

CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 18, 1994

The one thousand six hundred and eighty-seventh meeting of the Milwaukie City Council was called to order by Mayor Lomnicki at 7:03 p.m. at the Milwaukie Center with the following Councilmembers present:

Craig Lomnicki, Mayor	Jean Schreiber
Rick Farley	Bob Knudson
	Rob Kappa

Also present:

Dan Bartlett, City Manager	Tim Corbett, Public Works Director
Charlene Richards, Assistant to the City Manager	Greg Drechsler, City Engineer
Bill Monahan, City Attorney	Dave Krogh, Associate Planner
Angus Anderson, Finance Director	Kelly Somers, Public Works Superintendent
	Pat DuVal, Recorder/Secretary

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Presentation of the 1992-1993 Comprehensive Annual Financial Report

This item was continued to the February 2, 1994 agenda.

PUBLIC HEARING

Consider Request to Rezone Certain Property from R-10 to R-7; File No. ZC-93-01 - Ordinance

Mayor Lomnicki called the public hearing on the application of Sisul Engineering for the rezoning of R-10 property to R-7 located between Firwood and Willow Streets, west of Stanley Avenue to order at 7:05 p.m.

Mayor Lomnicki said the purpose of the hearing was to consider rezoning approximately 2.47 acres of property from R-10 to R-7 for the purpose of a subdivision. The applicant is Sisul Engineering and the property owner is Marilyn Bocci.

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Mayor Lomnicki reviewed the order of business. The applicant had the burden of proving that the proposed rezoning of the property is consistent with the City of Milwaukie's Zoning Ordinance and Comprehensive Plan. The applicable substantive criteria to be addressed were Sections 903.1 and 905.1 of the City Zoning Ordinance.

Mayor Lomnicki said all testimony and evidence must be directed toward the applicable substantive criteria and other criteria in the plan or land use regulation which one believes to apply to the decision. Failure to address a criterion or to raise any other issue or criteria which any participants feel are applicable, with sufficient specificity, precludes an appeal based on that criterion.

Conflicts of Interest: Councilmember Farley said he drove by the property but observed nothing beyond those issues addressed in the staff report.

Councilmember Kappa said he had been contacted by James Murray on this matter. He recommended to Murray that he attend the City Council public hearing. Councilmember Kappa said as a member of the Johnson Creek Corridor Committee, he had considered this site as a possible wetlands or holding pond area. Committee members looked at several properties in the Portland/Milwaukie area in order to identify land for purchase by the City of Portland. He and other members of the committee agreed that the property being considered for rezone did not meet wetlands criteria. Councilmember Kappa said he had not changed his opinion. He said he believed he could base his decision on what would be seen and heard at this hearing.

There was no challenge to any member's impartiality.

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

Staff Report: Dave Krogh, Associate Planner, presented the staff report in which the City Council was requested to consider an application to rezone specific property within the City of Milwaukie from R-10 to R-7, as recommended by the City Planning Commission. It is a request to rezone for the purpose of developing a ten-lot subdivision. The property had been a pasture, but in recent years had become overgrown with blackberries. The City was taking code enforcement action on a nuisance complaint when the application was filed.

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The applicant submitted a zone change request and a subdivision preliminary plat request concurrently. The Planning Commission reviewed both applications at a public hearing on November 9, 1993. The Commission voted to approve the preliminary plat request and to recommend that City Council approve the rezone request.

Several issues were discussed at the Planning Commission hearing. These concerns were livability, traffic, and wildlife habitat. The applicant developed a storm drainage system that would cause no adverse impact on surrounding properties. The applicant proposed to create a new street, SE 56th Street, between Firwood and Willow. The City Engineer determined that utilities were adequate and were either in place or could be extended by the developer to accommodate the development.

Krogh said the area is in transition and the lots are relatively large. This is one of the few areas in the City that has infill potential. The proposed lots will be about 8,000 square feet each. He discussed other subdivision in the area in which lots were smaller. This was allowed because portions of the subdivisions were for wetlands and storm water detention basins.

Krogh discussed the two wetlands surveys done on the property. Sisul Engineering commissioned a survey which indicated that the site was not a jurisdictional wetland. This opinion was confirmed by the Oregon Division of State Lands. A second study, completed by SRI/Shapiro as part of a Clackamas County delineation project, reached the same conclusion. These studies did not include a wildlife analysis, and there would be little habitat when the blackberries were removed. Blackberries are considered a nuisance plant in the municipal code.

Krogh said the area is designated as low-density residential in the Comprehensive Plan. He distributed photographs taken by the Friends of Firwood Meadows which indicated the neighborhood characteristics and street conditions in the area. There was also a petition signed by those opposed to the proposed development of Firwood Meadows. He discussed the letter from the Friends of Firwood Meadows in which they indicated the following concerns: wildlife habitat; character and predominant land use; roads; open spaces; and storm water drainage.

Krogh said the Planning Commission considered this an area in transition, and this was taken into account when addressing criteria. The applicant will have to provide half street improvements with curbs and sidewalks. In order to designate this a wildlife area, the Council would have to direct staff to amend the Comprehensive Plan.

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Krogh discussed a January 14, 1994, memo from Thom Kaffun of the North Clackamas Parks and Recreation District regarding the rezone request. In response to Metro Greenspaces and neighborhood contact, he made a site visit and reviewed the Parks Master Plan and Park District Neighborhood Plans. District staff concluded that the parcel fits a neighborhood park standard but agreed with the surveys that it was probably not a wetlands. Although the area is considered park deficient, Kaffun wrote that there are no funds available for acquisition of this property. **Krogh** added that a dedication could not be imposed on the applicant at this time.

Krogh discussed the findings and stated that the application meets applicable approval criteria for a zone change. The previously approved preliminary plat would be valid if the City Council adopted the rezone.

Councilmember Knudson asked if it would be necessary for an opinion from the Corp of Engineers. **Krogh** said there are two surveys on hand with confirmation from the Division of State Lands. A Corps of Engineers' review is not required.

Councilmember Farley said he was concerned with the impact on the community and the amount of traffic. **Krogh** said there would be some traffic impacts. Ten new homes would add about sixty trips per day. The new street would improve traffic circulation.

Councilmember Farley asked the minimum allowable lot width. **Krogh** said the minimum width in an R-7 zone would be 60 feet. The frontages of the proposed subdivision are about 80 feet.

Councilmember Farley asked if there would be a problem with water pressure. **Krogh** said he would defer this question to Drechsler.

Councilmember Kappa asked how drainage would be handled. **Krogh** said he understood there would be pipe installed, but Drechsler would be more able to answer this question.

Councilmember Farley asked about the impact of additional traffic. **Greg Drechsler**, City Engineer, said he considered the difference of the number of trips generated by seven houses versus ten houses, or eighteen trip per day.

Councilmember Farley asked how many new homes had been built in this area. **Drechsler** said he did not have this information.

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Councilmember Kappa asked for information on drainage in the area. **Drechsler** said the line would be buried in a ten-foot easement. It has not been determined yet if the line will go through an easement from Firwood to Tambara Ct. or if it will be kept in the right-of-way.

Councilmember Kappa asked if there would be catchbasins. **Drechsler** said Tambara Ct. currently drains to Johnson Creek. The proposed subdivision would connect with the existing drainage system. The decision on catchbasins would be made during the development stage.

Councilmember Farley asked if there would be sufficient water pressure. **Drechsler** said the water would be supplied from a 12-inch line on Firwood and a 6-inch line on Willow. Waterlines would be developed in the subdivision itself. The supply is sufficient to serve the area.

Councilmember Kappa asked if the new development would create a loop in the waterline service. **Drechsler** said if installed, the line in the proposed new road would create a loop from Firwood to Willow.

Mayor Lomnicki discussed the wildlife habitat. He said this property had not been identified by the Milwaukie Comprehensive Plan or any other jurisdiction as a natural resource. Council must base its decision on the Comprehensive Plan as it exists now. He asked if Council could deny the application pending investigation of the property as a significant wildlife habitat.

Krogh said Council has full authority to take action on the zone change request. If Council heard new information that would lead it to believe there was a new issue to be considered, the application could be put on hold. The 120 days expires on February 4, 1994. Petitioner Murray, opponent, has requested an extension from Council on the decision.

Bill Monahan, City Attorney, said a local decision must be made and a local appeal allowed. The applicant would be requested to sign a waiver if the period was extended. From the record created to this point, there is no indication that the criteria of the Comprehensive Plan have not been met. He advised that the applicant should be evaluated on existing criteria at the time of application. If the City chose to acquire the property for open space, it is possible that a taking would occur. The applicant could seek compensation because the land could not be used for anything other than open space.

Mayor Lomnicki said the applicant has the right to develop the property as R-10 if the R-7 rezone is denied.

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Councilmember Kappa asked if it was necessary to have a park in this area. **Krogh** said there were no parks in the immediate area. The dedicated areas in Winsor Place and Shayna Park subdivisions were not neighborhood parks.

Councilmember Kappa said this area was close to the Springwater Corridor.

Correspondence: None.

Applicant's Presentation: **Tom Sisul**, 375 Portland Ave., Gladstone, OR 97027. He said, as noted by staff, the issue is not whether it is developed or not, but whether it is a ten-lot or a seven-lot subdivision. The site requires an unusual amount of offsite improvements. Extension of the sanitary sewer would benefit the area and allow existing homes in the area to hook into the sewer. Improvements would also allow future development of the parcels to the east. There would be full and half street improvements on site. Development as an R-7 subdivision would make the project more economically viable.

Sisul discussed the wetland surveys and confirmation by the Division of State Lands. He said based on the City's criteria at the time of application, there is no natural feature or hazard to prohibit development of the site. The property is near Stanley Avenue which is designated as a collector by Clackamas County. King Road and Johnson Creek Blvd. are minor arterials. Normally, it is the goal of Metro and most cities to put higher densities near collectors and minor arterials. It appears from the Comprehensive Plan map that all recently annexed parcels have been rezoned and developed at the R-7 level.

Councilmember Kappa asked **Sisul** if he had considered an R-10 development. **Sisul** said this would be a financially difficult alternative because of offsite improvements.

Others in Support: None.

Opponent's Presentation: **Joe Stockam**, 5642 SE Willow, said he was concerned with the additional vehicles and speeding in the neighborhood. He said he believed the proposed new street would cause more traffic problems.

Councilmember Kappa suggested that residents could address their concerns to the Traffic Safety Commission.

James Murray, 5577 SE Firwood, spoke in opposition to the rezone request. There were many greenspaces and meadows in this older, family neighborhood prior to recent developments. Wildlife has moved to Firwood Meadows as a final natural habitat in the area. He requested a wildlife survey.

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Murray said he was also concerned with traffic problems and street widths. Recently developed subdivisions have created more traffic on Firwood and Willow. The streets are narrow, and it is difficult for vehicles to pass. He said the photos submitted by the Friends group indicate pull over spots in residents' yards. He said he believed the improvements would make the streets more dangerous for both cars and pedestrians. Cars would be using wide streets that would abruptly become narrow. He said he would not be as opposed to the proposal if Firwood and Willow were improved.

Murray said he was also concerned with the storm drainage plan and the effect on the rest of the neighborhood. He was concerned with the type of fill brought to the site. Most yard levels were below the street surface.

Murray discussed the applicant's statement that properties east of the site would benefit from the development. He said he did not believe these property owners had any intention of subdividing, so there will be no benefits for them. He said he did not believe the development was consistent with the land use in the area. It is an area of larger lots and older homes. An R-7 subdivision would be inconsistent with the land use in the area. He requested that Council grant an extension so that the neighbors would be able to address the criteria and prepare a better case.

Sherry Stockam, 5622 SE Willow, said she was concerned about dust and exhaust from traffic and the impact on health and safety of the neighborhood. She was also concerned that the site was a flood zone.

Diane Bell, 5621 SE Firwood, discussed the possibility of installing speed humps to discourage speeding.

Councilmember Kappa said the Traffic Safety Commission was addressing this issue.

Councilmember Farley asked Bell if she drove her children to school. Bell said she drove her children to school because she was concerned with their safety.

Councilmember Farley asked Bell how long she had lived in that neighborhood. Bell said since March, 1993, and traffic had increased during that time. She had asked for enforcement but did not get any.

Neutral Testimony: None.

Staff Comments: Krogh said the premise of planning is to look at future needs. The State demands infill within urban boundaries, and this will ultimately happen. He said the neighbors' concerns were valid and that the Traffic Safety Commission should look at traffic on Willow Street. He

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recommended that minutes of this meeting be distributed to those concerned citizens signing the petition. He recommended that the Public Works Department look at street improvements in the area. The proposed new street would provide sidewalks, and children could get to the school without walking along Stanley Avenue.

Questions of Clarification: Wayne Bell, 5621 SE Willow, asked if there would be additional street lights if the proposed subdivision was developed. Mayor Lomnicki said street lights would be required.

Councilmember Farley asked how the amount of impervious area is calculated on a single family residence. Drechsler said it is calculated at 2,500 square feet per house.

Councilmember Knudson asked if there had been a traffic count on that street. Drechsler said there had not been one done.

Applicant's Rebuttal: None.

Close Hearing: Mayor Lomnicki closed the public testimony portion of the hearing on the Sisul Engineering application at 8:22 p.m.

Discussion among Councilmembers: Councilmember Kappa said he would like to have time to read the material from the Friends of Firwood Meadows before he voted.

The meeting was recessed at 8:23 a.m and reconvened at 8:32 p.m.

Councilmember Knudson said Council had to determine if the property would be developed as R-7 or R-10.

Councilmember Farley said he was concerned that more impervious ground in the development would adversely impact Johnson Creek.

Councilmember Schreiber said she was pleased to see so many people concerned about their community and seeking improvements. The only issue being voted on at this hearing is to approve or deny the rezone application.

Councilmember Knudson said the property would eventually be developed with either seven or ten houses.

Councilmember Kappa recommended that the group attend a Traffic Safety Committee meeting. He said the Johnson Creek Corridor Committee was also concerned with property drainage. He added that he liked what he saw on the preliminary plat map.

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Mayor Lomnicki said these criteria were addressed at the Comprehensive Plan review. Staff looked at the land to determine natural resource and wetland areas. This property was not considered a significant natural wildlife habitat or wetland when evaluated. He said he did not believe the issues raised were so overwhelming that the rezone should not be approved.

Councilmember Schreiber said the issue is R-7 versus R-10, but the other concerns must be addressed.

Councilmember Farley said an R-7 gives the developer a better cost return. The property would probably not be developed if not rezoned.

Councilmember Schreiber said the property was annexed with the understanding that there might be some modifications.

Councilmember Kappa said the City does not have a tree ordinance that might help identify or develop areas better.

Councilmember Knudson said he believed that half street improvements would help the area.

Councilmember Farley said he thought the new streets would increase the pressure on Firwood and Willow.

Mayor Lomnicki said higher density development within the urban growth boundary require access to minor arterials like King Road and Johnson Creek Blvd.

Determination of Findings and Decision: It was moved by Councilmember Kappa and seconded by Councilmember Schreiber to read the ordinance amending Ordinance No. 1712 by rezoning certain property from County R-10 to City R-7 for the first time by title only. Motion passed 4 - 1 with the following vote: Mayor Lomnicki, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; Councilmember Farley nay; no abstentions. The ordinance was read for the first time.

The second reading of the ordinance will be considered at the February 1, 1994 regular session.

Mayor Lomnicki explained that there would be no public testimony at the next meeting.

Councilmember Kappa suggested that Murray attend the next Johnson Creek Coordinating Committee meeting.

Mayor Lomnicki suggested that Public Works evaluate full street improvements.

Bartlett said this action would require a local improvement district. He said the Public Works Department could look at the cost and determine interest in formation of an LID.

Mayor Lomnicki said Council and staff would respond to citizen concerns.

A member of the audience expressed concern with the traffic coming from McLoughlin through the neighborhood to the new housing development.

Councilmember Schreiber said she believed there was a need for a citywide traffic study.

Monahan said if the zone change is adopted at the next meeting, people have 21 days after the final decision to appeal to LUBA.

AUDIENCE PARTICIPATION

None.

OTHER BUSINESS

Consider Supplemental Budget for FY 1993-94

Angus Anderson, Finance Director, presented the staff report in which the City Council was requested to consider a resolution amending by supplemental budget process, the FY 1993-94 Budget. The proposed resolution recognized the Administrative Services fund and transferred \$14,475 into this fund from the General Fund contingency. The resolution also recognized the formation of a new appropriation category in the Bike Path Fund, entitled Public Works, and transferred \$10,000 to provide funding for City commitments to the Springwater Corridor.

Councilmember Farley asked if the entire \$10,000 will be used for bike path improvements. Bartlett said the City had committed \$10,000 to the Springwater Corridor project for bike, pedestrian, and equestrian improvements.

It was moved by Councilmember Kappa and seconded by Councilmember Farley to adopt the resolution adopting a supplemental budget and making appropriations for fiscal year 1993-1994. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

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RESOLUTION NO. 3-1994:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING A SUPPLEMENTAL BUDGET AND MAKING APPROPRIATIONS FOR FISCAL YEAR 1993-94.

Consider Change Order to OTAK, Inc. on 32nd Avenue Reconstruct Project

Tim Corbett, Public Works Director, presented the staff report in which the City Council was requested to consider authorizing the Public Works Department to issue a change order to OTAK, Inc., in the amount of \$20,100 for additional engineering and survey work to complete the 32nd Avenue Reconstruct Project. He gave the Council an update and indicated that the project would come in about \$70,000 under the estimate.

Councilmember Farley asked if the additional \$20,000 was included in the \$70,000. Corbett said the \$20,000 was in the OTAK contract.

Councilmember Kappa asked if the increased costs were related to the Public Safety Building. Corbett said the increased cost was due to lines not being where they were expected. Most of the Public Safety Building work was done by staff.

Mayor Lomnicki asked why the curbs were standard rather than rolled. Corbett said parking was a major community concern and rolled curbs would not adequately solve those problems.

Councilmember Farley asked when the project would be completed. Corbett said the project was 95% complete. The balance could be completed in about two week of warm weather.

Councilmember Schreiber said the safety issue of standard curbs was important.

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to authorize the Public Works Department to issue a change order to OTAK, Inc., in the amount of \$20,100 for additional engineering and survey work to complete the 32nd Avenue Reconstruct Project. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Consider Letting Bids for Home Avenue and Monroe Street Lift Station Rehabilitation

Tim Corbett, Public Works Director, presented the staff report in which the City Council was requested to authorize the Public Works Department-Sewer Division to advertise the Home and Monroe lift station upgrade project for bid. The cost is estimated at \$25,000 and is budgeted in the adopted 1993-94 Budget. This was the final pump station to be rehabilitated in the improvement program.

It was moved by Councilmember Farley and seconded by Councilmember Knudson to authorize the Public Works Department-Sewer Division to let bids for the Home and Monroe lift station upgrade project. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Consider Purchase Order Amendment for Independent Audit Services

This item was postponed.

Consider Dictaphone Purchase for Public Safety Building 9-1-1 Center

Dan Bartlett, City Manager, presented the staff report in which the City Council was requested to consider purchasing a communications recording device for the 9-1-1 center at the Public Safety Building from Dictaphone in the amount of \$22,995.

Councilmember Farley asked why the equipment needed to be replaced. Bartlett said the equipment has been malfunctioning. Failure to record incoming calls impacts the ability of the Police Department to conduct business and could be a liability issue. The new equipment is expected to be in service from five to ten years.

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to authorize the purchase of a communications recording device for the 9-1-1 center at the Public Safety Building from Dictaphone in the amount of \$22,995. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa and Councilmember Knudson aye; no nays; no abstentions.

City Hall Remodel Project

Bartlett discussed the emergency purchase order issued for asbestos removal at City Hall. He updated Council on the project.

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CONSENT AGENDA

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to adopt the Consent Agenda which consisted of the City Council Minutes of January 4, 1994. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

INFORMATION

Councilmember Schreiber discussed the opening of the Aquatic Park scheduled for June.

Bartlett pointed out that departmental quarterly reports were in the packet.

Bartlett discussed a letter and photographs received from a concerned citizen. He said he would work with the responsible department head.

Councilmember Kappa discussed the Clackamas County Department of Human Services *Issues and Solutions* report.

ADJOURNMENT

Mayor Lomnicki adjourned the meeting at 9:32 p.m.

Pat DuVal

Pat DuVal, Recorder/Secretary

