 9,846
5							
6				**FINES & FORFEITS**			
7							
8	$ 320,997	$ 257,424	$ 268,952	Municipal Court Fines	$ 282,457	$ 282,457	$ -
9	-	-	26,000	Court Fine Admin Assmt	19,615	19,615	-
10	47,409	98,726	50,000	Collections - Past Due	52,083	52,083	-
11	45,417	34,853	44,681	Impoundment Fees	34,600	34,600	-
12	$ 413,823	$ 391,003	$ 389,633	Total Fines & Forfeits	$ 388,755	$ 388,755	$ -
13							
14				**MISCELLANEOUS**			
15							
16	$ 540	$ 2,066	$ 11,000	Police Donations	$ -	$ -	$ -
17	333	896	500	K-9 Donations	-	-	-
18	2,009	2,603	2,000	Special Duty Officers	2,000	2,000	-
19	-	33,493	-	Exchange of Equipment	-	-	-
20	$ 2,882	$ 39,058	$ 13,500	Total Miscellaneous	$ 2,000	$ 2,000	$ -
21							
22	$ 792,329	$ 656,458	$ 584,734	TOTAL ACTIVITY GENERATED	$ 565,872	$ 575,718	$ 9,846
23	2,670,083	2,904,121	3,361,129	GENERAL SUPPORT	3,511,788	3,512,846	1,058
24	$3,462,412	$3,560,579	$ 3,945,863	**TOTAL RESOURCES**	$ 4,077,660	$ 4,088,564	$ 10,904

Notes:

1 School funds will be received in FY 02-03, which partially pay for the school resource officer assigned to the new school.

2 The 3-year COPPS grant expired in FY 01-02, which partially funded 6 police officers. Additional grant funds have been awarded to the City to help fund the new school resource officer position.

10 Average fine $75 + $15 collection fee = 560 accounts. Revenue estimated at $50,000 less $15 collection + 25% collection fee.

11 Impound Fee increased from $75 to $100 in FY 01-02.

19 The Exchange of Equipment in FY 00-01 was a one time barter agreement where surplus equipment was exchanged for police ammunition and weapons.

GENERAL FUND

Police

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
25							
26				EXPENDITURES			
27							
28				PERSONAL SERVICES			
29							
30	$ 38,777	$ 41,359	$ 40,956	Administrative Assistant	$ 35,136	$ 35,136	$ -
31	5,016	5,601	5,281	Facility Maintenance Worker	5,782	5,782	-
32	84,436	84,086	85,140	Chief of Police	87,216	87,216	-
33	140,663	145,162	142,584	Captains	143,520	143,520	-
34	276,596	424,618	493,204	Sergeants	501,259	501,259	-
35	191,843	187,950	248,686	Detectives	201,826	201,826	-
36	4,824	-	-	Crime Data Analyst	-	-	-
37	1,085,855	888,331	895,234	Police Officers	981,546	981,546	-
38	25,093	28,616	33,136	Community Service Officer	32,659	32,659	-
39	154,922	168,504	181,933	Police Support Specialists	193,908	193,908	-
40	35,440	-	-	Community Services Coordinator	-	-	-
41	-	87,782	144,788	School Resource Officers	153,923	153,923	-
42	34,726	38,290	40,944	Community Services Specialist	41,952	41,952	-
43	-	14,724	3,000	Reserve Officers	3,000	3,000	-
44	92,206	112,054	133,116	Overtime	136,377	136,377	-
45	33,022	34,108	37,575	Medicare	38,704	38,704	-
46	353,548	377,218	486,494	Retirement	506,290	506,290	-
47	268,451	283,543	300,436	Insurance Benefits	302,425	302,425	-
48	8	1,332	1,575	Unemployment Insurance	1,575	1,575	-
49	56,867	52,920	72,935	Workers Compensation	78,276	78,276	-
50	$2,882,293	$2,976,198	$ 3,347,017	TOTAL PERSONAL SERVICES	$ 3,445,374	$ 3,445,374	$ -

Notes:

35 The FY 01-02 budget included 5 detectives and 20 police officers. There are actually 4 detectives and 21 police officers. This does not change the overall cost of personal services. The FY 02-03 includes 4 detective positions and 21 police officer positions.

FY 02-03	1,183,372	Sum of Detectives & Police Officer line items	
FY 01-02	1,143,920	Sum of Detectives & Police Officer line items	
Difference	39,452	3.45%	Net increase for two line items combined reflects the 2.45% COLA + step increases

37 In FY 01-02 one police officer position was left vacant. This situation continues in FY 02-03.

41 The number of School Resource Officer positions increased from 2 officers in FY 00-01 to 3 officers in FY 01-02 to cover the new middle school.

44 The need for overtime depends on the number and complexity of crimes. Overtime costs are approximately 10% of sworn-represented staff salaries.

46 The PERS employer contribution went from 6% in FY 00-01 to 7.96% in FY 01-02.

49 Worker's compensation costs are expected to increase 20%-25% in FY 02-03.

GENERAL FUND

Police

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
51							
52				**MATERIALS & SERVICES**			
53							
54	$ 19,378	$ 17,325	$ 20,000	Materials & Supplies	$ 20,500	$ 20,500	$ -
55	-	2,667	-	Reserve Officer Program	-	-	-
56	27,913	23,698	26,000	Clothing	27,000	27,000	-
57	2,388	3,723	3,000	K-9 Supplies	5,000	5,000	-
58	11,031	10,632	13,000	Postage & Printing	15,249	15,249	-
59	22,804	13,977	24,000	Travel & Training	25,000	25,000	-
60	4,823	3,225	5,000	Tuition Reimbursement	5,000	5,000	-
61	4,090	2,191	4,000	Testing	4,000	4,000	-
62	-	793	-	Advertising	-	-	-
63	3,848	10,323	4,000	Legal	4,000	4,000	-
64	1,805	1,089	-	Contractual	-	-	-
65	9,617	8,500	9,000	Janitorial	19,704	19,704	-
66	6,042	4,303	7,800	Utilities	16,000	16,000	-
67	26,869	22,507	23,000	Telephone	24,000	24,000	-
68	39,499	48,297	50,270	Insurance	62,838	62,838	-
69	22,100	-	25,000	Vehicle Lease	26,000	26,000	-
70	3,495	3,500	5,000	Equipment Rental	5,000	5,000	-
71	35,860	35,161	35,000	Gasoline	40,000	35,000	(5,000)
72	20,404	26,816	22,531	Computer Maintenance	-	-	-
73	41,376	26,355	25,000	Maintenance-Vehicles	30,000	30,000	-
74	17,987	20,791	19,000	Maintenance-Equipment	19,000	19,000	-
75	4,210	4,647	5,000	Community Services Unit	5,000	5,000	-
76	27,988	17,862	29,000	Operating Materials	24,000	29,000	5,000

Notes:

57 The Police Department had one police dog budgeted in FY 01-02. Through donations, the department added another dog during the fiscal year.

58 The US Postal Service will have a 9% rate increase beginning 6/30/02

65 The City implemented a new cleaning program for the City Hall facilities and increased the janitorial services to address environmental concerns.

66 During FY 01-02 staff discovered that the meter numbers on the electricity bills for the City Hall building and Police Department were switched. Other operating funds were paying the Police Department bills and visa versa. There is a significant dollar difference between the two meters. Monthly bills have been approximately $1400 per month at the Police Department since the rate increase in October 2001.

68 The City's Insurance carrier projects a 20%-25% increase in insurance costs.

69 Vehicle operating leases were paid from the Revenue Sharing Fund in FY 00-01.

72 Citywide costs have been moved to the General Fund Administration budget.

75 Community related activities such as National Night Out.

GENERAL FUND

Police

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
77							
78	-	37,562	5,000	Ammo/Weapons	5,500	5,500	-
79	152,582	160,772	167,250	Salem Communications	180,695	180,695	-
80	61,288	49,773	41,995	RAIN	43,300	60,704	17,404
81	8,088	15,063	13,000	Investigations	13,000	13,000	-
82	1,728	2,282	4,000	Crime Prevention	4,000	4,000	-
83	-	4,226	-	Peer Court	6,500	-	(6,500)
84	404	480	1,000	HEP-B Immunizations	1,000	1,000	-
85	2,502	1,841	1,000	Miscellaneous	1,000	1,000	-
86	$ 580,119	$ 580,381	$ 587,846	TOTAL MATERIALS AND SERVICES	$ 632,286	$ 643,190	$ 10,904
87							
88							
89				**CAPITAL OUTLAY**			
90							
91	$ -	$ 4,000	$ -	Protective Vests	$ -	$ -	$ -
92	-	-	11,000	Uniforms/Equipment	-	-	-
93	$ -	$ 4,000	$ 11,000	TOTAL CAPITAL OUTLAY	$ -	$ -	$ -
94							
95	$3,462,412	$3,560,579	$ 3,945,863	**TOTAL EXPENDITURES**	$ 4,077,660	$ 4,088,564	$ 10,904

Notes:

78 In FY 00-01, the City entered into a barter agreement and exchanged surplus equipment for $33,000 in weapons.

79 Costs are shared with the 9-1-1 fund and represent 58% of the total costs for dispatch services from the Willamette Valley Communications Center. Capital outlay costs associated with the Police program are budgeted in the Revenue Sharing Fund.

82 Peer Court is a youth program where those charged voluntarily agree to have their case heard and decided by their peers.

85 Miscellaneous costs are one time expenditures that are not characterized by existing line-item descriptions.

GENERAL FUND

Stadium Operations

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
				RESOURCES			
				MISCELLANEOUS			
1	$ 70,984	$ 67,372	$ 58,344	Stadium Rent	$ 54,072	$ 54,072	$ -
2	$ 70,984	$ 67,372	$ 58,344	**TOTAL RESOURCES**	$ 54,072	$ 54,072	$ -
3							
4				**EXPENDITURES**			
5							
6				**MATERIALS & SERVICES**			
7							
8	$ 33,521	$ 34,008	$ 35,028	Property Tax	$ 36,561	$ 36,561	$ -
9	$ 33,521	$ 34,008	$ 35,028	TOTAL MATERIALS & SERVICES	$ 36,561	$ 36,561	$ -
10							
11	$ 37,463	$ 33,364	$ 23,316	**AVAILABLE FOR GENERAL SUPPORT**	$ 17,511	$ 17,511	$ -
12	$ 70,984	$ 67,372	$ 58,344	**TOTAL EXPENDITURE & GENERAL SUPPORT**	$ 54,072	$ 54,072	$ -

Notes:

1 Volcano's Ball Club projects a 5% decrease in ticket sales in the current year due to the economy. Year-to-date actuals through April 2002 indicate an even further decline over the preceding year. FY 03 revenues are based on this projection.

8 Property taxes are paid on the parking lot as provided in the lease agreement with the Volcanoes ball club. The City anticipates a 3% increase in assessed value, which is the maximum allowed under ballot measure 50. Actual payment in FY 01-02 was $36,710 less $1,250 paid by the stadium.

SPECIAL REVENUE FUND

Revenue Sharing

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 45,942	$ 53,289	$ 79,625	Beginning Fund Balance	$ 26,024	$ 26,024	$ -
2							
3				**RESOURCES**			
4							
5	149,953	197,019	166,827	State Revenue Sharing	170,831	170,831	-
6	-	-	-	Transfer from General Fund	9,000	9,000	-
7	$195,895	$ 250,308	$ 246,452	**TOTAL RESOURCES**	$ 205,855	$ 205,855	$ -

Notes:

5 State shared revenues are expected to increase 2.4% over FY 02. FY 02 revenues are expected to come in on budget.

6 The City is working toward a program budget. Towards this end, capital outlay items used for general government purposes are tracked in the Revenue Sharing Fund. This transfer is needed because Revenue Sharing funds are not sufficient in FY 02-03 to cover the entire capital outlay needs of the City's general government programs.

SPECIAL REVENUE FUND

Revenue Sharing

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
8							
9				**EXPENDITURES**			
10							
11				**MATERIALS & SERVICES**			
12							
13	$ -	$ 11,017	$ -	Contract Services - Admin	$ -	$ -	$ -
14	-	36,720	-	Contract Services - Parks	-	-	-
15	-	24,762	-	Vehicle Lease - Police	-	-	-
16	-	-	31,330	Facility Maintenance	-	-	-
17	$ -	$ 72,499	$ 31,330	TOTAL MATERIALS & SERVICES	$ -	$ -	$ -
18							
19				**CAPITAL OUTLAY**			
20							
21	$ 4,409	$ -	$ -	Telephone System	$ -	$ -	$ -
22	1,546	5,805	1,660	Office Furniture & Equipment	1,610	1,610	-
23	12,287	-	-	Software	20,182	20,182	-
24	1,000	803	2,000	Parks Master Plan	-	-	-
25	-	7,292	7,500	Vehicle Lease to Purchase	13,500	13,500	-
26	2,592	-	-	Planning - GIS Plotter	-	-	-
27	19,045	-	39,000	Police Motorcycles/Equipment	-	-	-
28	277	-	4,000	Police Protective Vests	4,000	4,000	-
29	10,220	-	-	Police Radios	8,000	8,000	-
30	39,171	6,545	10,313	Computer Equipment	32,558	32,558	-
31	-	2,440	-	Vehicle Equipment	-	-	-
32	17,024	56,996	87,500	Patrol Vehicles	96,500	96,500	-
33	6,709	-	-	Police Nylon Duty Rigs	-	-	-
34	14,110	7,288	14,110	Police Mobil Computer Terminals	21,649	21,649	-
35	-	-	-	Radio Modems	7,723	7,723	-
36	14,216	-	-	Patrol Equipment	-	-	-
37	$142,606	$ 87,169	$ 166,083	TOTAL CAPITAL OUTLAY	$ 205,722	$ 205,722	$ -

Notes:

11 Materials & Services for General Fund operations were funded in the Revenue Sharing Fund in FY 00-01. These costs are funded in the General Fund in FY 01-02 and forward except for one-time costs.

16 This was a one time cost in FY 01-02 and was for cleaning up City facilities to address environmental concerns.

22 $1000 for a portion of the Senior Planner workstation; $610 for a portion of the City Hall reception workstation improvements.

23 New Court software is needed because the current program is being discontinued by the current software vendor.

25 Final payment for a Park's Vehicle ($7500) and the first year of a three-year lease for a code enforcement vehicle ($6000) to be purchased in 7/02.

32 $62000, 7 vehicles, 3rd year of a 3-year lease; $25500, 3 vehicles, 4th year of a 5-year lease; $9000; 2 vehicles, 1st half year of a 3-year lease to be purchased in 1/03.

34 The City discovered it was not billed $12,594 for charges back to FY 00-01. The company agreed to let the city pay these costs over the next 3 years.

SPECIAL REVENUE FUND

Revenue Sharing

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
38							
39	$142,606	$ 159,668	$ 197,413	TOTAL EXPENDITURES	$ 205,722	$ 205,722	$ -
40							
41				**TRANSFERS**			
42							
43	$ -		$ 45,821	Transfer to Urban Renewal	$ -	$ -	$ -
44	$ -		$ 45,821	TOTAL TRANSFERS	$ -	$ -	$ -
45							
46				**FUND BALANCE**			
47							
48	-	-	3,218	Contingency	-	-	-
49	53,289	90,640	-	Undesignated Ending Fund Balance	133	133	-
50							
51	$195,895	$ 250,308	$ 246,452	**TOTAL EXPENDITURE & FUND BALANCE**	$ 205,855	$ 205,855	$ -

SPECIAL REVENUE FUND

PEG FUND

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ -	$ -	$ -	Beginning Fund Balance	$ -	$ -	$ -
2							
3				**RESOURCES**			
4							
5	-	-	-	PEG Fees	107,634	107,634	-
6	-	-	-	Transfer from General Fund	53,792	53,792	-
7	$ -	$ -	$ -	**TOTAL RESOURCES**	$ 161,426	$ 161,426	$ -
8							
9				**EXPENDITURES**			
10							
11				**MATERIALS & SERVICES**			
12							
13	$ -	$ -	$ -	Broadcasting	$ 60,000	$ 60,000	$ -
14	$ -	$ -	$ -	TOTAL MATERIALS & SERVICES	$ 60,000	$ 60,000	$ -
15							
16				**CAPITAL OUTLAY**			
17							
18	$ -	$ -	$ -	Television Equipment	$ 86,426	$ 86,426	$ -
19	$ -	$ -	$ -	TOTAL CAPITAL OUTLAY	$ 86,426	$ 86,426	$ -
20							
21	$ -	$ -	$ -	TOTAL EXPENDITURES	$ 146,426	$ 146,426	$ -
22							
23				**FUND BALANCE**			
24							
25	-	-	-	Undesignated Ending Fund Balance	15,000	15,000	-
26							
27	$ -	$ -	$ -	**TOTAL EXPENDITURE & FUND BALANCE**	$ 161,426	$ 161,426	$ -

Notes:

5 Revenues are to be used exclusively for public television access related expenditures and have therefore been moved from the general fund.

6 The transfer amount equals unspent PEG revenues estimated at 6/30/02.

13 Currently broadcasting costs are $5000 per month.

18 Sufficient funds have been budgeted should the City need additional media equipment.

25 Includes 3 months working capital until quarterly revenue comes in.

SPECIAL REVENUE FUND

911 Communications

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$170,439	$ 200,329	$ 159,995	Beginning Fund Balance	$ 88,982	$ 88,982	$ -
2							
3				**RESOURCES**			
4							
5	150,577	134,666	132,190	911 Excise Tax	141,774	141,774	-
6	8,488	-	-	Interest	-	-	-
7	$329,504	$ 334,995	$ 292,185	TOTAL RESOURCES	$ 230,756	$ 230,756	$ -
8							
9				**EXPENDITURES**			
10							
11				**MATERIALS & SERVICES**			
12							
13	$101,721	$ 116,421	$ 107,762	Emergency 911 and Dispatch Calls	$ 130,848	$ 130,848	$ -
14	27,454	43,528	56,842	DST. to 911 Agencies	60,963	60,963	-
15	$129,175	$ 159,949	$ 164,604	TOTAL MATERIALS & SERVICES	$ 191,811	$ 191,811	$ -
16							
17	$129,175	$ 159,949	$ 164,604	TOTAL EXPENDITURES	$ 191,811	$ 191,811	$ -
18							
19							
20				**FUND BALANCE**			
21							
22	-	-	127,581	Contingency	38,945	38,945	-
23	200,329	175,046	-	Undesignated Ending Fund Balance	-	-	-
24							
25	$329,504	$ 334,995	$ 292,185	TOTAL EXPENDITURE & FUND BALANCE	$ 230,756	$ 230,756	$ -

Notes:

5 911 Excise Tax revenue is expected to increase 7% over FY 01-02 actual projections.

13 Of the estimated $275,012 for the Willamette Valley Communications Center, radio fees and Mobil Data Terminal fees, 42% is expected to be attributed to emergency phone service. The FY 01-02 budget does not include costs for radio fees or MDT fees. However, these are allowable charges and are included in the FY 02-03 budget.

14 Of the estimated $141,774 to be received in 911 Excise Tax revenues, 39% is to be remitted to the Keizer Fire District and 4% is to be remitted to the Marion County Fire District.

SPECIAL REVENUE FUND

Housing Services

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 52,445	$ 38,178	$ 35,178	Beginning Fund Balance	$ 80,964	$ 80,964	$ -
2							
3				**RESOURCES**			
4							
5	16,423	29,304	80,000	Loan Proceeds	80,000	80,000	-
6	1,984	2,552	-	Interest Revenue	1,764	1,764	-
7	$ 70,852	$ 70,034	$ 115,178	**TOTAL RESOURCES**	$ 162,728	$ 162,728	$ -
8							
9				**EXPENDITURES**			
10							
11				**MATERIALS & SERVICES**			
12							
13	$ 5,738	$ -	$ 11,518	Contractual Services	$ 16,273	$ 16,273	$ -
14	26,936	-	103,660	Housing Rehabilitation Services	146,455	146,455	-
15	$ 32,674	$ -	$ 115,178	TOTAL MATERIALS & SERVICES	$ 162,728	$ 162,728	$ -
16							
17	$ 32,674	$ -	$ 115,178	TOTAL EXPENDITURES	$ 162,728	$ 162,728	$ -
18							
19				**FUND BALANCE**			
20							
21	38,178	70,034	-	Undesignated Ending Fund Balance	-	-	-
22							
23	$ 70,852	$ 70,034	$ 115,178	**TOTAL EXPENDITURE & FUND BALANCE**	$ 162,728	$ 162,728	$ -

Notes:

5 Proceeds from loan repayments are difficult to forecast. $80,000 has been budgeted to provide appropriation should funds become available.

13 This program is operated through a contract with the City of Salem whereby Salem receives 10% on loans made to cover its administrative costs.

14 Expenditure represents loans made from all available resources including beginning fund balance should funds become available. (See note 5)

SPECIAL REVENUE FUND

Law Enforcement Grants

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 10,987	$ 11,526	$ -	Beginning Fund Balance	$ -	$ -	$ -
2							
3				**RESOURCES**			
4							
5	-	12,069	25,025	Police Grant	-	-	-
6	539	-	-	Interest	-	-	-
7	$ 11,526	$ 23,595	$ 25,025	**TOTAL RESOURCES**	$ -	$ -	$ -
8							
9				EXPENDITURES			
10							
11							
12				**MATERIALS & SERVICES**			
13							
14	$ -	$ -	$ 10,621	Materials & Supplies	$ -	$ -	$ -
15	$ -	$ -	$ 10,621	TOTAL MATERIALS & SERVICES	$ -	$ -	$ -
16							
17				**CAPITAL OUTLAY**			
18							
19	$ -	$ 12,050	$ -	Computer Equipment	$ -	$ -	$ -
20	-	-	14,404	Office Furniture and Equipment	-	-	-
21	$ -	$ 12,050	$ 14,404	TOTAL CAPITAL OUTLAY	$ -	$ -	$ -
22							
23	$ -	$ 12,050	$ 25,025	TOTAL EXPENDITURES	$ -	$ -	$ -
24							
25				**FUND BALANCE**			
26		-					
27	11,526	11,545	-	BUDGETED FUND BALANCE	-	-	-
28							
29	$11,526	$ 23,595	$ 25,025	**TOTAL EXPENDITURE & FUND BALANCE**	$ -	$ -	$ -

Notes:

The Crime Prevention Grant Fund has been funded by federal grants. No grant revenues are anticipated in FY 02-03 and the City plans to fully expend existing grant money.

SPECIAL REVENUE FUND

Street Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 482,055	$ 531,780	$ 683,493	Beginning Fund Balance	$ 1,038,010	$ 1,038,010	$ -
2							
3				**RESOURCES**			
4							
5	38,160	37,409	19,080	Planning Construction Fees	12,000	12,000	-
6	31,439	-	-	ODOT Bike Grant	-	-	-
7	-	2,546	-	Donations (Helmets)	-	-	-
8	-	-	-	Bond Proceeds	4,475,000	4,475,000	-
9	53,906	13,547	-	Disaster Grant (1099 HMGP)	-	-	-
10	1,313,465	1,449,090	1,278,740	State Fuels Tax	1,223,677	1,223,677	-
11	-	-	125,000	Alder Street Grant	-	-	-
12	3,109	2,999	1,630	Orchard-Filmore Assessments	1,488	1,488	-
13	751	618	760	Orchard-Filmore Assessment Interest	420	420	-
14	37,212	-	-	Interest	-	-	-
15	10,559	2,140	-	Miscellaneous Revenue	-	-	-
16	125,565	-	-	Transfer from Utility Fund	-	-	-
17	$2,096,221	$2,040,129	$2,108,703	**TOTAL RESOURCES**	$ 6,750,595	$ 6,750,595	$ -

Notes:

5 New construction is expected to decline in FY 02-03 as the City builds out to its urban growth boundaries.

8 Issue 15-year debt for the Chemawa road access project near I-5. Funds to be repaid from new urban renewal district to be formed in 2003. Repayment expected to begin when tax increment revenues come into the new district.

10 Actual year-to-date revenues in FY 01-02 are 4.76% above budget. Per ODOT, revenue will be down in FY 03 by 6.65% due to economic conditions + another 2% decline from funds to be reserved for State bonded indebtedness beginning March 2002.

14 Interest earned on cash balances in this fund are allocated to the General Fund.

15 Miscellaneous revenues are one time revenues that are not characterized by line-item descriptions.

SPECIAL REVENUE FUND

Street Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
18							
19				**EXPENDITURES**			
20							
21				**PERSONAL SERVICES**			
22							
23	$ 17,924	$ 6,627	$ 8,108	City Manager	$ 8,369	$ 8,369	$ -
24	37,687	27,632	28,930	Public Works Director	30,526	30,526	-
25	-	-	22,579	Public Works Superintendent	20,849	20,849	-
26	5,901	5,863	6,050	City Recorder	6,199	6,199	-
27	38,353	34,228	35,376	Municipal Utility Worker	36,240	36,240	-
28	2,596	3,013	3,205	Planning Director	3,382	3,382	-
29	5,896	3,040	5,913	Planner	-	-	-
30	-	3,371	3,057	Code Enforcement/Zoning Technician	3,248	3,248	-
31	-	-	-	Senior Planner	9,322	9,322	-
32	11,910	14,026	17,466	Administrative Support Staff	21,010	21,010	-
33	-	2,620	2,827	Human Resources Director	2,983	2,983	-
34	3,577	3,738	3,861	Finance Director	3,956	3,956	-
35	7,523	5,698	5,281	Facility Maintenance Worker	5,782	5,782	-
36	2,768	1,695	3,300	Overtime	3,300	3,300	-
37	2,320	2,092	2,227	Medicare	2,386	2,386	-
38	23,538	22,590	26,274	Retirement	28,878	28,878	-
39	18,086	20,265	21,186	Insurance Benefits	22,414	22,414	-
40	-	-	500	Unemployment	500	500	-
41	1,994	1,661	2,255	Workers Compensation	3,035	3,035	-
42	$ 180,073	$ 158,159	$ 198,395	TOTAL PERSONAL SERVICES	$ 212,379	$ 212,379	$ -

Notes:

25 Public Works Superintendent salary is now allocated to all programs where effort is expended. See Supplemental information "Staffing Allocations".

31 Hire Senior Planner 1/1/03. Salary subject to compensation study to be completed if position approved.

41 Worker's compensation costs are expected to increase 20%-25% in FY 02-03. Budget estimates also changed because of allocation changes.

43

SPECIAL REVENUE FUND

Street Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
44				**MATERIALS & SERVICES**			
45							
46	$ 1,362	$ 2,386	$ 1,500	Materials & Supplies	$ 1,500	$ 1,500	$ -
47	-	5,053	-	Helmets	-	-	-
48	-	997	1,152	Postage & Printing	3,636	3,636	-
49	2,743	3,461	3,000	Dues/Subscriptions	1,512	1,512	-
50	2,962	1,469	4,446	Training & Travel	6,113	6,113	-
51	-	52	-	Advertising	360	360	-
52	11,879	7,749	7,000	Legal Services	8,300	8,300	-
53	1,273	6,047	1,500	Contractual Services	2,960	2,837	(123)
54	12,742	3,250	-	River Wall Contract Services	-	-	-
55	1,865	1,765	1,900	Audit	1,900	1,900	-
56	88,378	76,693	79,190	Engineering Services	75,000	75,000	-
57	5,802	3,168	9,000	Traffic Engineering	7,000	7,000	-
58	1,195	494	1,200	Janitorial	2,000	2,000	-
59	-	-	-	Utilities	-	1,277	1,277
60	8,258	8,809	9,690	Insurance	12,113	12,113	-
61	-	-	-	Software Maintenance Agreements	367	367	-
62	1,408	2,147	1,687	Computer Maintenance	1,320	1,320	-
63	3,702	3,345	4,000	Equipment Maintenance	4,000	4,000	-
64	5,165	10,716	5,887	Facility Maintenance	1,460	1,460	-
65	-	-	3,238	Office Equipment-Maintenance	-	-	-
66	31,310	14,951	10,000	Sidewalk Maintenance	5,000	5,000	-
67	33,650	36,960	65,000	Storm Drain Maintenance	40,000	40,000	-

Notes:

48 The Street Fund has not previously paid its share of Postage & Printing costs. The US Postal Service is increasing rates 9% beginning 6/30/02.

49 Citywide costs are comprised of memberships to Council of Governments, League of Oregon Cities, Local Government Personnel Institute, local newspapers, Chamber of Commerce, Rotary & International City/County Management Association. Costs are then allocated to each fund based on FTE.

50 $4000 Public Works staff+ $400 APWA fees + $1713 other staff training

51 Costs are for recruitments and public notices. $1000 is for the Senior Planner recruitment to be paid 1/3 each from General Fund, Street Fund and Urban Renewal.

53 FY 02-03 increases are for the compensation study due this year and a City Hall facilities study as directed by the Council on 4/15/02.

58 Janitorial costs have increased over the FY 01-02 budget to provide for a more thorough cleaning.

60 The City's insurance carrier projects a 20%-25% increase in insurance costs.

60 Costs are separated from Computer maintenance beginning FY 02-03.

64 The Council appropriated a supplemental budget in FY 01-02 increasing facility maintenance from $1,200 to $5,887 to address environmental issues.

SPECIAL REVENUE FUND

Street Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
68	67,604	67,859	68,000	Street Sweeping	68,000	68,000	-
69	74,806	318,852	300,000	Street Resurfacing	236,000	236,000	-
70	109,372	114,130	115,000	Street Maintenance	115,600	115,600	-
71	47,924	34,247	55,000	Street Light Utilities	55,000	55,000	-
72	17,026	18,701	22,000	Traffic Light Utilities	22,100	22,100	-
73	22,563	-	-	CCTV - Cable Reg. Commission	-	-	-
74	-	-	-	Bond Issue Costs	43,425	43,425	-
75	32,602	22,023	15,000	Flood & Drainage Services	15,000	15,000	-
76	$ 585,591	$ 765,324	$ 784,390	TOTAL MATERIALS & SERVICES	$ 729,666	$ 730,820	$ 1,154
77							
78				CAPITAL OUTLAY			
79							
80	$ 7,379	$ 22	$ 7,407	GIS System	$ 6,000	$ 6,000	$ -
81	-	-	472	Copier	-	-	-
82	545	478	25	Office Equipment & Furniture	1,273	1,273	-
83	1,100	273	1,700	Computer Equipment	3,353	3,353	-
84	435	-	-	Vehicle	-	-	-
85	-	-	125,000	Master Plan	125,000	125,000	-
86	-	-	-	Keizer Levee Study			-
87	96,949	2,610	80,000	Bike Paths	80,000	80,000	-
88	167,470	101,609	547,000	Street Improvements	158,000	158,000	-
89	-	-	25,000	Infill Sidewalk Completions	-	-	-
90	-	-	15,000	School Zone Flasher Update	-	-	-
91	26,835	94,199	50,000	Storm Drains	40,000	40,000	-
92	-	-	-	Alder Drive Connection East of Schools	135,000	135,000	-
93	-	-	-	CAC Access Road & Drainage	1,200,000	1,200,000	-

Notes:

85 The $125,000 budgeted in FY 01-02 was not expended and is therefore carried over to FY 02-03. The master plan is for storm drain improvements.

87 $5000 Rivercrest + $75000 Clearlake

88 Street Improvements include $105,000 carryover from FY 01-02 for Verda improvements south of Dearborn.

93 $4 M project, 30% completed in FY 02-03. Engineering starts Oct 1, 02 with bonded indebtedness. Expenditures include engineering, surveys, field work, land acquisition, and preliminary construction.

SPECIAL REVENUE FUND

Street Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
94	-	-	-	Neighborhood Traffic Management Plans	175,000	145,000	(30,000)
95	1,740	-	-	Shop Paving	-	-	-
96	4,000	-	-	Shop Addition	-	-	-
97	5,994	3,403	1,500	Field Equipment	1,500	1,500	-
98	318,110	38,944	-	Keizer Levee Construction	-	-	-
99	148,060	7,872	-	Labish HMG Grant Expenditures	-	-	-
100	-	3,472	-	Fork Lift	-	-	-
101	$ 778,617	$ 252,882	$ 853,104	TOTAL CAPITAL OUTLAY	$ 1,925,126	$ 1,895,126	$ (30,000)
102							
103				**DEBT SERVICE**			
104							
105	$ -	$ -	$ -	Principal	$ -	$ -	$ -
106	-	-	-	Interest	133,983	133,983	-
107	$ -	$ -	$ -	TOTAL DEBT SERVICE	$ 133,983	$ 133,983	$ -
108							
109	$1,544,281	$1,176,365	$1,835,889	TOTAL EXPENDITURES	$ 3,001,154	$ 2,972,308	$ (28,846)
110							
111				**TRANSFERS**			
112							
113	$ -	$ -	$ 1,696	Transfer to Urban Renewal	$ -	$ -	$ -
114							
115				**FUND BALANCE**			
116							
117	-	-	94,335	Contingency	150,000	150,000	-
118	-	-	35,000	Reserve for Shop Addition	35,000	35,000	-
119	-	-	50,000	Reserve for Foot Bridge	100,000	100,000	-
120	-	-	-	Reserve for Chemawa Access Road	2,800,000	2,800,000	-
121	-	-	-	Reserve for Debt Service	429,860	429,860	-
122	551,940	863,764	91,783	Undesignated Ending Fund Balance	234,581	263,427	28,846
123							
124	$2,096,221	$2,040,129	$2,108,703	**TOTAL EXPENDITURE & FUND BALANCE**	$ 6,750,595	$ 6,750,595	$ -

Notes:

120 70% of $4 M total in construction cost will be expended in FY 03-04.

121 $429,860 is to be reserved for life of debt.

CAPITAL PROJECTS FUND

City Hall Facility Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 12,857	$ 50,641	$ 56,008	Beginning Fund Balance	$ -	$ -	$ -
2							
3				**RESOURCES**			
4							
5	4,361	2,927	-	Interest	-	-	-
6	100,000	-	-	Transfer from Urban Renewal Project Fund	-	-	-
7	$117,218	$ 53,568	$ 56,008	**TOTAL RESOURCES**	$ -	$ -	$ -
8							
9				**EXPENDITURES**			
10							
11				**CAPITAL OUTLAY**			
12							
13	$ 66,577	$ -	$ -	Improvements	$ -	$ -	$ -
14	$ 66,577	$ -	$ -	TOTAL EXPENDITURES	$ -	$ -	$ -
15							
16				**TRANSFERS**			
17							
18	$ -	$ -	$ 56,008	Transfer to Urban Renewal Fund	$ -	$ -	$ -
19							
20				**FUND BALANCE**			
21							
22	-	-	-	Contingency	-	-	-
23	50,641	53,568	-	Undesignated Ending Fund Balance	-	-	-
24							
25	$117,218	$ 53,568	$ 56,008	**TOTAL EXPENDITURE & FUND BALANCE**	$ -	$ -	$ -

Notes:

Due to the lack of a funding source, the City Hall Facility Fund has been closed.

CAPITAL PROJECTS FUND

Park Improvement Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$285,244	$ 363,248	$ 384,487	Beginning Fund Balance	$ 440,792	$ 440,792	$ -
2							
3				**RESOURCES**			
4							
5	15,855	22,608	17,000	Interest	7,107	7,107	-
6	83,500	71,311	95,040	System Development Fees	45,000	45,000	-
7	1,000	-	-	Miscellaneous	-	-	-
8	$385,599	$ 457,167	$ 496,527	**TOTAL RESOURCES**	$ 492,899	$ 492,899	$ -
9							
10				**EXPENDITURES**			
11							
12				**CAPITAL OUTLAY**			
13							
14	$ -	$ -	$ 100,000	Land Acquisition	$ 120,000	$ 120,000	$ -
15	37,810	56,921	86,500	Improvements	35,000	35,000	-
16	$ 37,810	$ 56,921	$ 186,500	TOTAL CAPITAL OUTLAY	$ 155,000	$ 155,000	$ -
17							
18				**FUND BALANCE**			
19							
20	-	-	-	Contingency	50,000	50,000	-
21	347,789	400,246	310,027	Undesignated Ending Fund Balance	287,899	287,899	-
22	$385,599	$ 457,167	$ 496,527	**TOTAL EXPENDITURE & FUND BALANCE**	$ 492,899	$ 492,899	$ -

Notes:

5 The economic downturn has caused a reduction in interest earning in FY01-02. FY 02-03 is estimated at current year actuals projected out to year end.

6 Current year new construction is expected to be approximately half of FY 01-02 projections. In FY 00-01 the City increased System Development Fees and provides that 10% of the revenue is to be allocated to the General Fund to cover administrative costs.

14 For the purchase of 10-15 acres in West Keizer.

15 *Pleasantview Park:*

Big Toy Play Structure	$ 15,000
Irrigation System	5,000
Northview Park:	
Improve Sport Court	12,000
Country Glen:	
Picnic Tables and Trees	3,000
Total Improvements	$ 35,000

ENTERPRISE FUND

Utilities Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 261,659	$ 17,336	$ 274,336	Beginning Fund Balance	$ 81,651	$ 81,651	$ -
2							
3				**RESOURCES**			
4							
5	8,697	4,080	4,000	Planning/Construction Fees	2,267	2,267	-
6	2,962,384	3,108,109	3,336,000	Salem Sewer Billing	3,217,318	3,217,318	-
7	218,802	222,535	211,500	Sewer Administration Fee	217,637	217,637	-
8	1,573	-	-	Lighting Districts	-	-	-
9	4,764	4,642	4,641	Oakwood Assessment	6,564	6,564	-
10	$ 3,457,879	$3,356,702	$3,830,477	TOTAL	$ 3,443,786	$ 3,443,786	$ -
11							
12				**MISCELLANEOUS**			
13	$ 3,754	$ 3,250	$ 3,380	Oakwood Interest	$ 3,282	$ 3,282	$ -
14	7,791	-	-	Interest	-	-	-
15	9,444	8,346	-	Miscellaneous	-	-	-
16	$ 20,989	$ 11,596	$ 3,380	TOTAL MISCELLANEOUS	$ 3,282	$ 3,282	$ -
17							
18							
19	$ 3,478,868	$3,368,298	$3,833,857	TOTAL RESOURCES	$ 3,528,719	$ 3,528,719	$ -

Notes:

5 Revenue decreases reflect the decline in growth over previous years.

6 Increases reflect the City of Salem staff's proposed increase of 5.6% on average for all classes combined in FY 02-03.

7 Approximately 9200 sewer customers billed bi-monthly at $3.95 per bill

14 Interest earned on cash balances in this fund are allocated to the General Fund.

15 Miscellaneous revenues include one time revenues that are not characterized by line-item descriptions.

ENTERPRISE FUND

Utilities Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
20							
21				**EXPENSES**			
22							
23				**PERSONAL SERVICES**			
24							
25	$ 11,455	$ 795	$ 811	City Manager	$ 837	$ 837	$ -
26	11,557	11,656	12,398	Public Works Director	13,082	13,082	-
27	-	-	-	Public Works Superintendent	5,957	5,957	-
27	2,596	1,205	1,282	Planning Director	1,353	1,353	-
28	59,631	55,486	61,299	Administrative Support Staff	67,300	67,300	-
29	-	1,965	2,120	Human Resources Director	2,237	2,237	-
30	13,796	14,954	15,444	Finance Director	15,823	15,823	-
31	729	1,882	2,500	Overtime	2,500	2,500	-
32	1,518	1,395	1,471	Medicare	1,675	1,675	-
33	14,020	13,940	16,931	Retirement	21,432	21,432	-
34	16,834	16,480	15,939	Insurance Benefits	17,536	17,536	-
35	-	-	1,500	Unemployment	1,500	1,500	-
36	525	328	235	Workers Compensation	470	470	-
37	$ 132,661	$ 120,086	$ 131,930	TOTAL PERSONAL SERVICES	$ 151,702	$ 151,702	$ -
38							

Notes:

27 The Public Works Superintendent position was reviewed during FY 01-02 and reallocated based on efforts in each operating fund.

36 Worker's compensation costs are expected to increase 20%-25% in FY 02-03. Budget estimates also changed because of allocation changes.

ENTERPRISE FUND

Utilities Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
39				**MATERIALS & SERVICES**			
40							
41	$ 7,049	$ 6,775	$ 7,400	Materials & Supplies	$ 3,225	$ 3,225	$ -
42	9,217	13,643	18,380	Postage & Printing	20,579	20,579	-
43	1,449	1,710	2,250	Dues/Subscriptions	1,165	1,165	-
44	2,866	1,719	2,637	Travel & Training	2,830	2,830	-
45	933	302	335	Advertising	104	104	-
46	3,115	3,961	3,435	Legal Services	3,285	3,285	-
47	3,182	1,294	1,200	Contractual services	2,281	2,187	(94)
48	1,149	3,072	3,335	Audit	3,546	3,335	(211)
49	36,666	30,281	29,800	Engineering Services	22,395	22,395	-
50	-	-	-	Janitorial	1,728	1,728	-
51	899	1,914	2,200	Utilities	2,274	1,277	(997)
52	87	-	-	Telephone	72	72	-
53	4,960	5,294	8,735	Insurance	10,919	10,919	-
54	-	-	-	Software Maintenance Agreements	3,106	3,106	-
55	2,727	3,809	2,854	Computer Maintenance	1,016	1,016	-
56	-	632	542	Equipment Maintenance	1,041	1,041	-
57	4,731	8,731	6,168	Facility Maintenance	1,123	1,123	-
58	2,916,306	3,107,247	3,337,113	Salem Sewer Payments	3,217,318	3,217,318	-
59	20,651	-	-	CCTV - Cable Regulatory Commission	-	-	-
60	$ 3,015,987	$3,190,384	$3,426,384	TOTAL MATERIALS & SERVICES	$ 3,298,007	$ 3,296,705	$ (1,302)
61							

Notes:

42 The FY 02-03 budget is based on current year actuals projected to 6/30/02. The US Postal Service will have a 9% rate increase beginning 6/30/02.

43 Citywide costs are comprised of memberships to Council of Governments, League of Oregon Cities, Local Government Personnel Institute, local newspapers, Chamber of Commerce, Rotary and International City/County Management Association. Costs are then allocated to each fund based on FTE.

47 FY 02-03 increases are for the compensation study due this year and a City Hall facilities study as directed by the Council on 4/15/02.

50 The Utility Fund has not previously paid its share of janitorial costs which have been allocated for the FY 02-03 budget. Janitorial costs have increased over the FY 01-02 budget to provide for a more thorough cleaning.

53 The City's Insurance carrier projects a 20%-25% increase in insurance costs.

54 Costs are separated from Computer maintenance beginning FY 02-03.

57 The Council appropriated a supplemental budget in FY 01-02 increasing facility maintenance from $900 to $6,168 to address environmental issues.

58 Increases reflect the City of Salem staff's proposed increase of 4.5% in FY 02-03.

ENTERPRISE FUND

Utilities Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
				CAPITAL OUTLAY			
	$ -	$ -	$ -	GIS System	$ -	$ -	$ -
	2,369	1,232	460	Office Furniture & Equipment	128	128	-
	2,462	220	714	Computer Equipment & Software	3,426	3,426	-
	$ 4,831	$ 1,452	$ 1,174	TOTAL CAPITAL OUTLAY	$ 3,554	$ 3,554	$ -
				DEBT SERVICE			
	$ 5,000	$ 5,000	$ 5,000	Oakwood Principal	$ 5,000	$ 5,000	$ -
	4,345	3,839	3,330	Oakwood Interest	2,562	2,562	-
	$ 9,345	$ 8,839	$ 8,330	TOTAL DEBT SERVICE	$ 7,562	$ 7,562	$ -
	$ 3,162,824	$3,320,761	$3,567,818	TOTAL EXPENSES	$ 3,460,825	$ 3,459,523	$ (1,302)
				TRANSFERS			
	$ -	$ 15,000	$ -	Transfer to General Fund	$ -	$ -	$ -
	125,565	-	-	Transfer to Street Fund	-	-	-
	965	-	-	Transfer to Sewer Reserve Fund	-	-	-
	-	-	38,732	Transfer to Street Lighting District Fund	-	-	-
	-	-	1,997	Transfer to Urban Renewal	-	-	-
	$ 126,530	$ 15,000	$ 40,729	TOTAL TRANSFERS	$ -	$ -	$ -
	-	-	24,634	Contingency	30,000	30,000	-
	189,514	32,537	200,676	Undesignated Ending Fund Balance	37,894	39,196	1,302
	$ 3,478,868	$3,368,298	$3,833,857	TOTAL EXPENSES & FUND BALANCE	$ 3,528,719	$ 3,528,719	$ -

ENTERPRISE FUND

Water Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 497,867	$ 228,704	$ 414,752	Beginning Fund Balance	$ 86,332	$ 86,332	$ -
2							
3				**RESOURCES**			
4							
5	17,139	16,094	14,000	Planning & Construction Fees	8,000	8,000	-
6	1,737,849	1,722,124	1,780,213	Water Sales	1,818,956	1,818,956	-
7	56,638	45,927	47,000	Service Fees	42,000	42,000	-
8	5,350	5,260	5,880	Interest	970	970	-
9	4,241	5,623	2,000	Miscellaneous	2,000	2,000	-
10	10,500	11,190	6,000	Live Tap Reimbursement	2,800	2,800	-
11	$ 2,329,584	$ 2,034,922	$ 2,269,845	**TOTAL RESOURCES**	$ 1,961,058	$ 1,961,058	$ -

Notes:

6 The City is in the process of a cost of service analysis on its water rates. The analysis is expected to be completed by 6/30/02, therefore, new rates are not included in the Managers Recommended Budget. In FY 00-01 Water Rates were reduced by 5% and the City imposed a 5% franchise fee on Water Sales to be paid to the General Fund. The City anticipates .75% growth in Water Sales over current year projections.

8 The economic downturn has caused a reduction in interest earning in FY01-02. FY 02-03 is estimated at current year actuals projected out to year end.

9 Miscellaneous revenues include one time revenues that are not characterized by line-item descriptions.

ENTERPRISE FUND

Water Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
12							
13				**EXPENSES**			
14							
15				**PERSONAL SERVICES**			
16							
17	$ 58,363	$ 6,769	$ 8,108	City Manager	$ 8,369	$ 8,369	$ -
18	18,843	19,427	20,664	Public Works Director	21,804	21,804	-
19	30,240	32,451	33,869	Public Works Superintendent	23,827	23,827	-
20	280,996	269,353	301,840	Municipal Utility Worker	310,983	310,983	-
21	2,596	1,205	1,282	Planning Director	1,353	1,353	-
22	1,966	1,013	1,971	Planner	-	-	-
23	86,053	83,966	97,889	Administrative Support Staff	108,961	108,961	-
24	18,226	11,170	11,307	Human Resources Director	11,931	11,931	-
25	18,567	18,692	19,305	Finance Director	19,779	19,779	-
26	6,270	7,001	6,601	Facility Maintenance Worker	7,227	7,227	-
27	-	24,234	38,000	Seasonal Help	24,000	24,000	-
28	-	990	2,500	Overtime - Utility Billing	2,500	2,500	-
29	16,959	20,651	16,000	Overtime - Public Works	16,000	16,000	-
30	5,400	5,200	10,400	Duty Pay	10,400	10,400	-
31	8,305	7,894	8,160	Medicare	8,717	8,717	-
32	84,632	75,732	93,851	Retirement	101,831	101,831	-
33	79,376	80,649	93,470	Insurance Benefits	85,794	85,794	-
34	-	2,957	8,000	Unemployment Insurance	8,000	8,000	-
35	7,910	6,090	9,499	Workers Compensation	9,485	9,485	-
36	$ 724,702	$ 675,444	$ 782,716	TOTAL PERSONAL SERVICES	$ 780,961	$ 780,961	$ -

Notes:

19 Public Works Superintendent salary is now allocated to all programs where effort is expended. See Supplemental information "Staffing Allocations".

30 Per the Union contract negotiated in FY 00-01, Duty Pay went from $100 per week to $200 per week. One Public Works employees is assigned to after hours duty each week.

35 Worker's compensation costs are expected to increase 20%-25% in FY 02-03. Budget estimates also changed because of allocation changes keeping costs down in this fund.

ENTERPRISE FUND

Water Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
37							
38				**MATERIALS & SERVICES**			
39							
40	$ 10,942	$ 13,545	$ 13,500	Materials & Supplies	$ 10,235	$ 10,235	$ -
41	14,253	16,751	14,500	Postage & Printing	30,878	30,878	-
42	2,839	6,531	4,000	Concrete	5,000	5,000	-
43	6,375	7,018	6,000	Rock & Backfill	6,000	6,000	-
44	12,729	14,079	10,000	Paving	10,000	10,000	-
45	30,440	33,813	55,000	Sequestering Agent	55,000	55,000	-
46	15,299	11,677	12,000	Fluoride	12,000	12,000	-
47	6,238	6,285	5,885	Dues & Subscriptions	5,842	5,842	-
48	14,240	8,870	16,553	Travel & Training	16,956	16,956	-
49	772	973	1,000	Advertising	1,000	1,000	-
50	3,271	5,948	5,000	Legal Services	7,700	7,700	-
51	16,904	19,200	49,000	Contractual Services	23,650	23,165	(485)
52	2,739	1,723	1,870	Audit	1,870	1,870	-
53	2,157	1,036	2,000	Flagging	2,000	2,000	-
54	28,524	25,550	25,000	Engineering Services	25,000	25,000	-
55	8,996	8,204	7,500	Janitorial	6,714	6,714	-
56	2,905	2,739	3,000	Clothing	3,000	3,000	-
57	100,127	103,803	135,200	Utilities	135,200	134,200	(1,000)
58	5,675	7,187	7,680	Natural Gas	7,700	7,700	-
59	27,793	24,232	29,000	Telephone	28,000	28,000	-
60	5,729	6,134	10,000	Telemetry	10,000	10,000	-
61	29,611	31,595	34,760	Insurance	43,450	43,450	-
62	8,599	9,965	16,000	Gasoline	12,000	12,000	-
63	3,493	4,946	11,200	Diesel Fuel	6,000	6,000	-
64	-	-	-	Software Maintenance Agreements	4,119	4,119	-
65	6,316	10,018	8,472	Computer Maintenance	5,100	5,100	-
66	12,300	11,227	13,000	Vehicle Maintenance	13,000	13,000	-
67	9,050	9,438	9,986	Equipment Maintenance	9,500	9,500	-

Notes:

41 Costs include all printed materials and postage associated with printing and mailing bills. The budgeted amount in FY 01-02 was significantly less than the amount needed. An adjusted figure is reflected in FY 02-03 to more adequately cover this costs. The US Postal Service will have a 9% rate increase beginning 6/30/02.

47 Citywide costs are comprised of memberships to Council of Governments, League of Oregon Cities, Local Government Personnel Institute, local newspapers, Chamber of Commerce, Rotary and International City/County Management Association. Costs are then allocated to each fund based on FTE.

50 An additional $2700 has been added to negotiate the union contract which is to be renewed in FY 02-03.

51 FY01-02 budget included a water rate study. FY 02-03 costs include the compensation study due this year and a City Hall facilities study as directed by the Council on 4/15/02.

55 Janitorial costs have increased over the FY 01-02 budget to provide for a more thorough cleaning.

61 The City's Insurance carrier projects a 20%-25% increase in insurance costs.

64 Costs are separated from Computer maintenance beginning FY 02-03.

ENTERPRISE FUND

Water Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
68	12,258	9,656	15,755	Facility Maintenance	5,650	5,650	-
69	29,937	36,204	32,000	Plant Maintenance	32,000	32,000	-
70	7,185	8,880	5,000	Live Taps	5,000	5,000	-
71	14,143	19,303	20,000	Pumphouse Maintenance	20,000	20,000	-
72	40,930	25,405	25,000	Pump Maintenance	30,000	30,000	-
73	29,453	28,042	32,000	Op Mat/Supplies	30,000	30,000	-
74	65,027	108,600	-	Watermains	-	-	-
75	22,563	-	-	Cable Regulatory Commission	-	-	-
76	3,816	3,816	3,816	Well Property Lease	3,816	3,816	-
77	15,754	13,666	36,000	Lab Tests	51,500	51,500	-
78	5,276	20,000	19,000	Contract Meter Reading	20,000	20,000	-
79	9,621	9,474	10,000	Consumer Confidence Report/ Public Education	10,000	10,000	-
80	909	440	-	Miscellaneous	-	-	-
81	$ 645,188	$ 685,973	$ 705,677	TOTAL MATERIALS & SERVICES	$ 704,880	$ 703,395	$ (1,485)

Notes:

68 The Council appropriated a supplemental budget in FY 01-02 increasing facility maintenance from $4,940 to $15,755 to address environmental issues.

77 Costs have continued to increase due to an increase in commitments for lab tests as required by the State Health Division.

80 Miscellaneous costs are one time expenditures that are not characterized by existing line-item descriptions.

82							
83				**CAPITAL OUTLAY**			
84	$ 7,180	$ 2,228	$ -	Base Maps	$ -	$ -	$ -
85	-	-	1,960	Copier	-	-	-
86	932	165	-	Telephone System	-	-	-
87	2,555	1,612	2,825	Office Furniture & Equipment	2,018	2,018	-
88	2,572	4,442	3,400	Field Equipment	10,000	10,000	-
89	5,177	-	-	Itron System Upgrade	-	-	-
90	855	1,908	5,100	Computer Equipment	8,863	8,863	-
91	2,654	-		Software	-	-	-
92	19,200	-	-	Public Works Vehicle	-	-	-
93	36,195	26,631	35,000	Water Meters	28,000	28,000	-
94	40,439	26,775	-	Water Pump	-	-	-
95	-	3,521	-	Fork Lift	-	-	-
96	3,000	-	-	Telemetry System	10,000	10,000	-
97	6,315	-	-	Shop Paving	-	-	-
98	11,000	-	-	Shop Addition	-	-	-
99	8,990	-	-	Water Master Plan Amendment	-	-	-
100	-	35,002	-	Pressure Relief Valves	20,000	20,000	-
101	$ 147,064	$ 102,284	$ 48,285	TOTAL CAPITAL OUTLAY	$ 78,881	$ 78,881	$ -

ENTERPRISE FUND

Water Fund

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
102							
103				**DEBT SERVICE**			
104							
105	$ 340,000	$ 360,000	$ -	Bond Principal-6/3/1991 Issue	$ -	$ -	$ -
106	41,660	21,600	-	Bond Interest-6/3/1991 Issue	-	-	-
107	$ 381,660	$ 381,600	$ -	TOTAL DEBT SERVICE	$ -	$ -	$ -
108							
109	$ 1,898,614	$ 1,845,301	$ 1,536,678	TOTAL EXPENSES	$ 1,564,722	$ 1,563,237	$ (1,485)
110							
111				**TRANSFERS**			
112							
113	$ 50,000	$ -	$ 550,000	Transfer to Water Facility Replacement Reserve	$ 200,000	$ 200,000	$ -
114	-	-	3,844	Transfer to Urban Renewal	-	-	-
115	$ 50,000	$ -	$ 553,844	TOTAL TRANSFERS	$ 200,000	$ 200,000	$ -
116							
117				**FUND BALANCE**			
118							
119	$ -	$ -	$ 48,207	Contingency	$ 60,000	$ 60,000	$ -
120	-	-	35,000	Shop Reserve	45,000	45,000	-
121	380,970	189,621	96,116	Undesignated Fund Balance	91,336	92,821	1,485
122							
123	$ 2,329,584	$ 2,034,922	$ 2,269,845	**TOTAL EXPENSES & BUDGETED FUND BALANCE**	$ 1,961,058	$ 1,961,058	$ -

Notes:

105 The City's outstanding debt matured January 1, 2001 and was fully paid as of that date.

106 Since the City no longer has debt service payments funds have been transferred to the Water Facility Reserve Fund for future capital improvements.

121 The ending fund balance provides for a 30-day cash supply.

ENTERPRISE FUND

Water Facility Replacement Reserve

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 29,079	$ 238,526	$ 402,939	Beginning Fund Balance	$ 588,463	$ 588,463	$ -
2							
3				**RESOURCES**			
4							
5	13,881	20,250	14,700	Interest	6,053	6,053	-
6	145,861	64,990	32,400	Systems Development Fees	15,000	15,000	-
7	-	-	3,600	Oversized Reimbursement Fees	-	-	-
8	50,000	-	550,000	Transfer from Water Fund	200,000	200,000	-
9	$ 238,821	$ 323,766	$ 1,003,639	**TOTAL RESOURCES**	$ 809,516	$ 809,516	$ -
10							
11				**EXPENSES**			
12							
13				**CAPITAL OUTLAY**			
14							
15	$ -	$ -	$ 318,500	CIP Well Improvements	$ 761,000	$ 761,000	$ -
16	-	-	160,000	CIP Distribution Improvements	-	-	-
17	295	-	-	Reservoir	-	-	-
18	$ 295	$ -	$ 478,500	TOTAL EXPENSES	$ 761,000	$ 761,000	$ -
19							
20				**FUND BALANCE**			
21							
22	$ -	$ -	$ 525,139	Reserve for Storage Tank	$ -	$ -	$ -
23	-	-	-	Contingency	48,516	48,516	-
24	238,526	323,766	-	Undesignated Ending Fund Balance	-	-	-
25							
26	$ 238,821	$ 323,766	$ 1,003,639	**TOTAL EXPENSES & BUDGETED FUND BALANCE**	$ 809,516	$ 809,516	$ -

Notes:

5 The economic downturn has caused a reduction in interest earning in FY01-02. FY 02-03 is estimated at current year actuals projected out to year end.

8 Since the City no longer has debt service payments funds have been transferred from the Water Fund for future capital improvements.

15 Includes Bair Park Reservoir, Rietz Well, & Burnside replacement Well.

ENTERPRISE FUND

Street Lighting Districts

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ -	$ (1,948)	$ 22,046	Beginning Fund Balance	$ (3,800)	$ (3,800)	$ -
2							
3				RESOURCES			
4							
5	285,387	297,784	361,006	Lighting District Assessments	546,945	546,945	-
6	2,779	-	-	Interest	-	-	-
7	-	-	38,732	Transfer from Utility fund	-	-	-
8	$ 288,166	$ 295,836	$ 421,784	TOTAL RESOURCES	$ 543,145	$ 543,145	$ -

Notes:

5 Electricity costs increased 30% in FY 01-02 and are assessed in FY 02-03. Additionally, a 1.5% increase in city franchise rates will result in an increase in street lighting costs. An increase in assessments are needed to cover these costs and to provide working capital for FY 03-04.

ENTERPRISE FUND

Street Lighting Districts

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
9							
10				EXPENSES			
11							
12				PERSONAL SERVICES			
13							
14	$ -	$ 630	$ 811	City Manager	$ 837	$ 837	$ -
15	7,286	7,771	8,266	Public Works Director	8,722	8,722	-
16	-	-	-	Public Works Superintendent	2,978	2,978	-
17	5,901	5,863	6,050	City Recorder	6,199	6,199	-
18	1,826	3,366	4,049	Administrative Support Staff	5,328	5,328	-
19	3,406	3,738	3,861	Finance Director	3,956	3,956	-
20	-	1,352	1,320	Facility Maintenance Worker	1,445	1,445	-
21	279	357	371	Medicare	452	452	-
22	3,364	3,982	4,532	Retirement	5,669	5,669	-
23	1,973	2,672	3,150	Insurance Benefits	3,882	3,882	-
24	49	122	74	Workers Compensation	254	254	-
25	$ 24,084	$ 29,853	$ 32,484	TOTAL PERSONAL SERVICES	$ 39,722	$ 39,722	$ -
26							

Notes:

16 The Public Works Superintendent position was reviewed during FY 01-02 and reallocated based on efforts in each operating fund.

24 Worker's compensation costs are expected to increase 20%-25% in FY 02-03. Budget estimates also changed because of allocation changes in this fund.

ENTERPRISE FUND

Street Lighting Districts

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
27							
28				**MATERIALS & SERVICES**			
29	$ 111	$ 335	$ 299	Materials & Supplies	$ 294	$ 294	$ -
30	-	177	-	Postage & Printing	451	451	-
31	81	209	100	Dues/Subscriptions	230	230	-
32	257	250	328	Travel & Training	609	609	-
33	38	7	100	Legal Services	106	106	-
34	-	69	-	Contractual Services	220	202	(18)
35	73	201	318	Audit	318	318	-
36	-	-	-	Janitorial	340	340	-
37	818	682	930	Utilities	606	852	246
38	637	512	380	Telephone	657	657	-
39	-	-	-	Insurance	200	200	-
40	-	-	-	Software Maintenance Agreements	166	166	-
41	431	442	202	Computer Maintenance	200	200	-
42	-	74	-	Equipment Maintenance	252	252	-
43	-	-	1,063	Facilities Maintenance	220	220	-
44	4,264	5,068	6,600	Engineering costs	6,600	6,600	-
45	256,918	254,506	318,600	Lighting Costs	318,600	318,600	-
46	1,913	-	-	Cable Regulartory Commission	-	-	-
47	$ 265,541	$ 262,532	$ 328,920	TOTAL MATERIALS & SERVICES	$ 330,069	$ 330,297	$ 228

Notes:

30 The FY 01-02 budget did not include an appropriation for postage & printing. A certain amount of postage is allocable to this fund and accordingly has been budgeted for FY 02-03

31 Citywide costs are comprised of memberships to Council of Governments, League of Oregon Cities, Local Government Personnel Institute, local newspapers, Chamber of Commerce, Rotary and International City/County Management Association. Costs are then allocated to each fund based on FTE.

34 FY 02-03 costs include the compensation study due this year and a City Hall facilities study as directed by the Council on 4/15/02.

36 The SLD Fund has not previously paid its share of janitorial costs which have been allocated for the FY 02-03 budget. Janitorial costs have increased over the FY 01-02 budget to provide for a more thorough cleaning.

39 The SLD Fund has not previously paid its share of insurance costs which have been allocated for the FY 02-03 budget. The City's insurance carrier projects a 20%-25% increase in insurance costs.

41 Costs are separated from Computer maintenance beginning FY 02-03.

43 The Council appropriated a supplemental budget in FY 01-02 increasing facility maintenance from $160 to $1063 to address environmental issues.

ENTERPRISE FUND

Street Lighting Districts

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
48							
49				**CAPITAL OUTLAY**			
50							
51	$ -	$ -	$ 65	Copier	$ -	$ -	$ -
52	-	256	25	Office Furniture & Equipment	6	6	-
53	81	38	151	Computer Equipment	468	468	-
54	408	-	-	Software	-	-	-
55	$ 489	$ 294	$ 241	TOTAL CAPITAL OUTLAY	$ 474	$ 474	$ -
56							
57	$ 290,114	$ 292,679	$ 361,645	TOTAL EXPENSES	$ 370,265	$ 370,493	$ 228
58							
59				**TRANSFERS**			
60							
61	$ -	$ -	$ 238	Transfer to Urban Renewal	$ -	$ -	$ -
62							
63				**FUND BALANCE**			
64							
65	-	-	13,999	Contingency	15,000	15,000	-
66	(1,948)	**3,157**	45,902	Undesignated Ending Fund Balance	157,880	157,652	(228)
67							
68	$ 288,166	$ 295,836	$ 421,784	**TOTAL** EXPENSES & BUDGETED FUND BALANCE	$ 543,145	$ 543,145	$ -

Notes:

65 The contingency is approximately 4% of total expenditures.

66 Fund balance is calculated at one-forth annual operating costs to provide cash in FY 03-04 to operate until property tax assessments are received in late November.

ENTERPRISE FUND

Sewer Reserve

	Actual 1999-00	Actual 2000-01	Adopted 2001-02		Manager Recommended	Committee Approved	Difference
1	$ 248,354	$ 164,157	$ 272,450	Beginning Fund Balance	$ 293,064	$ 293,064	$ -
2							
3				**RESOURCES**			
4							
5	11,273	160,785	110,379	Sanitary Sewer Acreage Fee	36,750	36,750	-
6	-	779	-	Sewer Service Improvement Agreement	-	-	-
7	-	116	-	Sewer Service Improvement Agreement - Interest	-	-	-
8	56,172	38,046	-	Storm Sewer Acreage Fee	-	-	-
9	8,066	-	-	Interest	-	-	-
10	965	-	-	Transfer from the Sewer Fund	-	-	-
11	$ 324,830	$ 363,883	$ 382,829	TOTAL RESOURCES	$ 329,814	$ 329,814	$ -
12							
13				**EXPENSES**			
14							
15				CAPITAL OUTLAY			
16							
17	$ 105,063	$ 8,056	$ 270,000	Sewer Line Extensions	$ 270,000	$ 270,000	$ -
18	55,610	37,666	-	Storm Drain Reimbursement	-	-	-
19	$ 160,673	$ 45,722	$ 270,000	TOTAL EXPENSES	$ 270,000	$ 270,000	$ -
20							
21				**FUND BALANCE**			
22							
23	$ -	$ -	$ 112,829	Contingency	$ 59,814	$ 59,814	$ -
24	164,157	318,161	-	Undesignated Ending Fund Balance	-	-	-
25							
26	$ 324,830	$ 363,883	$ 382,829	TOTAL EXPENSES & BUDGETED FUND BALANCE	$ 329,814	$ 329,814	$ -

Notes:

5 Growth is expected to be one-half of the growth in FY 01-02. 2% of these fees are paid to the General Fund for Administration.

City of Keizer, Oregon

AGENDA ITEM 7a

June 3, 2002

RESOLUTION – AUTHORIZATION OF INTERFUND LOANS TO THE GENERAL FUND AND STREET LIGHTING DISTRICT FUND

COUNCIL MEETING: **June 3, 2002**

AGENDA ITEM NUMBER:_____

TO: **MAYOR CHRISTOPHER AND CITY COUNCILORS**

THROUGH: **CHRIS EPPLEY**
CITY MANAGER

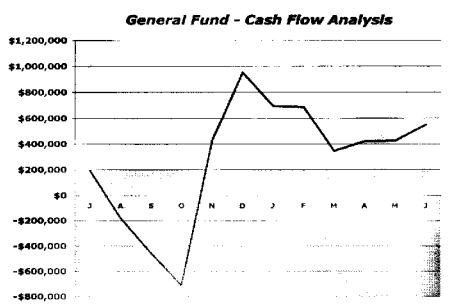
FROM: **SUSAN GAHLSDORF, CPA**
FINANCE DIRECTOR

SUBJECT: **INTERFUND BORROWING TO MEET CASH FLOW NEEDS**

BACKGROUND:

The City has traditionally used cash from other funds to meet the cash flow needs of the General Fund and the Street Lighting District Fund (SLD).

The graph below represents the cash balance of the General Fund in FY 2001-02. Expenditures are consistent from month to month and are estimated to be between $500,000 and $700,000 per month for ongoing operating costs. In fact, 77% of the costs are for Personal Services.



Revenues on the other hand fluctuate widely. The bulk of the property tax revenues come in late November. Most franchise receipts are paid quarterly and some are paid annually in the spring months. By year-end the General Fund results in a positive ending fund balance. However, the

disparity between the revenue stream and the expenditure stream results in a cash flow deficit during the first five months of the fiscal year. Likewise, the SLD fund has ongoing operating costs but does not receive the bulk of its revenue until assessments are received in late November.

Cash from other funds has traditionally been used to supplant the General Fund and SLD Fund during this shortfall. This practice will continue until the funds reach their targeted ending fund balance as set out in the long-range financial plan. The problem this generates for the other funds is those cash balances become the corpus for the General Fund and SLD Fund's cash needs. Although the money is repaid when property tax revenues and assessments are received, the money cannot be spent because it will be needed the following year.

ISSUE:

The long-range financial plan as approved by the council on June 18, 2001 provides for a short-term borrowing arrangement to meet the cash flow needs in the General Fund. Although the SLD is not specifically mentioned in the Plan it too will incur a shortfall if interfund borrowing does not occur. Staff recommends that the General Fund borrow up to $600,000 and the SLD Fund borrow up to $60,000 to cover anticipated needs. Staff suggests that the loans be made similar to a line of credit and that only the amounts needed be borrowed at the time of need.

The Parks Improvement Fund and Water Facility Fund are designated as the funds from which to borrow cash. In FY 2002-03, there is sufficient cash in these funds to meet the needs of the General Fund as well as carry out the capital improvement programs and other expenditure requirements of the loaning funds. However, capital outlay expenditures need to be held off until the loans are repaid in December 2002.

Since the Parks Improvement Fund and Water Facility Fund have constitutional provisions that restrict the use of revenues, all amounts borrowed must be repaid with interest.

RECOMMENDATION:

Staff recommends the City Council adopt the attached Resolution authorizing the interfund loans to the General Fund and SLD Fund.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2002-_____

AUTHORIZATION OF INTERFUND LOANS TO THE GENERAL FUND AND STREET LIGHTING DISTRICT FUND

WHEREAS, the General Fund and the Street Lighting District Fund do not have adequate cash balances to meet operating expenditures from July 2002 through November 2002, at which time property tax revenues and assessments will be received; and

WHEREAS, a long-range financial plan has been adopted by the Council to resolve these cash flow problems over the next several years; and

NOW, THEREFORE BE IT RESOLVED that the Council authorizes interfund loans to the General Fund and the Street Lighting District Fund, as needed, up to the amounts indicated below:

Maximum amounts to be loaned from:

Parks Improvement Fund	$400,000
Water Facility Fund	$260,000

Maximum amounts to be loaned to:

General Fund	$600,000
Street Lighting District Fund	$ 60,000

NOW, THEREFORE BE IT RESOLVED that all monies borrowed during the period authorized be repaid, if required, to the appropriate fund by December 31, 2002 including interest at the established Oregon State Investment Pool interest rate for the applicable the time period.

City of Keizer, Oregon

June 3, 2002

AGENDA ITEM 7b

RESOLUTION – ESTABLISHING ADMINISTRATIVE COSTS FOR FORMATION AND MAINTENANCE OF STREET LIGHTING DISTRICTS

COUNCIL MEETING: June 3, 2002

AGENDA ITEM NUMBER:_____

TO: MAYOR CHRISTOPHER AND CITY COUNCILORS

THROUGH: CHRIS EPPLEY
CITY MANAGER

FROM: SUSAN GAHLSDORF, CPA
FINANCE DIRECTOR

SUBJECT: STREET LIGHTING DISTRICT ADMINISTRATION FEE

BACKGROUND:

In 1994 the city council passed Resolution R94-716 which set the Street Lighting District (SLD) administrative fee at 8.5% of the assessment. In 1999 this resolution was repealed by R99-1106 and a $6.00 per lot flat rate replaced the 8.5% administrative charge. The flat rate was considered a more equitable charge since there was no direct correlation between utility costs and administrative costs. Each year during the budget process staff reviews the administrative fee to determine if an adjustment is needed. Over the past three years, the projected increase in the number of lots was sufficient to cover the increase in administrative costs.

ISSUE:

As the attached spreadsheet shows, the $6.00 per lot administrative fee will not sufficiently cover administrative costs for the upcoming fiscal year, 2002-2003. For comparison, the attached spreadsheet shows the revenue to be generated from 1) the existing $6.00 administrative fee, 2) an administrative fee adjusted by the Consumer Price index, and 3) an administrative fees adjusted by the number of lots.

FISCAL IMPACT:

The fiscal year 2002-2003 budget provides for a total of $49,093 in administrative costs. The existing fee would generate $42,894, a CPI-indexed administrative fee would generate $47,031, and a "cost-per-lot" administrative fee would generate $49,328. The "cost-per-lot" fee covers the administrative costs as provided in the Committee Approved Budget.

RECOMMENDATION:

Staff recommends the Council pass the attached resolution repealing Resolution R99-1106 and increasing the administrative costs to $6.90 per lot.

CITY OF KEIZER
STREET LIGHTING DISTRICT FUND
ADMINISTRATIVE FEE ANALYSIS
FISCAL YEAR 2002-2003

Administrative Costs per FY 2003 Committee Approved Budget:	$	49,093

Comparative Analysis

Based on Existing Administrative Fee

Administrative Cost per Lot	$	6.00
Number of Lots		7,149
Total Revenue Generated	$	42,894

Based on Cost of Living Index

			COLA
Base year - 1999	$	6.00	
Year 2000	$	6.19	3.10%
Year 2001	$	6.38	3.15%
Year 2002	$	6.58	2.45%
Administrative Cost per Lot	$	6.58	
Number of Lots		7,149	
Total Revenue Generated	$	47,031	

Base on Cost per Lot

Administrative Cost per Lot	$	6.90
Number of Lots		7,149
Total Revenue Generated	$	49,328

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2002-_____

ESTABLISHING THE ADMINISTRATIVE COSTS FOR THE FORMATION AND MAINTEANCE OF STREET LIGHTING DISTRICTS

(REPEALING R99-1106)

WHEREAS, in 1994 an Ordinance was adopted by the Keizer City Council providing for procedures for Municipal Lighting Districts and Special Assessments. This ordinance established an administrative fee which is equal to the actual costs of the administration of the districts; NOW, THEREFORE,

BE IT RESOLVED that the City Council hereby determines that the administrative fee for the formation and maintenance of the Municipal Lighting Districts shall be $6.90 per lot.

BE IT FURTHER RESOLVED that this matter shall be reviewed on an annual basis prior to the certification of the assessments;

BE IT FURTHER RESOLVED that Resolution R99-1106 is hereby repealed in its entirety.

PASSED this _____ day of _____, 2002.

SIGNED this _____ day of _____, 2002.

_____
Mayor

_____
City Recorder

City of Keizer, Oregon

AGENDA ITEM 7c

June 3, 2002

RESOLUTIONS– AUTHORIZING CITY MANAGER TO ENTER HOUSING CONSORTIUM AGREEMENT AND INTERGOVERNMENTAL AGREEMENT WITH CITY OF SALEM

TO: Mayor Christopher and City Councilor Members

FROM: Maria C. Meier, Planning Director

THROUGH: Chris Eppley, City Manager

DATE: May 30, 2002

SUBJECT: Consortium Cooperation Agreement for the Federal Housing & Urban Development (HUD) Home Investment Partnership Program (HOME Program) & Intergovernmental Agreement.

The City of Keizer is joined together with the City of Salem to form a consortium to meet a minimum dollar grant requirement to apply for HOME funds that they share. The City of Keizer coordinates with the City of Salem local housing and community development efforts funded through the federal Community Development Block Grant (CDBG) and HOME Investment Partnership programs. These programs are managed by the U.S. Department of Housing and Urban Development (HUD).

The Salem-Keizer HOME Consortium was formed in 1993 for a three year period to administer HOME funds allocated to it by the Department of HUD. The consortium agreement was extended in 1996 and 1999. The Consortium Cooperation Agreement specifically governs the use of HOME funds for the Salem-Keizer HOME Consortium and CDBG funds, including CDBG Program Income provided to Keizer through State of Oregon Small Cities Program and any other funds which may be designated for this purpose by Keizer. Oregon Revised Statute 190.010 allows local governments to enter into agreements to perform functions and activities that the parties have duty or authority to perform.

The Consortium Cooperation Agreement designated the City of Salem to administratively represent both Salem and Keizer and to assume overall responsibility for ensuring that the consortium's HOME Program is carried out in compliance with the HOME Program law. This agreement describes the responsibilities of each city. This agreement also includes a term of agreement that allows for the agreement to automatically be renewed for participation in successive three-year qualification periods, unless notified in writing to discontinue the agreement.

RECOMMENDATION

Staff recommends the City Council approve the attached resolutions approving the City Manager to enter into agreements to extend the Consortium Cooperation Agreement and Intergovernmental Agreement with the City of Salem for continued participation in the HUD Home Investment Partnership Program. **Suggested Motions:**

1. Approve a resolution to allow the City Manager to sign the Consortium Cooperation Agreement with the City of Salem as attached to this staff report.

2. Approve a resolution to allow the City Manager to sign the Intergovernmental Agreement to participate in the HUD HOME Program with the City of Salem as attached to this staff report.

ATTACHMENTS

- Consortium Cooperation Agreement
- Intergovernmental Agreement
- Resolution to approve a resolution to allow the City Manager to sign the Consortium Cooperation Agreement with the City of Salem.
- Resolution to approve a resolution to allow the City Manager to sign the Intergovernmental Agreement to participate in the HUD HOME Program with the City of Salem.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2002- _____

AUTHORIZING THE CITY MANAGER TO ENTER CONSORTIUM COOPERATION AGREEMENT WITH CITY OF SALEM FOR FEDERAL HOUSING AND URBAN DEVELOPMENT (HUD) HOME INVESTMENT PARTNERSHIP (HOME PROGRAM)

WHEREAS, the City of Keizer and the City of Salem have had a Consortium Cooperation Agreement for the joint receipt and administration of federal HOME funds since 1996; and

WHEREAS that Consortium has successfully served to help meet the needs of low and moderate income residents of Keizer in meeting their housing needs; and

WHEREAS, continued HOME funding for Keizer depends on continuing this Consortium; and

WHEREAS, the existing agreement needs to be renewed for an additional three-year term; NOW THEREFORE

BE IT RESOLVED that the City Council of the City of Keizer hereby authorizes the City Manager to enter a Consortium Cooperation Agreement with the City of Salem, which is attached hereto and marked exhibit "A" for Federal Housing and Urban Development (HUD) Home Investment Partnership Program (HOME) Program.

PASSED this _____ day of _____, 2002.

SIGNED this _____ day of _____, 2002.

_____

Mayor

_____

City Recorder

CONSORTIUM COOPERATION AGREEMENT

between

The CITY OF SALEM, an Oregon municipal corporation (Salem)

and

The CITY OF KEIZER, and Oregon municipal corporation (Keizer)

(1) Authority. This Agreement is entered into pursuant to ORS 190.010.

(2) Purpose. By this Agreement, the parties hereby form a consortium known as the Salem-Keizer HOME Consortium for the purpose of participation in the Federal Housing and Urban Development (HUD) Home Investment Partnership Program (HOME Program).

(3) Administration. Salem is designated the representative for both Salem and Keizer and assumes overall responsibility for ensuring that the consortium's HOME Program is carried out in compliance with the HOME Program law, including requirements concerning a Housing and Community Development Strategic Plan (Consolidated Plan) in accordance with federal law. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Salem shall be responsible only for the acts, omissions or negligence of its own officers, employees or agents. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Keizer shall be responsible only for the acts, omissions or negligence of its own officers, employees or agents.

(4) Housing and Community Development Strategic Plan. Keizer and Salem will jointly submit a single Housing and Community Development Strategic Plan (Consolidated Plan) to HUD covering the entire geographic area of both cities. Keizer is responsible for assisting Salem in a timely manner to gather all information necessary for participation in the HOME Program including information for the Housing and Community Development Strategic Plan.

(5) Allocation of Funds. Funds will be allocated throughout the city limits of Salem and Keizer. Efforts shall be made to expend funds approximately in proportion to each jurisdiction's population over the life of the agreement. The top priority for funding projects will be the merit of the project and its conformance to the Housing and Community Development Strategic Plan, rather than geographic location. Project priorities will be established with the advice of the Community Development Directors of Salem and Keizer.

(6) Publication of Materials. Any informational materials published for general public distribution shall display a notation that funding is provided by the Salem-Keizer HOME consortium.

(7) Fair Housing. The parties agree to take affirmative action to further fair housing in their jurisdictions. The parties also agree to cooperate to undertake or assist in undertaking housing assistance activities for the HOME Program.

(8) Adding New Members. Keizer authorizes Salem to amend this consortium agreement on behalf of the entire consortium to add qualified new members to the consortium.

(9) Term of Agreement. This agreement shall begin on October 1, 2002 for federal FY 2003-2005. This agreement shall automatically be renewed for participation in successive three-year qualification periods, unless by the date specified by HUD, the Consortium lead entity will notify each participating unit of general local government in writing of its right not to participate for the successive three year period. The Consortium shall adopt any amendment to the agreement

incorporating changes necessary to meet the requirements for cooperation as set forth by HUD for a subsequent three-year qualification period and submit the amendment to HUD. Failure to comply will void the automatic renewal of the consortium agreement.

(10) The parties are required to remain in the consortium and cannot terminate or withdraw during the entire three year period. This agreement can be extended for additional three year periods by the mutual consent of the parties in writing.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date set forth below.

CITY OF SALEM

By: _____
City Manager

Date: _____

ATTEST:

By: _____
City Recorder

Date: _____

CITY OF KEIZER

By: _____
City Manager

Date: _____

By: _____
City Recorder

Date: _____

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2002-_____

AUTHORIZING THE CITY MANAGER TO ENTER INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF SALEM FOR ADMINISTRATION OF THE HOUSING REHABILITATION PROGRAM

WHEREAS, the City of Keizer and the City of Salem have had a Consortium Cooperation Agreement for the joint receipt and administration of federal HOME funds since 1996; and

WHEREAS, the City of Salem has worked with the City of Keizer to administer the Housing Rehabilitation Program, specifically the use of HOME funds and CDBG funds provided through the State of Oregon;

WHEREAS, there is authority granted in ORS 190.010 which grants units of local government to enter into agreements to perform functions and activities; NOW THEREFORE

BE IT RESOLVED that the City Council of the City of Keizer hereby authorizes the City Manager to enter an intergovernmental agreement, which is attached hereto marked exhibit "A" and by this reference made a part hereof, that outlines the duties and responsibilities of each party in administration of a Housing Rehabilitation Program within the City of Keizer.

PASSED this _____ day of _____, 2002.

SIGNED this _____ day of _____, 2002.

_____
Mayor

_____
City Recorder

INTERGOVERNMENTAL AGREEMENT

RESIDENTIAL PROGRAM

This Intergovernmental Agreement ("Agreement") is made and entered into between the City of Salem ("Salem") and the City of Keizer ("Keizer").

Recitals

1. The HOME Investment Partnership Act at Title II of the Cranston-Gonzalez National Affordable Housing Act of 1992 provides that two or more jurisdictions may form a consortium to administer funds under the HOME program.

2. The Salem-Keizer HOME Consortium was formed in 1993 for a three year period to administer HOME funds allocated to it by the Department of Housing and Urban Development. The Consortium agreement was extended in 1996 and 1999.

3. This Agreement sets forth the understandings of the parties concerning the program approved by the two cities regarding the administration of a joint housing rehabilitation program in Keizer. This Agreement specifically governs the use of HOME funds for the Salem-Keizer HOME Consortium and Community Development Block Grant (CDBG) funds including CDBG Program Income provided to Keizer through the State of Oregon Small Cities Program and any other funds which may be designated for this purpose by Keizer.

4. By authority granted in ORS 190.010 units of local government may enter into agreements to perform any functions and activities that the parties to the agreement, or their officers or agents have the duty or authority to perform.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

I. Salem agrees to the following:

   1. Salem, acting on behalf of the Salem-Keizer HOME Consortium will set aside $100,000 in Consortium HOME funds from the Annual Plan, a one year plan for the use of CDBG and HOME funds required by the Department of Housing and Community Development, specifically for use within the City Limits of Keizer to undertake owner-occupied, single family residential rehabilitation. The Consortium may set aside a similar amount in 2002 and future years from the Consortium HOME allocation for this purpose. If these funds are not committed to Keizer single family rehabilitation projects by March 1 of each year, the funds will be available for use anywhere in the Consortium area. Multi-family projects funded by the Consortium will be considered on an individual basis.

   2. Salem will maintain program files to ensure compliance with federal and state requirements, where required.

3. Salem will accept applicantions on first-come, first-served basis for the HOME Consortium single family rehabilitation and homebuyer programs from Keizer. Keizer applicants may submit the application to the Community Development Department at Keizer City Hall. The City of Keizer will forward these applications to the Consortium staff at Salem Community Development Department for processing.

4. The Salem Department of Community Development will administer an owner-occupied, single family residential rehabilitation program on behalf of the City of Keizer funded with Community Development Block Grant (CDBG) funds provided by the City of Keizer.

5. Keizer may also allocate urban renewal funds and other funds which may be designated for rehabilitation purposes to be administered under this agreement.

II. Keizer agrees to the following:

1. Keizer will permit City of Salem staff to inspect properties located in Keizer which are referred for single family rehabilitation, homebuyer assistance with HOME or City of Keizer funds designated for use pursuant to this agreement, or multi-family rehabilitation projects undertaken by eligible agencies with Consortium HOME funds; that are for the purpose of developing project specifications to ensure compliance with HUD Minimum Housing Quality Standards. Properties that pose an immediate danger to health or safety will be reported to the City of Keizer Code Enforcement Officer.

2. Keizer will pay a 10 per cent fee to Salem for administering the Keizer CDBG program income and other designated funds. The administrative fee will be based on 10 percent of the total project cost, per unit. Salem will submit an invoice to Keizer for this amount upon completion of the project. A fee will not be charged for administration of HOME funded projects in the City of Keizer.

3. Salem will act as the agent for the funds provided by Keizer. Keizer may budget its CDBG funds to the program. Salem will forward approved requests for payment to Keizer for each housing unit rehabilitated with Keizer funds. Keizer will pay the invoice directly to the contractor.

4. Keizer may elect to designate certain funds provided by Keizer to fund an emergency program. which will be administered by Salem. Priority for use of emergency funds will be established by Keizer on a case by case basis.

III. Both parties agree to the following:

1. Salem and Keizer will jointly promote the program through advertisements in Keizer, on the Keizer Home Page, and through brochures available in both City Hall locations. Applications for Consortium programs will also be available in both City Hall locations.

2. The terms of this agreement shall begin and terminate on the same day as the Consortium Cooperation Agreement between Salem and Keizer, dated a copy of which is attached hereto and incorporated by reference, and may be extended for additional three year periods under the same conditions as the consortium agreement. Either party may terminate the agreement prior to that time after giving at least 120 days advance notice of such intent to the other party.

3. The Agreement may be amended with the mutual consent of the parties hereto. Any such amendment shall be in writing and signed by both parties.

CITY OF SALEM, OREGON

_____ _____

Robert D. DeLong Date
City Manager

CITY OF KEIZER, OREGON

_____

Christopher C. Eppley **Date**
City Manager

Attachment: Consortium Cooperation Agreement

City of Keizer, Oregon

AGENDA ITEM 8a

June 3, 2002

RESOLUTION– CERTIFYING THAT THE CITY PROVIDES FOUR OR MORE MUNICIPAL SERVICES

COUNCIL MEETING: June 3, 2002

AGENDA ITEM NUMBER:_____

TO: **MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS**

FROM: **CHRISTOPHER EPPLEY**
CITY MANAGER

SUBJECT: **CERTIFYING THE CITY PROVIDES FOUR OR MORE MUNICIPAL SERVICES**

ISSUE:

The law provides that a city located within a county having more than 100,000 inhabitants must provide four or more municipal services to be eligible to receive state-shared revenue.

RECOMMENDATION:

It is recommended the Council adopt the Resolution certifying the City of Keizer provides four or more municipal services.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2002-_____

CERTIFYING THAT THE CITY OF KEIZER PROVIDES FOUR OR MORE MUNICIPAL SERVICES

WHEREAS, ORS 221.760 provides as follows:

Section 1. The officer responsible for disbursing funds to cities under ORS 323.455, 366.785, 366.820 and 471.805 shall, in the case of a city located within a county having more than 100,000 inhabitants according to the most recent federal decennial census, disburse such funds only if the city provides four or more of the following services:

1) Police protection

2) Fire protection

3) Street construction, maintenance and lighting

4) Sanitary sewer

5) Storm sewers

6) Planning, zoning and subdivision control

7) One or more utility service

WHEREAS, city officials recognize the desirability of assisting the state officer responsible for determining the eligibility of cities to receive such funds in accordance with ORS 221.760; NOW THEREFORE,

/////

BE IT RESOLVED that the City of Keizer hereby certifies that it provides the following four or more municipal services enumerated in Section 1, ORS 221.760:

1) **Police protection**

2) **Street construction, maintenance and lighting**

3) **Planning, zoning and subdivision control**

4) **One or more utility services**

PASSED this _____ day of _____, 2002.

SIGNED this _____ day of _____, 2002.

_____
Mayor

_____
City Recorder

AGENDA ITEM 8b

June 3, 2002

RESOLUTION – DECLARING THE CITY'S INTENTION TO RECEIVE STATE REVENUE SHARING

COUNCIL MEETING: June 3, 2002

AGENDA ITEM NUMBER:_____

TO: **MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS**

FROM: **CHRISTOPHER EPPLEY**
CITY MANAGER

SUBJECT: **CITY'S ELECTION TO RECEIVE STATE REVENUE SHARING**

ISSUE:

State Revenue Sharing Law, ORS 221.770 requires cities to pass a Resolution each year stating they want to receive state revenue sharing money. The law also requires the City to certify that the public hearings for the budget were held. The adoption of this Resolution will accomplish both of these items.

RECOMMENDATION:

It is recommended the Council adopt the Resolution declaring the City's election to receive state revenue sharing and certify the dates of the budget public hearings.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2002-_____

DECLARING THE CITY'S ELECTION TO RECEIVE

STATE REVENUES

The City Council of the City of Keizer resolves as follows:

Pursuant to ORS 221.770, The City Council of the City of Keizer hereby elects to receive state revenues for fiscal year 2002-2003.

PASSED this _____ day of _____, 2002.

SIGNED this _____ day of _____, 2002.

_____
Mayor

_____
City Recorder

I certify that a public hearing before the Budget Committee was held on May 7, 2002 and a public hearing before the City Council was held on June 3, 2002, giving citizens opportunity to comment on use of State Revenue Sharing.

_____
City Recorder

City of Keizer, Oregon

AGENDA ITEM 8c

June 3, 2002

APPROVAL OF CHANGE OF LICENSE TYPE AND TRADE NAME FOR KAT'S KORNER BILLIARDS AND SPORTS LOUNGE

CITY COUNCIL MEETING: June 3, 2002

AGENDA ITEM NUMBER: _____

TO: **MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS**

THROUGH: **CHRIS EPPLEY**
CITY MANAGER

FROM: **TRACY L. DAVIS, CMC**
CITY RECORDER

SUBJECT: **KAT'S KORNER BILLIARDS AND SPORTS LOUNGE**
CHANGE OF TRADE NAME AND GREATER PRIVILEGE

ISSUE:

On May 17, 2002, an application for a change of trade name and liquor license type was received from Kathleen L. Miller, operator of Kat's Korner Billiards, located at 3393 River Road N, Keizer. The change being requested is from a "limited on-premises sales" license to a "full on-premises sales" license. These license types are defined in ORS 471.175 and 471.178. In addition, the request includes a change in trade name from Kat's Korner Billiards to Kat's Korner Billiards and Sports Lounge.

As outlined by City of Keizer Ordinance 95-318, a review of the license application was completed by the Keizer Police Department and the Keizer Planning Department. Based upon this review, the City Manager is recommending approval of this application.

RECOMMENDATION:

It is recommended the City Council approve and forward a favorable recommendation to the Oregon Liquor Control Commission for the change of license type from "limited on-premises sales" license to a "full on-premises sales" and change of trade name for Kat's Korner Billiards and Sports Lounge.

KEIZER POLICE

1982

City Council Meeting of_____

Agenda Item No._____

To: Mayor and City Council

Thru: Chris Eppley, City Manager

From: Marc Adams, Chief of Police
Rita Powers, Police Support Supervisor

Subject: Liquor License Application of Kat's Korner Billiards & Sports Lounge

Issue

Shall the City Council approve the liquor license application of Kat's Korner Billiards & Sports Lounge, 3393 River Rd. N., Keizer, Oregon?

Background

The Keizer Police Department responded to ten (10) calls for service at the address of 3393 River Rd. N. Keizer, OR from May 1, 2001 through April 30, 2002. This address was formerly known as Yessie's Place and the Inferno Dance Club during a portion of the background period as stated above.

9 of the 10 calls for service were not in conflict with the ordinance. The applicants, Kathleen L. Miller (owner) and Wright, Amy R. (Manager) have no criminal history on record.
Thus, the background review did not reveal any history or events that would be in direct conflict with the City of Keizer City Ordinance 95-318.

Recommendation
The Keizer Police Department recommends approval of the liquor license for Kat's Korner Billiards & Sports Lounge.

P.O. BOX 21000 ★ 930 CHEMAWA RD. N.E. ★ KEIZER, OREGON 97307-1000
PHONE: 503-390-3713 ★ FAX: 503-390-8295

Oregon
John A. Kitzhaber, M.D., Governor

Liquor Control Commission

213 Madrona Ave. SE
Salem, Oregon 97302

May 16, 2002

Ms. Kathleen Miller
1826 SE 52nd Avenue
Hillsboro, OR 97123

Re: Liquor License Application
Kathleen Miller (503) 693-9644
Kat's Korner Billiards & Sports Lounge
3393 River Road North
Keizer, OR 97303

Dear Ms. Miller:

I have accepted your application for a **Full On-Premises Sales** license. Find enclosed the original liquor license application and copies of the Business Information and Individual History forms submitted with the application. As we discussed, these forms and application must be submitted to the City of Keizer its review and recommendation. The city has 30 days to act on the application; therefore, obtain a receipt and forward a copy to me. After the city has endorsed your application, please return the original application to my attention.

I will need to post a public notice at the premises. Upon my return from vacation on May 29th, I will contact you to arrange a mutually convenient time to post the notice.

Please feel free to contact me should you have any questions regarding your application and OLCC's application process.

Sincerely,

Randy K. Mitchell

Randy K. Mitchell
License Investigator

enc.

OREGON LIQUOR CONTROL COMMISSION

LIQUOR LICENSE APPLICATION

Please Print or Type

Application is being made for:

TYPES

- [X] Full On-Premises Sales ($402.60/yr)
  - [ ] Commercial Establishment
  - [ ] Caterer
  - [ ] Passenger Carrier
  - [ ] Other Public Location
  - [ ] Private Club
- [ ] Limited On-Premises Sales ($202.60/yr)
- [ ] Off-Premises Sales ($100/yr)
- [ ] Brewery Public House ($252.60)
- [ ] Winery ($250/yr)
- [ ] Other: _____

ACTIONS

- [ ] Change Ownership
- [ ] New Outlet
- [X] Other: GREATER PRIVILEGE & CHANGE TRADE NAME

Applying as:

- [X] Individuals
- [ ] Limited Partnership
- [ ] Corporation
- [ ] Limited Liability Company

.....for city, county use only.....

The city council or county commission:

_____ (name of city or county)

recommends that this license be:

Granted [ ] Denied [ ]

By: _____ (signature) (date)

Name: _____

Title: _____

.....for OLCC office use only.....

Application Rec'd by: R. Mitchell

Date: 5/16/02

90-day authority: [ ] Yes [X] No

1. Applicant(s):

① Kathleen L. Miller ③ _____

② _____ ④ _____

2. Trade Name (dba): Kat's Korner Billiards & Sports Lounge

3. Business Location: 3393 River Rd., North (number, street, rural route) Keizer (city) Marion (county) Oregon (state) 97303 (ZIP code)

4. Business Mailing Address: (same as above) (PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 503-304-3804 (phone) none (fax)

6. Is the business at this location currently licensed by OLCC? Yes X No _____

7. If yes to whom: same Type of License: Beer/Wine

8. Former Business Name: Yessie's Place

9. Will you have a manager? Yes X No _____ Name: Amy Wright (manager must fill out an individual history form)

10. What is the local governing body where your business is located? Keizer, Oregon 97303 (name of city or county)

11. Contact person for this application: Kathleen L. Miller (name) 503-693-9644 (phone number(s))

1826 SE 52nd Ave Hillsboro, OR 97123 (address) none (fax number) kathiemiller@earthlink.net (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① Kathleen Miller Date 3-30-02 ③ _____ Date _____

② _____ Date _____ ④ _____ Date _____

OREGON LIQUOR CONTROL COMMISSION

BUSINESS INFORMATION

Please Print or Type

Applicant Name: Kathleen L. MIller Phone: 503-304-3804

Trade Name (dba): Kat's Korner Billiards & Sports Lounge

Business Location Address: 3393 River Rd., North

City: Keizer, Oregon ZIP Code: 97303

DAYS AND HOURS OF OPERATION

Business Hours:			Food Service Hours:			Outdoor Area Hours:		
Sunday	11:00A	2:30am	Sunday	11:00	1:00am	Sunday		
Monday			Monday			Monday		
Tuesday			Tuesday			Tuesday		
Wednesday			Wednesday			Wednesday		
Thursday			Thursday			Thursday		
Friday			Friday			Friday		
Saturday			Saturday			Saturday		

Seasonal Variations: ☐ Yes ☒ No If yes, explain:

ENTERTAINMENT

Check all that apply:

- ☐ Live Music
- ☐ Recorded Music
- ☒ DJ Music
- ☐ Dancing
- ☐ Nude Entertainers
- ☒ Karaoke
- ☐ Coin-operated Games
- ☐ Video Lottery Machines
- ☐ Social Gaming
- ☒ Pool Tables
- ☒ Other: jukebox

DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday	9:00pm	2:00am
Saturday	9:00pm	2:00am

SEATING COUNT

Restaurant: _____ Outdoor: _____

Lounge: _____ Other (explain): _____

Banquet: _____ Total Seating: 100

Investigator Verified Seating: ___(Y) ___(N)

Investigator Initials: _____

Date: _____

.....for OLCC office use only.....

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: Kathleen Miller **Date:** 3-20-02

OREGON LIQUOR CONTROL COMMISSION

INDIVIDUAL HISTORY

Please Print or Type

NOTE: YOU MUST ANSWER ALL QUESTIONS ON BOTH SIDES OF THIS FORM. IF THE QUESTION DOES NOT APPLY, WRITE N/A IN THE SPACE.

Business Name: KAT'S KORNER BILLIARDS

Business Location Address: 3393 RIVER Rd, NO City: KEIZER ZIP Code: 97303

PART A - PERSONAL INFORMATION

1. Name: WRIGHT (last) AMY (first) RENEE (middle)
2. Other Names Used: WISE (maiden)
3. Residence Address: 149 ELDIN AVE NE (number and street) SALEM (city) ORE (state) 97301 (ZIP code)
4. Home Phone: (503) 391-7689 Business Phone: (503) 930-4334
5. *SSN: 544-80-6958 Place of Birth: OREGON, MARION (state/country) Date of Birth: 08/20/69 (mm/dd/yyyy)
6. Sex: FEMALE Height: 5'5" Weight: 120 Hair Color: BROWN Eye Color: BROWN
7. Driver License #: 4712910 State: OR Spouse's name: —

PART B - EMPLOYMENT/RESIDENCE INFORMATION *Attach additional sheets if necessary.*

8. List former and current employers or occupations during the past 10 years:

Date by Month/Year		Employer or Business	Occupation	City & State
From: FEB, 02	To: CURRENTLY	SALEM KEIZER SCHOOL DIST.		SALEM, OR
From: MARCH, 01	To: JAN FEB, 02	SQUEEZ INN	BARTENDER	AUMSVILLE, OR
From: AUG, 00	To: JAN 01	TURNER INN	BARTENDER	TURNER, OR

9. List other cities and states where you have lived in the past 10 years other than that noted above:

		City	State
From: JULY 98	To: MARCH, 99	LEBANON	OREGON
From:	To:		
From:	To:		

PART C - CRIMINAL HISTORY INFORMATION

If you answer YES to any of the following questions, you must also complete PART D on other side of this form.

10. Have you ever been convicted of any violation, misdemeanor or felony? ☐Yes ☒No
11. Do you have any arrests or citations pending? ☐Yes ☒No
12. Have you ever entered into a diversion agreement? ☐Yes ☒No
13. Have you ever been treated, or been in a treatment program for alcohol or other drug use or abuse? ☐Yes ☒No
14. Have you ever had a warning, violation, suspension, fine, cancellation, or refusal as a licensee or service permittee, in Oregon or any other state? ☐Yes ☒No

INDIVIDUAL HISTORY - CONTINUED

PART D - CRIMINAL HISTORY

If you answered yes to any of questions 10-14, you must complete this section of the application. Attach additional sheets if necessary.

Have you ever been convicted of any offense?

Convicted of:_____ Conviction Date:_____ City/State/County:_____

Convicted of:_____ Conviction Date:_____ City/State/County:_____

Convicted of:_____ Conviction Date:_____ City/State/County:_____

Do you have any arrests or citations that have not been resolved?

Arrested/Cited for:_____ Date:_____ City/State/Country:_____

Arrested/Cited for:_____ Date:_____ City/State/Country:_____

Arrested/Cited for:_____ Date:_____ City/State/Country:_____

Have you ever entered into a diversion agreement?

When:_____ Where:_____

When:_____ Where:_____

Have you ever been treated, or been in a treatment program for alcohol or other drug use or abuse?

When:_____ Where:_____

When:_____ Where:_____

Have you ever had a warning, violation, suspension, fine or cancellation as a licensee or service permittee?

When:_____ Where:_____

When:_____ Where:_____

PART E - APPLICANT SIGNATURE

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: Amy R Wright Date: 3-23-02

SOCIAL SECURITY NUMBER DISCLOSURE

As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) & ORS 25.785). The OLCC will refuse a license to any applicant or licensee who fails to provide his/her Social Security Number. Your Social Security Number will be used only for child support enforcement purposes unless you sign below.

Based on our authority under ORS 471.311 and OAR 845-006-0312(6), we are requesting your voluntary consent to use your Social Security Number for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your Social Security Number for these administrative purposes (5 USC § 552(a)). If you consent to these uses, please sign here:

Applicant Signature: Amy R Wright Date: 3-23-02

OREGON LIQUOR CONTROL COMMISSION

INDIVIDUAL HISTORY

Please Print or Type

NOTE: YOU MUST ANSWER ALL QUESTIONS ON BOTH SIDES OF THIS FORM. IF THE QUESTION DOES NOT APPLY, WRITE N/A IN THE SPACE.

Business Name: Kat's Korner Billiards & Sports Lounge

Business Location Address: 3393 River Rd., No. City: Keizer ZIP Code: 97303

PART A - PERSONAL INFORMATION

1. Name: Miller (last) Kathleen (first) Lynn (middle)
2. Other Names Used: Brewer (maiden) Bengtson (other)
3. Residence Address: 1826 SE 52nd Ave (number and street) Hillsboro, OR (city) (state) 97123 (ZIP code)
4. Home Phone: (503) 693-9644 Business Phone: (503) 643-1681
5. *SSN: 557 - 82 - 3457 Place of Birth: Michigan/Genessee (state/country) Date of Birth: 07 (mm) / 23 (dd) / 1950 (yyyy)
6. Sex: F Height: 5'3" Weight: 145 Hair Color: brown Eye Color: hazel
7. Driver License #: 1515370 State: OR Spouse's name: none

PART B - EMPLOYMENT/RESIDENCE INFORMATION *Attach additional sheets if necessary.*

8. List former and current employers or occupations during the past 10 years:

Date by Month/Year		Employer or Business	Occupation	City & State
From: 6/00	To: now	ADC/Kentrox	Ofc. Admin Supvr	Portland, OR
From: 8/97	To: 6/00	Lattice	Exec. Asst.	Hillsboro, OR
From: 1981	To: 1997	Tektronix	Sect'y	Beaverton, OR

9. List other cities and states where you have lived in the past 10 years other than that noted above:

		City	State
From:	To:		
From:	To:		
From:	To:		

PART C - CRIMINAL HISTORY INFORMATION

If you answer YES to any of the following questions, you must also complete PART D on other side of this form.

10. Have you ever been convicted of any violation, misdemeanor or felony?	☒Yes	☐No
11. Do you have any arrests or citations pending?	☐Yes	☒No
12. Have you ever entered into a diversion agreement?	☐Yes	☒No
13. Have you ever been treated, or been in a treatment program for alcohol or other drug use or abuse?	☐Yes	☒No
14. Have you ever had a warning, violation, suspension, fine or cancellation as a licensee or service permittee?	☐Yes	☒No

INDIVIDUAL HISTORY - CONTINUED

PART D - CRIMINAL HISTORY

If you answered yes to any of questions 10-14, you must complete this section of the application. Attach additional sheets if necessary.

Have you ever been convicted of any offense?

Convicted of: speeding Conviction Date: 1/18/02 City/State/County: Beaverton/Or/Wash

Convicted of:_____ Conviction Date:_____ City/State/County:_____

Convicted of:_____ Conviction Date:_____ City/State/County:_____

Do you have any arrests or citations that have not been resolved?

Arrested/Cited for:_____ Date:_____ City/State/Country:_____

Arrested/Cited for:_____ Date:_____ City/State/Country:_____

Arrested/Cited for:_____ Date:_____ City/State/Country:_____

Have you ever entered into a diversion agreement?

When: no Where:_____

When:_____ Where:_____

Have you ever been treated, or been in a treatment program for alcohol or other drug use or abuse?

When: no Where:_____

When:_____ Where:_____

Have you ever had a warning, violation, suspension, fine or cancellation as a licensee or service permittee?

When: no Where:_____

When:_____ Where:_____

PART E - APPLICANT SIGNATURE

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: Kristi Miller **Date:** 3-20-02

**SOCIAL SECURITY NUMBER DISCLOSURE*

*As part of your application for an initial or renewal license, **Federal and State laws require you to provide your Social Security Number** to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) & ORS 25.785). The OLCC will refuse a license to any applicant or licensee who fails to provide his/her Social Security Number. Your Social Security Number will be used only for child support enforcement purposes unless you sign below.*

Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your voluntary consent to use your Social Security Number for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your Social Security Number for these administrative purposes (5 USC § 552(a)). If you consent to these uses, please sign here:

Applicant Signature: K Miller **Date:** 3-20-02

OMB NO. 1512-0472 (09/30/2002)

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
SPECIAL TAX REGISTRATION AND RETURN
ALCOHOL AND TOBACCO

(Please Read Instructions on Back Carefully Before Completing This Form)

SECTION I - TAXPAYER IDENTIFYING INFORMATION

1. EMPLOYER IDENTIFICATION NUMBER *(Required see instructions)*
2. BUSINESS TELEPHONE NUMBER: (503) 304-3804
3. NAME *(Last, First, Middle)* or CORPORATE NAME *(If Corporation)*: Miller Kathleen Lynn
4. TRADE NAME: Kat's Korner Billiards & Sports Lounge
5. MAILING ADDRESS *(Street address or P.O. box number)*: 3393 River Rd., No.
6. CITY: Keizer STATE: Oregon ZIP CODE: 97303

ACTUAL LOCATION *(IF DIFFERENT THAN ABOVE)*

7. PHYSICAL ADDRESS OF PRINCIPAL PLACE OF BUSINESS *(Show street address)*: Same as above
8. CITY STATE ZIP CODE

FOR ATF USE ONLY
T
FF
FP
I
T

9. TAX PERIOD COVERING
FROM: _____ *(mm/dd/yy)*
TO: June 30, _____ *(yy)*

SECTION II - TAX COMPUTATION

TAX CLASS DESCRIPTION (FOR ITEMS MARKED*, SEE INSTRUCTIONS) (a)		MONTHLY (b)	ANNUAL (c)	LOCATIONS (d)	TAX DUE (e)	CODE (f)
RETAIL DEALER	Liquors *(Distilled spirits, wine or beer)*	$20.83 1/3	$250			11
	Beer only	$20.83 1/3	250			12
	Liquors (Distilled Spirits, Wine or Beer) - at large	$20.83 1/3	250			15
	Beer only - at large	$20.83 1/3	250			16
WHOLESALE DEALER	Distilled spirits, wine or beer	$41.66 2/3	500			31
	Beer only	$41.66 2/3	500			32
BREWER	Regular rate	$83.33 1/3	1000			41
	REDUCED rate*	$41.66 2/3	500			43*
NONBEVERAGE DRAWBACK CLAIMANT			500			51
INDUSTRIAL ALCOHOL	User of specially denatured alcohol	$20.83 1/3	250			55
	Dealer in specially denatured alcohol	$20.83 1/3	250			56
	User of tax-free alcohol	$20.83 1/3	250			57
ALCOHOL PRODUCERS	Proprietor of alcohol fuel plant	$83.33 1/3	1000			58
	Proprietor of alcohol fuel plant - REDUCED*	$41.66 2/3	500			59*
	Proprietor of distilled spirits plant	$83.33 1/3	1000			81
	Proprietor of distilled spirits plant - REDUCED*	$41.66 2/3	500			86*
	Proprietor of bonded wine cellar	$83.33 1/3	1000			82
	Proprietor of bonded wine cellar - REDUCED*	$41.66 2/3	500			87*
	Proprietor of bonded wine warehouse	$83.33 1/3	1000			83
	Proprietor of bonded wine warehouse - REDUCED*	$41.66 2/3	500			88*
	Proprietor of taxpaid wine bottling house	$83.33 1/3	1000			84
	Proprietor of taxpaid wine bottling house - REDUCED*	$41.66 2/3	500			89*
TOBACCO PRODUCTS	Manufacturer of tobacco products	$83.33 1/3	1000			91
	Manufacturer of tobacco products - REDUCED*	$41.66 2/3	500			95*
	Manufacturer of cigarette papers and tubes	$83.33 1/3	1000			92
	Manufacturer of cigarette papers and tubes - REDUCED*	$41.66 2/3	500			96*
	Proprietor of export warehouse	$83.33 1/3	1000			93
	Proprietor of export warehouse - REDUCED*	$41.66 2/3	500			97*

MAKE CHECK OR MONEY ORDER PAYABLE TO "BUREAU OF ALCOHOL, TOBACCO AND FIREARMS". WRITE YOUR EMPLOYER IDENTIFICATION NUMBER ON THE CHECK AND SEND IT WITH THE RETURN TO BUREAU OF ATF, P.O. BOX 371962, PITTSBURGH, PA 15250-7962.

TOTAL TAX DUE $

Under penalties of perjury, I declare that the statements in this return/registration are true and correct to the best of my knowledge and belief; that this return/registration applies only to the specified business and location or, where the return/registration is for more than one location, it applies only to the businesses at the locations specified on the attached list. Note: Violation of Title 26, United States Code 7206, is punishable upon conviction by a fine of not more than $100,000 *($500,000 in the case of a corporation)* or imprisonment for not more than 3 years, or both, with the costs of prosecution added thereto.

SIGNATURE	TITLE	DATE
[signature]	Owner	5-20-02

ATF F 5630.5 (10-99) PREVIOUS EDITIONS ARE OBSOLETE

SECTION III - BUSINESS REGISTRATION

10. OWNERSHIP INFORMATION: *(Check One Box Only)* ☒ INDIVIDUAL OWNER ☐ PARTNERSHIP ☐ CORPORATION ☐ OTHER *(Specify)* _____

11. OWNERSHIP RESPONSIBILITY: (Read instruction sheet; use a separate sheet of paper if additional space is needed.)

FULL NAME	ADDRESS	POSITION
Kathleen Lynn Miller	1826 SE 52nd Ave. Hillsboro, OR 97123	Owner
FULL NAME	ADDRESS	POSITION
FULL NAME	ADDRESS	POSITION
FULL NAME	ADDRESS	POSITION
FULL NAME	ADDRESS	POSITION

12. ☐ GROSS RECEIPTS less than $500,000 *(See instructions for reduced rate taxpayers on the attached instruction sheet)*

13. ☐ NEW BUSINESS *(**NOTE:** RETAILERS AND WHOLESALERS SHOW DATE ALCOHOLIC BEVERAGE SALES BEGAN; PRODUCERS, MANUFACTURERS AND USERS SHOW DATE BUSINESS COMMENCED)* — DATE OF CHANGE (mm, dd, yy)

14. ☐ EXISTING BUSINESS WITH CHANGE IN:

☐ (a) NAME/TRADE NAME *(Indicate)*	DATE OF CHANGE *(mm, dd, yy)*
☐ (b) ADDRESS *(Indicate)*	DATE OF CHANGE *(mm, dd, yy)*
☐ (c) OWNERSHIP *(Indicate)*	DATE OF CHANGE *(mm, dd, yy)*
☐ (d) EMPLOYER IDENTIFICATION NUMBER (OLD: NEW:)	DATE OF CHANGE *(mm, dd, yy)*
☐ (e) BUSINESS TELEPHONE NUMBER ( )	[redacted]

15. ☐ DISCONTINUED BUSINESS — DATE BUSINESS DISCONTINUED *(mm, dd, yy)*

PAPERWORK REDUCTION ACT NOTICE

This information is used to ensure compliance by taxpayers of P.L. 100-647, Technical Corrections Act of 1988, and the Internal Revenue Laws of the United States. ATF uses the information to determine and collect the right amount of tax.

The estimated average burden associated with this collection of information is .8 hours per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(SEE ATTACHED INSTRUCTION SHEET)

City of Keizer, Oregon

June 3, 2002

AGENDA ITEM 8d

APPROVAL OF APRIL 22, 2002 WORK SESSION MINUTES

MINUTES
KEIZER CITY COUNCIL
WORK SESSION
Monday, April 22, 2002
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER

Council President Moir called the work session to order at 5:40 p.m. Roll Call was taken as follows:

Present:
Charles E. Lee, Councilor
Jerry McGee, Councilor
Jacque Moir, Council President
Judy K. Smith, Councilor
Richard Walsh, Councilor

Absent:
Lore Christopher, Mayor

Staff:
Chris Eppley, City Manager
Maria Meier, Senior Planner

Also Present:
Randy Franke, Marion County Commissioner
Barb Young, Marion County Board of Commissioner's Office
Les Sasaki, Marion County Planning
Chris Monseno, Ducks Unlimited
Michel Gaynor, Keizer Urban Renewal Board
Stuart Crosby, Keizer Urban Renewal Board
Tom Callhan, Keizer Urban Renewal Board
John Preston, Keizer Planning Commission

DISCUSSION

a. Marion County Urban Growth Management Project
City Manager Eppley summarized the various regional land use issues that the city would be reviewing in the near future and the participation of the Planning Commission and the Urban Renewal Board in the process.

Les Sasaki, Project Manager for the Marion County Urban Growth Management Project summarized the coordination roles of the county, which encompassed 20 cities and included issues of population and concepts of growth or

non-growth for these various cities and the issues that need to be analyzed in this process. He outlined various scenarios that were reviewed in the Growth Management Project and the pros and cons of each scenario. Also listed was a Growth Framework Document that listed the goals, objectives and standards, which the county would follow. He summarized this document for the benefit of the Council and those in attendance.

Members of the Council expressed concern with the lack of separation between Salem and Keizer within the documents presented.

Mr. Sasaki indicated that there would be issues, which the County could play a role, but noted some of the topics outlined would be best served with the two entities addressing them separately.

Mr. Sasaki explained that Marion County could play a coordination role between the cities if requested.

Councilor McGee stated that this was the first time the City Council had been given this presentation and expressed that Keizer could not have initiated such involvement without being informed.

Chris Eppley explained his communications and updates provided to the Council through management meetings however understood that this was the first presentation by the County.

Mr. Sasaki explained the different phases of the project. He stated that the study looks at growth 50 years ahead. The next stages would include compact intergovernmental agreements with jurisdictions relating to where growth would be expected to effect County lands.

Councilor McGee described his hesitation about jumping into an agreement when the City needed to first consider it's own growth projections. He also explained that when Keizer conducts Periodic Review some of these related issues would be evaluated.

Mr. Sasaki continued to describe the project studies that included issues such as housing, transportation, density,

and employment.

Members of the Council thanked Mr. Sasaki for sharing the information with the Council.

b. Marion County Wetlands Project
Marion County Commissioner Randy Franke summarized the Lake Labish Wetlands Project, which would supply flood control, water quality and educational opportunities.

Matt Thorburn, Marion County Public Works provided an overview and history of the area along with a presentation regarding the proposed project and the boundaries that the phased in project may entail. He outlined possible federal funding sources in coordination with various entities.

Mr. Thorburn and Chris Monseno with Ducks Unlimited answered questions from the Council.

Also responding to questions Commissioner Franke indicated that they were seeking endorsement from Keizer to support the project.

Council President Moir indicated this information would be further discussed at a regular Council meeting. She thanked the group for their presentation.

ADJOURNMENT Council President Moir adjourned the meeting at 6:45 p.m.

Cindy Perry
Recording Secretary

APPROVED:
MAYOR:

Lore Christopher

COUNCIL MEMBERS:

Councilor #1 - Judy K. Smith

Councilor #4 - Jacque Moir

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Wayne Sturgill

Address: 1656 Willow Lk Rd N

Subject or Agenda Item Number: _____

Your Comments:

Proponent [redacted] Opponent _____ General X

Date 6-3-2

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Larry Monagon

Address: 1585 Chemawa Rd N
Salem, OR 97303

Subject or Agenda Item Number: West Keizer Park

Your Comments:

Proponent _____ Opponent _____ General _____

Date 6-3-03

City of Keizer, Oregon

PUBLIC HEARING SIGN UP SHEET

PUBLIC HEARING RE: CHEMAWA ACTIVITY CENTER/KEIZER STATION (TEXT AMENDMENT/COMP PLAN CHANGE/ZONE CHANGE – CASE NO. 01-50)

DATE: June 3, 2002 TIME: 7:00 p.m. AGENDA ITEM # 6a

BEFORE THE: KEIZER CITY COUNCIL PLACE: ROBERT L. SIMON COUNCIL CHAMBERS

(PLEASE PRINT)

NAME	ADDRESS	GENERAL	PROPONENT	OPPONENT
JACOB BROSTOFF	534 SW 3rd SUITE 300 PDX OR 97204 FRIENDS			X
Aaron Trude	6330 14th Ave NE			
Charles Matschek	4831 SW Jewald Ct. Portland OR		✓	
Steve Fabian				
CHUCK SIDES				
Wendi Kellington		✓		
[illegible]				
David Schreiner	6233 19th Ave NE Keizer			—
Ross Day	7478 Everwood St NE	✓	✓	

Chris Stanley —

City of Keizer, Oregon

PUBLIC HEARING SIGN UP SHEET

PUBLIC HEARING RE: CITY OF KEIZER 2002-2003 BUDGET

DATE: June 3, 2002 **TIME:** 7:00 p.m. **AGENDA ITEM #** 6b

BEFORE THE: KEIZER CITY COUNCIL **PLACE:** ROBERT L. SIMON COUNCIL CHAMBERS

(PLEASE PRINT)

NAME	ADDRESS	GENERAL	PROPONENT	OPPONENT
Cyndi Aethey	4766 Coloma DR SE	POWER after-school program		
~~[illegible]~~	~~[illegible]~~			
Janet Yates	6438 Castle Lake Ct. N	Visitor Center		