

CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
JULY 7, 1992

Members of Boy Scout Troop 376 presented the colors.

The one thousand six hundred and fiftieth meeting of the Milwaukie City Council was called to order by Mayor Lomnicki at 7:02 PM in the Milwaukie Center with the following Councilmembers present:

Craig Lomnicki, Mayor	Jean Schreiber
Roger Hall	Bob Knudson
	Rob Kappa

Also present:

Dan Bartlett, City Manager	Tim Corbett, Public Works Director
Michael Robinson, City Attorney	Kelly Somers, Public Works Superintendent
Angus Anderson, Finance Director	Director
Charlene Richards, Assistant to the City Manager	Jim Crumley, Associate Planner
Maggie Collins, Community Development Director	Mike Clark, Operations Supervisor
	Pat DuVal, Recorder/Secretary

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Oregon Downtown Development Association (ODDA) Presentation

Kate Joncas, Oregon Downtown Development Association (ODDA), presented an award to the Mayor and City Council for their support of the downtown development efforts.

Milwaukie Festival Daze

Ron Kinsella, Festival Daze Chair, reviewed the 1992 Milwaukie event and thanked all those who had participated. He discussed an agreement regarding the underground wiring in the City-owned parking lot.

Mayor Lomnicki expressed appreciation to Kinsella for his efforts as Festival Daze Chairman.

Councilmember Schreiber said she was impressed by the number of major local businesses supporting the event.

State Senator Bill Kennemer

Sen. Bill Kennemer introduced himself and explained that since redistricting, he represented the City. He urged that residents contact him with any concerns or questions.

PUBLIC HEARING

Appeal of Planning Commission Denial of Expansion of a Non-Conforming Use - File No. NCU-92-01

Mayor Lomnicki called the public hearing on an appeal of the Planning Commission's denial to expand a nonconforming use to order at 7:15 pm.

Mayor Lomnicki said the purpose of the hearing was to consider an appeal of the Planning Commission's decision to deny an application to expand a nonconforming use within the M-Zone. The applicants are Irving and Rhoda Leopold. The applicants propose to expand the areas used for display of new and used automobiles. The Planning Commission denied the expansion after a series of public hearings, the last one being held on May 26, 1992.

Mayor Lomnicki reviewed the conduct of the hearing. Unless there is a continuance of the hearing, if a participant so requests before the conclusion of the hearing, the record shall remain open for at least seven (7) days after the hearing. If the record remains open, such an extension shall not be subject to the so-called 120 day limit. He said the applicants have the burden of proving that the proposed expansion of the nonconforming use is consistent with the City of Milwaukie's Zoning Ordinance and Comprehensive Plan.

Mayor Lomnicki said the applicable substantive criteria to be addressed for the nonconforming use is in section 802 of the Zoning Ordinance. All the testimony and evidence must be directed toward the applicable substantive criteria described. Failure to address a criterion or to raise any other issue precludes an appeal based on that criterion or issue. Any interested party may appeal the decision of the Council to the State Land Use Board of Appeals according to the rules adopted by the Board.

Conflicts of Interest: No members of the Council announced any ex parte contacts or declared any potential conflicts of interest. No members of the audience made any challenge to any member's impartiality.

Jurisdictional Issues: There were no objections to the Council's jurisdiction to consider the proposal.

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Staff Report: Jim Crumley, Associate Planner presented the staff report in which the City Council was requested to consider an appeal of the Planning Commission's decision to deny the expansion of an existing nonconforming use within the M-Zone. The Onion Ring Restaurant and the Chalet Motel had been located on the site.

Crumley showed a series of slides of the area at McLoughlin and Ochoco. He discussed the site and the areas in which the appellants requested an expansion of a nonconforming use. He reviewed the prohibitions against expansion of a nonconforming use.

Crumley said the Planning Commission had directed attention to section 802 of the Zoning Ordinance. This section states that an alteration is allowed only if it is found that the expansion does not pose a detriment to the surrounding property. Crumley said Community Development staff believes that the proposed expansion does pose a degradation to the zone in which it is located.

Crumley explained that this proposal is part of a tentative agreement between the Oregon Department of Transportation (ODOT) and Leopold to settle a condemnation/litigation situation. He said this solution is the most workable for the appellants and ODOT. ODOT has not taken a position and wishes to remain neutral.

Crumley stated that correspondence from ODOT indicates that they will abide by the decision of the Milwaukie City Council. He said Council must determine through the Zoning Ordinance if the proposal poses a detriment to the surrounding zone. ODOT's plan states that this area should have ponds and a substantial amount of landscaping.

Crumley said regardless of potential use, the site is an amenity to the City. He said the Planning Commission and Community Development staff recommended that further loss of the gateway to the City of Milwaukie by expanding the nonconforming use would pose a greater detriment to the surrounding properties.

Mayor Lomnicki asked for clarification regarding alterations to a nonconforming use. Crumley said in most cases expansion of nonconforming use is prohibited, although an alteration could be considered an expansion. Mayor Lomnicki said it seems that it must be determined if the site has greater value as a detention area or as a car dealership. Mayor Lomnicki said at one time there was a provision that if a building was a nonconforming use and was not used for six months, that the site returned to the underlying zoning. Crumley said this was correct. If an applicant wished to build a restaurant or a motel on either site, it would not be allowed. Mayor Lomnicki said since Leopold does not own

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that property, would the M-Zone prohibit a dealership. **Crumley** said this was correct, but the applicant was seeking an expansion of a nonconforming use that was already in place.

Correspondence: There was correspondence on this matter received from Assistant Attorney General Roger R. Warren, ODOT Counsel.

Applicant's Presentation: **Max Miller**, 888 SW Fifth, Portland, attorney representing Irv Leopold addressed Council. He presented each member of Council with a copy of 1984 North Clackamas Chamber of Commerce Beautification Award.

**Miller** rebutted the point that ODOT has not taken a position on the appeal. He said that the letter from the Assistant Attorney General indicated that Leopold's proposal to acquire the Onion Ring and Chalet properties was "an excellent solution." He said he believed this was an endorsement.

**Miller** said Leopold has been in this location since 1960. He said Leopold had received the beautification award for the new car show room. He said ODOT condemned portions of the Leopold property for the McLoughlin Blvd. improvements. Although there was not a large amount of square footage involved, it does eliminate the new car display and impacts the ability of the dealer to operate. The frontage display area lost is about 15,000 square feet.

**Miller** said if the City allows use of the Onion Ring and Chalet sites further litigation with ODOT would be avoided. He said Thomason would not be a viable dealership with the remaining property. He said the two parcels equal about 18,000 square feet. **Miller** said Thomason would meet the 15% landscaping requirements of the M-Zone. He said the site will be resurfaced, but there would be no new buildings.

**Miller** said he did not believe this proposal was really an expansion of a nonconforming use. If approved, the dealership would actually be allowed to have the same amount of property. Part of the applicant's property was taken for public use. The applicant would like to transfer the rights to the remaining property. The criteria is whether the new configuration would be more of a detriment than the present configuration. The existing impact and new configuration will not be detrimental. He said there would be no net change, and the additional landscaping may be more beneficial. **Miller** said the new configuration would ease congestion, and traffic would flow more easily. He said there would be no net impact on the neighborhood.

Miller discussed the location of the detention ponds. He said ODOT's McLoughlin Blvd. improvement plan included storm water detention basins. Storm water detention is now a legal requirement for highway projects which includes holding ponds with a three foot capacity, landscaping, and 6' cyclone fence. He said he believed such a site could become a litter trap. ODOT had a maintenance schedule, but he questioned if it would be done frequently enough to keep it attractive. He discussed the location of a single alternate pond if the two ponds were eliminated. Miller said he believed the new site would be safer and would not be a visible, attractive nuisance. He said he believed a pond in the alternate location would perform better. He said at the Planning Commission, citizens expressed concern about safety and the possible relocation. Others testified that they were concerned that the ponds were located too near the highway and that the site was more of a wetland.

Miller said the vacant Onion Ring and Chalet parcels were now being used for storing highway department supplies. He said he did not believe the applicant's request would be a detriment.

Miller addressed the criteria. He said changing the configuration of the dealership would not be a detriment to the surrounding area. He said relocation of the proposed detention pond does not pose a greater detriment. Miller addressed finding #2 and said that Leopold or the tenant would meet the landscaping requirements. He said if the ponds do exist, only the perimeter would be landscaped. Finding #3 indicated that further loss of landscaping would be a detriment to the City. Miller said there was no more landscaping that would be lost by approving the application. Miller said that finding #4 stated that there was no site approval to move detention facilities elsewhere. He said there was no statutory requirement that ponds be constructed in a particular site.

Miller said the Planning Commission decision would result in the likely loss of a business that employs 105 people. He said he believed the commission misapplied the law. He urged the Council to allow the business to remain and operate and to move the ponds to a different location where they will better operate.

Steve Abel, 1211 SW 5th, spoke representing Thomason Toyota. He said the critical aspect was the standards being used to weigh the request. He said all of the information is irrelevant. He questioned if this particular nonconforming use expansion would have a more detrimental effect than what is already on the site.

Abel said he was concerned with the negative impacts on the business if expansion was not allowed. He said the business

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would die if the space lost to the McLoughlin improvements were not replaced. This would impact 105 employees. He said Thomason pays property taxes to the City; its employees pay taxes; and generally support other businesses in the area. The decision to not allow the expansion would leave the site a vacant shell; no user would come to the site. He said Council must consider what will be on the site. It is currently occupied by a viable, contributing business.

**Abel** read into the record a letter from "Love Your Car" supporting the applicant. He also had information regarding the network of business interdependence and the taxes paid by the appellant on this site.

**Scott Thomason**, 8990 McLoughlin Blvd. gave a brief history of himself and his auto dealerships and how his dealership in Milwaukie has expanded his business. He said he wants to stay in the location because he did \$75 million in sales. He said many of his employees live in the City of Milwaukie. He said Thomason Toyota paid substantial tax dollars and was a corporate contributor. He said he did not believe such a major contributor should be driven away. He said although widening McLoughlin would hurt his business, he felt strongly about remaining in the City.

**Hal Keever**, W & H Pacific, architect and landscaper, discussed what the City would get in these two parcels. He distributed photographs of what he explained were typical examples of retention basins. He said retention ponds are not always aesthetically pleasing, but are functional in nature. He said the basins are usually landscaped around the perimeter. The main body of detention basins are a deep hole which collects water during a heavy rain storm. Water is detained and then metered out to allow regulated release into the storm drain system. The proposal is an expansion of a nonconforming use in that it offsets the property taken during condemnation. He said the applicant would landscape the perimeter of the dealership similar to ODOT's proposal, except that there is not a deep hole in the ground filled with water several months of the year. He said Leopold's proposal includes landscaping with curb appeal.

**Councilmember Hall** asked where the display vehicles would be located. **Abel** indicated that the cars were presently on the condemned site, within 5 feet of the street.

**Keever** said ODOT had landscaping plans, but he did not believe he could commit for Thomason or Leopold. The dealerships farther south on McLoughlin have more space to landscape. He said this would probably not be used as a pedestrian site. He said this site would be better used for retail. He said ODOT has an alternate detention pond site away from the well-travelled arterial.

**Councilmember Knudson** asked how many gallons these basins would hold. **Keever** said detention basins are lined with soil, pvc, or vinyl in order to capture a large influx of water. A very small diameter pipe allows water to leave the pond slowly and enter the storm drain. In summer and fall the basin would probably be empty.

**Councilmember Kappa** asked where he had taken the photographs of the detention basins. **Keever** said the pictures were taken in the Columbia south shore area. One basin was near the airport and the other was east near 122nd Ave. **Keever** said these detentions ponds were designed for a 25- or 100-year storm event. He said capacity depends on the surface area of the drainage basin. **Keever** said these basins are designed for functionality and not to be particularly eye appealing.

**Mayor Lomnicki** asked about Beaverton's Griffith Park detention pond. **Keever** said this was designed aesthetically but does not capture more water.

**Councilmember Schreiber** said it seemed that Council needed to decide if we need cars more than a detention pond. **Keever** said he believed it was Council's role to determine whether it is more detrimental to have a detention pond or to leave the site as it is. He said he believed the detention pond was more detrimental in this site than a nicely landscaped lot.

**Councilmember Schreiber** addressed Thomason and asked how many full time equivalent workers her employed. **Thomason** said there were 103 FTE and 2 part time employees. **Councilmember Schreiber** said many of the businesses Thomason had listed as being benefitted by Thomason Toyota were not in the City of Milwaukie but were located in North Clackamas County. **Thomason** said this may be correct. He said Thomason Toyota had paid \$138,000 in property taxes in the last 8 years.

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**Councilmember Kappa** addressed Miller and asked the total square footage of the current site and how much will be lost and how much gained through this proposal. **Miller** said he did not personally know the answer but would be happy to provide the information later. He said the Onion Ring and Chalet properties totalled 18,000 square feet. The area condemned was about 15,000.

**Miller** discussed the access to the property. He said Moores Street would be barricaded, and access would be from Ochoco. The Chalet site would not be accessible and would be a display area only.

**Councilmember Kappa** asked specifically what type of plants and trees would be used in landscaping. **Keever** said landscaping details had not been determined.

**Mayor Lomnicki** said the application indicated that most of the landscaping would be at the back of the property and not on the street side. **Miller** said this was correct, but he had been informed that dealerships can use curbside landscaping.

**Councilmember Hall** said it was difficult to compare this dealership with those further south on McLoughlin. He said he was concerned with what would take place on the existing site and would there be landscaping on the existing westside section for uniformity.

**Councilmember Hall** asked why the triangles had been incorporated in ODOT's design. **Miller** said it was an ODOT requirement relative to stoplights and pedestrian islands. **Councilmember Hall** discussed the proximity of the buildings on the east side to McLoughlin. He said he had both safety and business survival concerns even if additional properties were acquired.

**Abel** said in litigation, the appellant has taken the position that the economic usefulness of the property is impaired. Thomason and ODOT had discussion on possible ways to save the business. He said if mitigation attempts were made, the business might be able to survive.

**Thomason** said there will be no pedestrian traffic if the street comes closer to the building. He said safety measures will be taken.

**Councilmember Hall** suggested if the dealership expanded perhaps something could be done to improve the appearance. He said he was concerned with the property looking as good as possible. **Thomason** said Toyota has architectural assistance available to help dealerships improve their appearance.

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Mayor Lomnicki asked if northbound vehicles on McLoughlin could make a right hand turn on Ochoco. Miller said this was correct. Mayor Lomnicki expressed concern that there would be traffic lights and pedestrian crossings.

Others in Support: Mel Swery, 3715 SE Malden St., Portland said he and his sister own the property roughly where the Thomason service department is located. He urged approval of the appeal because the Thomason property is attractive and well maintained as compared the property north on McLoughlin on the west side. He said the property loss should be mitigated.

Carol Elwood, 12204 SE Fuller, concerned citizen of Milwaukie, said she believed the detention ponds would be dangerous for children. She said the standing water would be a health hazard. She said she believed detention ponds would be an unsightly gateway to Milwaukie. She said she believed the the location would be more aesthetically pleasing. She said Thomason pays his taxes and adds to the economy.

Abel presented the Mayor with a list of those present who wished to speak in support of the appellant.

Bob Minor, 4340 SE King Rd., part owner of Ben Mar, said his business directly benefits from Thomason Toyota.

Don Schmidt, 14006 SE Linden Ln., said he has grown up in North Clackamas 12 District, and Thomason's tax money goes to help local schools. He said Thomason Toyota is a good employer. That section of McLoughlin has always been a business area and will never be beautiful.

Jeff Jessup, 8640 SE Causey, said he has worked in Milwaukie for the last four years. He said the application should be approved because denial would not support small business in the area and local families.

Charles Barley, 13600 SE McLoughlin Blvd., said his company has grown as Thomason Toyota has grown because customers are drawn from outside the area. He said denying the application would be detrimental to other businesses in the area.

Opponent's Presentation: Gary Michael, 11907 SE 19th, said other buildings had been demolished for the highway. He questioned if this configuration saved more of ODOT's front yard. He said the City has suffered a loss by the cutting of the 14 sequoias. He said as an architect, he has had detention basins which were both safe and attractive incorporated in his designs. He said he did not believe that Milwaukie needs more rows of new cars like Gladstone. He said allowance of an expansion would be a step backward.

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He urged that Council not feel obligated to help ODOT out of this situation.

**Carolyn Tomei**, 11907 SE 19th, member of the Planning Commission, spoke as a Milwaukie resident. She said the cutting of the sequoias was a great loss to the community. She said the Planning Commission had looked at this problem objectively. As a citizen, speaking subjectively, there should be mitigation with landscaping and not more parking lot pavement. She asked how much was being brought into the City by Thomason and expressed amazement that the dealership only paid \$40,000 in taxes last year. She said pedestrian traffic crossing McLoughlin was very dangerous for both customers and salespeople. She discussed the beautification award and said the landscaping does not even approach the 15% standard for the zone. She said she could not imagine how expansion of the nonconforming use could be beneficial to the adjacent property. She said it seems like a threat that this company would move if expansion is not allowed. City Council should look more objectively at this appeal because there would be no replacement of the trees. She said Keever's pictures of the retention ponds were deceptive because they were taken in marshy areas. She said the Mayor's comments about Griffith Park were more accurate to this area. She did not believe parking lots would be more appropriate.

**Malotta Jensen**, 2171 SE Moores, said she and her husband owned of property behind Thomason on the west side of McLoughlin. She said one large detention pond would not be any safer than two smaller ones. She expressed concern that the landscaping would not actually be done. She said she had done maintenance on plants on the Thomason property. She said they purchased the property in 1952.

**John Jensen**, 3824 SE 66th, said he has reviewed the Leopold application, and while researching the application, its nature had become clear. He said it was not a simple expansion of a dealership. A pre-existing can be eliminated through the years according to the underlying zone. He said Thomason could make adjustments like other property owners in the area. He said he did not believe that this application could reduce congestion in the area. He said this was not a question of detriment and not a question of aesthetics. He discussed other businesses located in the area who had traffic congestion problems with Thomason Toyota. He said it was not an economic issue of Thomason Toyota leaving the City because it was not a high dollar amount in the City's economy.

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Jensen said he believed this was a property deal. He said the application seemed an innocent request for replacement for what would otherwise be unattainable property. He said the Leopold property would be enhanced by \$500,000 and would become the best piece of property between Ross Island Bridge and Oregon City. Jensen said this involved 10,585 square feet: 1900 square feet on west side and approximately 8,000 on east side with both lots fronting on McLoughlin Blvd. He said ODOT had paid \$80,000 for Onion Ring property and \$400,000 for the Chalet property. Further improvements to McLoughlin would increase the value of the property. He said Leopold would acquire property at relatively little cost in addition to Moores Street being closed. He showed a diagram indicating how the Leopold property would dominate the area. If approved, Jensen said Leopold's frontage on McLoughlin would increase 40%. Expanded nonconforming use would increase traffic problems at Ochoco and McLoughlin.

Jensen said if the expansion plan were approved, the detention pond would be on Hopkins property on Moores Street. Leopold would be dictating to ODOT without reviewing it with the City of Milwaukie. The location of the detention pond as recommended by Leopold would not help detain water between residences and Johnson Creek.

Alex Kramer, 2101 SE Moores Street, said he lives next door to Mrs. Hopkins where the alternate pond has been suggested. He discussed the drainage problems already existing in the area. He said he was concerned that his property would be caught between the parking lots and the detention ponds. Storm drains have been installed, but his property still has standing water. If detention ponds are necessary, they should be constructed in the most efficient place.

Harvey Boulet, 18121 SE River Rd., said he was very concerned with the safety issue and the gateway to Milwaukie.

Neutral Testimony: None.

Staff Comments: Crumley said that the focus should be the findings of the original presentation and the criteria. The one nonconforming use in the present configuration on current site poses no threat. The expansion of the nonconforming use constitutes a detriment by the removal of the ponds. He said he believed Keever's photographs were an affront to the City and are not what ODOT proposes. The Council may approve those findings in the staff report, but he cautioned that under the 120 day limit, Council must adopt findings by July 28, 1992. Otherwise, the applicant would have to allow an extension beyond the 120 day limit.

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Mayor Lomnicki said since ODOT was not present at the hearing, would the landscaping and maintenance be similar to the Hwy 224 exchange. Crumley said this was correct. Mayor Lomnicki asked why there was fencing on only two sides of the detention site. Crumley said ODOT had not explained this.

Councilmember Hall asked if the buildings on the east side could be realigned and still have Planning Commission approval. Crumley said the Planning Commission would have to make findings if there is a proposal for modification of existing structures. Councilmember Hall said it seemed that there could be other alternative structures rather than the dealership leaving the area entirely. Crumley said this could be done, and he said he understood that Thomason was negotiating for property to the east.

Councilmember Schreiber asked if they were to decide if there would be no further detriment to the current nonconforming use. Crumley said the existing use is the dealership as it exists today.

Councilmember Schreiber asked if Council was discussing the Leopold property or the Thomason business. Robinson said it is the dealership that is under consideration. Councilmember Schreiber said the Leopold's do not own all the property. Robinson said decision is based on the dealership business and the entire business should be considered whether or not it is directly leased from the applicant.

Councilmember Schreiber asked if the landscaping only had to be done on the expansion area; would the applicant have to make further adjustments to come into compliance with the property they are already using. Crumley said the applicant would not.

Councilmember Kappa said it appeared that there are other alternatives in repositioning the structures. Crumley said that was correct. There is property to the east that is available for leasing.

Questions of Clarification: Mayor Lomnicki asked if the Council was determining if expansion was a detriment to properties outside of the area or the area included in the expansion. Robinson said it must be determined if the proposed alterations were more of a detriment than the current use. He said the two parcels and the surrounding property can be considered.

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Applicant's Rebuttal: Miller said that Tomei's sequoias would not be replaced. He said there would be designated crosswalks for safety. Relocation of the detention pond is to alleviate storm water problem caused by runoff from the streets. ODOT says they will function at least as well or better in the alternate location. He urged that Council consider the proposed use and determine if it poses a greater detriment on the surrounding area.

Abel said Thomason Toyota did not cut the trees, nor did it ask for highway improvements. He said the issue is to determine if there is an increased detrimental impact. He said the business is not on trial. He said there is a letter from the Department of Justice in the record stating that the new location is acceptable. He said it is a fact that Thomason Toyota currently exists, and he believes the application causes no increased impact.

Councilmember Kappa discussed the letter from the Assistant Attorney General. He said it seems that ODOT has changed its position several times. He asked how moving the detention ponds would effect litigation. Abel said moving the detention ponds would solve about 95% of litigation between the applicant and ODOT.

Close Public Testimony: Mayor Lomnicki closed the public testimony portion of the hearing at 9:57 PM.

Discussion among Councilmembers: Robinson outlined the criteria. He said Council must determine if the proposed modifications will or will not increase detrimental effects on the area. He said Council can reach a tentative decision at this time and request that the applicant or staff return with findings.

Bartlett said that the prevailing party would prepare the findings.

Councilmember Hall reviewed the Planning Commission findings for Denial of NCU-92-01. Finding #1 was that "this amenity would be lost." He said the amenity, the detention pond, would not necessarily be lost, but moved.

Councilmember Kappa asked the alternate location of the pond.

Councilmember Schreiber said the alternate location had not really been determined yet. She added that an amenity was a subjective term.

Councilmember Hall said if the pond is moved, then it is not lost.

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**Mayor Lomnicki** agreed that if it is an amenity as a detention pond, then it would not be lost. If the amenity is the pond and accompanying landscaping, then the amenity would be lost by being moved.

**Councilmember Hall** discussed finding #4. He asked if the City of Milwaukie had approved the initial locations of the detention ponds. **Crumley** said the locations had not been approved through a land use decision, but they were approved by the City of Milwaukie Office Engineer assigned to the McLoughlin improvement project. **Councilmember Hall** said in that case, the Public Works engineering department has given this site its stamp of approval.

**Councilmember Schreiber** said the Council must consider the nonconforming use and the impact on the surrounding community.

**Mayor Lomnicki** said the Council values the concept of a gateway to the City. These properties were the Onion Ring Restaurant and the Chalet Motel. In that time frame, these properties did not have a nonconforming use. Now anything built on that property must be in compliance with the underlying zone. If another party, other than Leopold came in with a request for a dealership, it would be denied. Through the alteration process, the applicant has the potential of being allowed to do something no one else would have the opportunity to do. **Mayor Lomnicki** said he would agree with the Planning Commission decision. There would be a detriment to the Jensen property in addition to safety issues. He said he believed this would be a greater detriment to the community than the detention ponds.

**Councilmember Kappa** said this was a difficult decision. He proposed that any decision be held over until other alternatives can be prepared.

**Councilmember Knudson** asked if the appeal were denied tonight, could they come back later with other modifications to their property.

**Mayor Lomnicki** said they do have the right to alter the property they already control, but this is new property on which they wish to have a nonconforming use. He said nonconforming uses should be phased out and the zoning upgraded. He said no specific alterations had been discussed. **Mayor Lomnicki** said the Council could approve the application with conditions. **Robinson** said if Council wished to impose conditions on the entire nonconforming use, it would have to be shown how these conditions would advance legitimate planning objectives and reduce detriment. If this was not done, the decision could not withstand a challenge.

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Bartlett said if City Council wished to uphold the Planning Commission decision, the City Attorney would prepare the findings.

Councilmember Schreiber said she was concerned with the presentations by adjacent property owners; businesses that had been adversely impacted by Thomason Toyota's business; and safety factors.

Councilmember Hall said if the additional property was granted to the dealership increasing the total square footage and frontage on McLoughlin, traffic and parking problems outlined by Jensen and others would likely increase. This would pose a further detriment. He said the applicant's testimony included the assertion that if the denial were upheld, Thomason would go out of business. Councilmember Hall said he was not in favor of forcing business out of the community, but he was not persuaded that a successful operation could not continue on the site. He said he was also not convinced that there would be a loss of business.

Councilmember Kappa said he believed there should be more time spent on the application to investigate other alternatives. He said he would vote on only the nonconforming use. The argument that persuaded him was loss of open space.

Councilmember Hall said he would like to see finding #4 deleted.

Robinson said it must be reduced to writing with final action at the next Council meeting.

Mayor Lomnicki asked if the Council had to be unanimous in adopting the findings.

Bartlett said Council could direct staff to prepare findings and make the final decision by enacting the findings. Public testimony would be closed, but the applicant's attorney could question the findings.

Mayor Lomnicki said the Council will either deny or uphold the appeal of the Planning Commission denial. At the next meeting, Council would make its final action on the findings of fact.

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Determination of Findings and Decision by the Council: It was moved by Councilmember Schreiber and seconded by Mayor Lomnicki to direct staff to prepare findings upholding the Planning Commission's denial of NCU-92-01 in writing for consideration at the July 21, 1992 meeting. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

## AUDIENCE PARTICIPATION

None.

## OTHER BUSINESS

Consider EID Assessment - Ordinance

Angus Anderson, Finance Director, presented the staff report in which the City Council was requested to consider an ordinance amending existing Ordinance 1710 which established Property Tax Assessment Surcharge Rate for 1992-1993. The rate is recalculated each year based on the total employment within the MDDA boundaries and on the total subject assessed value within the MDDA boundaries. The calculations were shown by tax lot, the individual assessment, and the amount of change. The tax is collected by the Clackamas County Tax Assessor and is passed through to the City. This rate is filed in conjunction with the 1992-1993 Budget.

Councilmember Schreiber asked why there was a decrease in assessed value. Anderson said one cause of the decrease was the loss of Red's.

Councilmember Hall asked if this was the second year assessment. Anderson said this was an assessment for the year just passed.

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to read the ordinance determining the EID assessments for 1992-1993 and direct that they be certified to the Clackamas County Tax Assessor for the first time by title only. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions. The ordinance was read for the first time by title only.

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It was moved by Councilmember Kappa and seconded by Councilmember Knudson to read the ordinance determining the EID assessments for 1992-1993 and direct that they be certified to the Clackamas County Tax Assessor for the second time by title only. Councilmember Hall discussed the making up of revenue loss. Anderson said unless directed otherwise, the City would provide the same coverage. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions. The ordinance was read for the second time by title only.

It was moved by Councilmember Hall and seconded by Councilmember Kappa to adopt the ordinance determining the EID assessments for 1992-1993 and direct that they be certified to the Clackamas County Tax Assessor. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

## ORDINANCE 1724:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DETERMINING THE ECONOMIC IMPROVEMENT DISTRICT ASSESSMENTS FOR FISCAL YEAR 1992-1993 AND DIRECTING THAT THEY BE CERTIFIED TO THE CLACKAMAS COUNTY TAX ASSESSOR FOR COLLECTION.

Consider SDC Installment Payments in Periods of Less than 10 Years - Ordinance

Angus Anderson, Finance Director, presented the staff report in which the City Council was requested to consider an ordinance amending Municipal Code Chapter 13.28.100. The proposed ordinance would allow installment payments of SDC assessments in periods of less than ten years in terms approved by the City Manager. Anderson said individuals had approached the City asking that charges could be paid in a period of less than 10 years.

Mayor Lomnicki asked if there was a downside for the City with this arrangement. Anderson said it was actually beneficial to the City. The interest lost would be marginal. Mayor Lomnicki asked why the SDC ordinance had been adopted with a ten-year assessment period. Councilmember Hall said he believed it was for the convenience of the property owner. Bartlett said it had been patterned after the Bancroft schedule.

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Councilmember Schreiber asked if the individual could choose their own payment schedule. Anderson said the assessment could be paid in accordance with a schedule agreed to by the City Manager. Councilmember Schreiber asked if this would make collection more difficult. Anderson said the amount of the payment would be more but it would be paid on the same schedule.

It was moved by Councilmember Hall and seconded by Councilmember Kappa to read the ordinance amending Ordinance 1707, MC section 13.28.100, allowing installment payments of SDC charges to be paid over a period of less than ten years and declaring an emergency for the first time by title only. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions. The ordinance was read for the first time by title only.

It was moved by Councilmember Hall and seconded by Councilmember Knudson to read the ordinance amending Ordinance 1707, MC section 13.28.100, allowing installment payments of SDC charges to be paid over a period of less than ten years and declaring an emergency for the second time by title only. Councilmember Schreiber asked how delinquent payments would be handled. Anderson said delinquency notices are sent out as others according to the agreement. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions. The ordinance was read for the second time by title only.

It was moved by Councilmember Hall and seconded by Councilmember Kappa to adopt the ordinance amending Ordinance 1707, MC section 13.28.100, allowing installment payments of SDC charges to be paid over a period of less than ten years and declaring an emergency. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

## ORDINANCE NO. 1725:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE 1707, SECTION 10, CODIFIED AS SECTION 13.28.100, OF THE MILWAUKIE MUNICIPAL CODE, ALLOWING FOR INSTALLMENT PAYMENTS OF SYSTEM DEVELOPMENT CHARGES TO BE PAID OVER A PERIOD OF LESS THAN TEN (10) YEARS, AND DECLARING AN EMERGENCY.

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It was moved by Mayor Lomnicki and seconded by Councilmember Hall to continue the meeting past 11:00 pm. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Consider Bid Award for Infra-red Paving Machine

Kelly Somers, Public Works Superintendent, presented the staff report in which the City Council was requested to consider awarding the bid for one new 1992 trailer mounted combination infra-red asphalt heater and infra-red storage/reclaimer box to Western Asphalt Recycling Equipment Company in the amount of \$32,989.00. He reviewed the bids received. He said the low bid was for a used machine. He discussed a letter of protest that was received.

It was moved by Mayor Lomnicki and seconded by Councilmember Kappa to award the bid for one new 1992 trailer mounted combination infra-red asphalt heater and infra-red storage/reclaimer box to Western Asphalt Recycling Equipment Company in the amount of \$32,989.00 and authorize the City Manager to sign a purchase order. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Consider Annual Public Works Purchase Orders

Kelly Somers, Public Works Superintendent, presented the staff report in which he requested that City Council authorize the City Manager to sign three yearly purchase orders in the amount of \$15,000 or more. The vendors were Carson Oil, Lone Star Northwest, and Portland Road and Driveway.

It was moved by Councilmember Hall and seconded by Councilmember Kappa to authorize the City Manager to sign purchase orders to Carson Oil Co., Lone Star Northwest, and Portland Road and Driveway in the amount of \$15,000 or more. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Consider Transfer of Funds from Bike Path Contingency to Capital Projects Bike Path - Resolution

Kelly Somers, Public Works Superintendent, presented the staff report in which the City Council was requested to consider a resolution transferring \$14,000 from Bike Path Contingency to Capital Projects Bike Path.

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It was moved by Councilmember Hall and seconded by Councilmember Kappa to adopt the resolution approving the budget appropriation transfer. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

## RESOLUTION NO. 24-1992:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO APPROVE BUDGET APPROPRIATION TRANSFERS.

Consider Advertisement for Statement of Qualifications for Water Source/Demand Study

Tim Corbett, Public Works Director, presented the staff report in which the City Council was requested to authorize staff to advertise for a request for qualifications from consulting firms to conduct a water source/demand study. He discussed the current capacity. The current capacity is 6.65 million gallons per day with a 1.7 million gallons per day buffer. He said this would be the planning document of feasible water supplies.

Councilmember Hall said it is becoming increasingly obvious that the water supply may not always be there. He encouraged water conservation. Corbett said water rights are based on an established water conservation program.

Councilmember Schreiber agreed that conservation should be encouraged for the future. Corbett said if customers practice conservation, revenues will go down and that is something that will be taken into consideration. Councilmember Schreiber said if there is conservation, new sources of water will not be necessary.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to authorize staff to advertise for a request for qualifications from consulting firms to conduct a water source/demand study. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Consider Advertisement for Statement of Qualifications for Water Cost of Service Study.

Tim Corbett, Public Works Director, presented the staff report in which the City Council was requested to authorize City staff to advertise for a request for qualifications from consulting firms to conduct a cost of service water rate study.

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Councilmember Kappa asked if the cost of water would be determined by the amount used. Corbett said the Council would be presented with several rate structure alternatives.

It was moved by Councilmember Hall and seconded by Councilmember Kappa to authorize advertisement for a request for qualifications from consulting firms to conduct a cost of service water rate study. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Commission Appointments

It was moved by Councilmember Kappa and seconded by Councilmember Hall to reappoint Dennis Daigle to the Budget Committee and Troy Hesselgesser to the Parks and Recreation Commission. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Revised Appropriation Resolution

This item was not necessary and was pulled from the agenda.

## CONSENT AGENDA

It was moved by Councilmember Hall and seconded by Councilmember Knudson to adopt the Consent Agenda which consisted of the City Council Minutes of June 16, 1992, and liquor license applications for J&J Little Store and Dotty's #10. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Hall, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

## INFORMATION

Bartlett said he and Mayor Lomnicki had attended the NC 12 Board of Directors Meeting.

Councilmember Schreiber announced that she was on the Community Action Board transportation committee. She also announced a Parks District community meeting on July 8, 1992, at the Milwaukie Center.

Bartlett announced an executive session to discuss property transaction immediately following adjournment of the regular session.

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## ADJOURNMENT

Mayor Lomnicki adjourned the meeting at 11:23 PM.

Pat DuVal

Pat DuVal, Recorder/Secretary