

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
August 2, 1994**

The one thousand seven hundredth meeting of the Milwaukie City Council was called to order by Mayor Lomnicki at 7:05 p.m. at the Milwaukie Center with the following Councilmembers present:

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

Also present:

Dan Bartlett, City Manager	Tim Corbett, Public Works Director
Tim Ramis, City Attorney	Greg Drechsler, City Engineer
Charlene Richards, Assistant to the City Manager	Dave Krogh Associate Planner
Dan Olsen, Fire Chief	Pat DuVal, Recorder/Secretary
Maggie Collins, Community Development Director	

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

After School Activity Program

Charlene Richards, Assistant to the City Manager, presented the staff report in which the City Council was requested to adopt a Resolution recognizing Don Robertson, Kate Demsky, and the staff for their work on the After School Activity Program. The pilot program was started in 1990 and will continue under the North Clackamas School District Community Education Department. All District elementary schools will offer the Extended Day Program in the 1994-1995 school year.

Robertson discussed the history of the program and thanked City Council and City Manager Bartlett for helping pioneer the program.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to adopt the Resolution recognizing Don Robertson, Kate Demsky, and the staff for their work on the After School Activity Program. Councilmember Schreiber read the Resolution in full. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

RESOLUTION NO. 30-1994:

**A RESOLUTION OF THE CITY OF MILWAUKIE, OREGON,
RECOGNIZING DON ROBERTSON, KATE DEMSKY, AND THE STAFF
OF THE AFTER SCHOOL ACTIVITY PROGRAM FOR ESTABLISHING
A NEW AND SUPERB SERVICE FOR THE CITIZENS OF MILWAUKIE.**

PUBLIC HEARING

Appeal of Administrative Approval of VR-94-01/MLP-94-01

Mayor Lomnicki called the public hearing on the variance and minor land partition to order at 7:12 p.m.

Mayor Lomnicki said the purpose of the hearing was to consider the appeal of an administrative approval of VR-94-01/MLP-94-01. The action allowed the creation of a buildable lot behind 3039 SE Olsen, by approving a lot width variance; flag lot access strip variance; and minor land partition for R-7 property. The variances are less than 25% and were completed through the Type II Administrative process, as per the Milwaukie Zoning Ordinance. He reviewed the order of business.

Mayor Lomnicki said the Appellant had the burden of proving that the appeal of the variance and minor land partition was consistent with the City of Milwaukie's Zoning Ordinance and Comprehensive Plan. The substantive criteria to be addressed for variances were those in Section 702 of the City of Milwaukie Zoning Ordinance. All testimony and evidence must be directed toward the applicable substantive criteria described or 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 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 Appeal according to the rules adopted by the Board. He reviewed the conduct of the hearing.

Conflicts of Interest: No members of the Council announced any ex parte contacts or declared any potential conflicts of interest. No member 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.

Staff Report: **Dave Krogh**, Associate Planner, presented the staff report in which City Council was requested to consider placing an appeal of an administrative approval of VR-94-01/MLP-94-01. The Applicant was Ed Martin and the Appellant was Tom McNabb. Two variances were approved administratively: a proposed 15-foot wide access strip instead of the 20 feet normally required for a single flag lot access strip (25% variance); and a proposed 57-foot lot width instead of the normal R-7 standard of 60 feet (5% variance). The Community Development Director is allowed to process variances of 25% or less.

The application was reviewed and deemed complete in February with a Notice of Intent to Approve mailed to property owners and occupants within a 150-foot radius on March 23, 1994. He directed Council's attention to the memorandum containing supplemental information. The variance approval was appealed on April 25, 1994, requiring a Planning Commission public hearing. The minutes of the Commission's June 14, 1994 meeting were included in the staff report. The Planning Commission voted unanimously to deny the variance appeal and voted 5 - 1 to approve the minor land partition. This decision was subsequently appealed, and the City Council public hearing was scheduled. The criteria analysis and standards for a minor land partition were included in the staff report.

Krogh discussed the supplemental information packet which included a neighborhood survey. He reviewed Exhibit 3 which indicated prior variance and partition activity in the area west of SE 32nd Avenue. Staff believed that the decision on each request should be evaluated based on its own situation and merit.

Councilmember Kappa asked for clarification of the need for both variances since the overall parcel had the appropriate R-7 square footage and 72 foot frontage. **Krogh** said the minimum flag lot access was 20 feet, so a variance was needed for the 15 foot proposal. The minimum R-7 lot width was 60 feet, and the Applicant was requesting 57 feet.

Councilmember Kappa said if this application had been made under the recently adopted Ordinance that amended the flag lot section of the Subdivision Ordinance. **Krogh** said that Ordinance was adopted July 19, 1994, and would go into effect 30 days after adoption.

Councilmember Kappa discussed Supplement Information Exhibit 3 and asked the average frontage. **Krogh** said the average frontage was 72 - 74 feet.

Councilmember Farley asked how many flat lots there were in the area. **Krogh** said staff identified at least 13 other flag lots that were processed over a period of twenty years.

Correspondence: **Mayor Lomnicki** said a "Victory Garden" Survey from Paul Brost prior to the meeting.

Applicant's Presentation: **Ed Martin**, 15733 SE Kaslin Way, Milwaukie. He announced for the record that his appearance was not a waiver of his objection to the non-payment of the appeal fee.

Martin discussed the criteria: (1) Tax lot 7200 is exceptional in that it is 17,280 square feet in an R-7 zone. This is about 2.5 times the square footage required in that zone. The existing house is located to one side, and there is adequate room for flag lot access without removing any structures. Of the 189 tax lots shown, about 56% have gone through a change in lot size or configuration. (2) The proposed variances maintain maximum street frontage and provide adequate emergency vehicle access. The

proposed driveway would meet the standards of 1769. (3) The proposal does not require any setback variances by meeting or exceeding privacy and setback standards. (4) For privacy, a fence could be built, and any trees removed would be replaced. He suggested considering a 4 foot fence for ease of Neighborhood Watch activities.

Martin said his application was consistent with Metro 2040 plans. The Community Development staff administratively approved the application, and the Planning Commission denied the appeal. He said he has complied with City Codes and should be able to utilize his property as desired. He circulated a map and photographs of the area that indicated 11 flag lots under 8,000 square feet.

Councilmember Farley referred to the map and the position of houses 3005 and 3007 on the lots. **Martin** said in some situations, the location of the house has been "grandfathered in."

Councilmember Kappa asked **Martin** what he believed made the property unique. **Martin** said the existing house sits to the side of the property and no additional variances for setbacks would be required.

Councilmember Farley asked **Martin** if he believed he was under a hardship. **Martin** said he was not.

Testimony in Support: **Richard Grolbert**, 3725 SE Harvey, discussed property values and that it was likely that a new house would increase property values in the area. There have been no objections to narrowing the lot to 57 feet. The Fire Marshal stated that a 15 foot access was adequate for emergency vehicles. Those neighbors who want a six foot sight obscuring fence could have less openness.

Paul Lisac, 2923 SE Olsen, Milwaukie. The current house is not on a foundation which made it difficult to finance a purchase. **Martin** bought the property to flag it, build a new house, and improve the existing structure. He said he personally preferred the improvements. He discussed his lot which had flag lots around it and how he was able to enjoy openness with his neighbors. He said some neighbors objected to a structure he recently built on his property which met all R-7 standards.

Earl Beck, 2908 SE Kelvin, Milwaukie. He said he owned about the same amount of property as **Martin** and was unable to care for the entire lot. He said he thought it was a good idea to put property to use and was in favor of infill in that area.

Teddy Grimsrud, Milwaukie area Realtor, 8206 SE 75 Pl., Portland. There comes a time when the need for smaller lots in an urban area must be recognized. New homes will improve and increase the value of the area. The Planning Commission has the responsibility to oversee reasonable planning of the area. She said there was no reason to see **Martin's** application as anything less than an upgrading.

Testimony in Opposition: **Mary Lee Oshiro**, 3023 SE Olsen, Milwaukie. She felt that in approving the application, we would lose sight of the area's purpose. Let people use the land the way they see fit. People want to have room for their families. Care of property is a matter of personal opinion. She said she believed improving the current house would increase the livability of the area. Approval of the proposed variances would give the Applicant special privilege. The proposed development would have an adverse effect on her property because of increased noise. There is still land available for building without partitioning lots. She urged that the fence issue be addressed.

Councilmember Kappa asked Oshiro if her fence would have to be removed. **Oshiro** said either her fence or hedge would remain. **Councilmember Kappa** asked her about the uniqueness of the site. **Oshiro** said although the house is on one side of the lot, it is not especially unique because all of the houses in the neighborhood are on large lots.

Councilmember Farley asked if activities in the backyard would be interrupted if the hedge was cleared. **Oshiro** said there was already a 6 foot fence in place that would remain.

Councilmember Schreiber asked how long the Martin property had been vacant or for sale. **Oshiro** said after the property owner moved, there was a series of renters.

Tom McNabb, Appellant, 3040 SE Malcolm. He said he was concerned that the benefits to the Applicant outweighed those of the other property owners. Realtors have nothing but gains when new homes are constructed. He said it would be impossible to predict the value fluctuations in the area. Residents in the neighborhood feel that an increase in the density is detrimental to the livability in the area. The value in the neighborhood is the openness and rural atmosphere only minutes from downtown Portland. He said he believed Martin was trying to make as much money as possible on this lot. He said he was interested in preserving the integrity of the neighborhood and believed the value was in the large lots. He said he agreed that it was a good idea to consider each flag lot individually.

McNabb said the Planning Commission interprets the Comprehensive Plan to say there is a need to infill. The flag lot concept requires 120 foot driveways with additional utility poles. The front yard of one home faces the backyard of another. He said he did not see any hardship or practical difficulty on the applicant. Many of the residents are not content with what they see happening with this type of development. The use should fit the City's current zoning standards. He said he was content with the minimum 60 foot frontage. He invested money in his property because of the open space character of the neighborhood. He said he believed Martin's best investment would be to build one new house. He said he would be interested in looking at a zone change to R-10.

Councilmember Farley asked McNabb where his property was in relation to the subject property. **McNabb** said his was behind the Martin property.

Councilmember Schreiber asked how the name Victory Garden came about. **McNabb** said he did not know.

Councilmember Kappa asked McNabb what his property frontage was. McNabb said his property was 72' x 240'.

Susan Brost 2908 SE Malcolm, Milwaukie. She discussed her recent property purchase. She said she believed the value was in the exclusiveness of the neighborhood was the larger lot sizes. She said she was also concerned that police could not protect flag lots when they could not be seen from the street. She urged that the current house be upgraded to maintain the neighborhood.

Mike Galloway, 3108 SE Olsen, Milwaukie. He referred to Supplemental Information Exhibit 3 and said that most of the infill was west of 29th Avenue. He described the neighborhood and said that Martin does not live in the neighborhood and does not have to live with the decision. He asked if each property had to be infilled just because there was an Ordinance. He said he would like to see the area preserved. He expressed concern with the parking situation on Olsen and said he believed a driveway would take up needed additional parking space. He said he was also concerned that there might be more crime in the neighborhood. Relaxed, comfortable neighborhoods like this are very expensive in other areas. He said additional housing would cause a hardship on the school.

Councilmember Kappa asked for clarification of the parking concerns. Galloway said some of the streets in the area are too narrow for cars to park on both sides of the street.

Rita Lynn, 3007 SE Olsen, Milwaukie. She said she was convinced that the greatest challenge facing all residents in the state will be how to manage the growth and development of property and yet respect people's rights to hold and use their property as they see fit. She discussed her property which had a second house used as a family residence. She said her property would never be used as a flag lot as long as she owned it. This is one of the last areas in which this type of neighborhood is maintained. She said she was unhappy with the Planning Commission's desire to promote infill in the area.

Michelle Greeley-Roberts, 2924 SE Malcolm, Milwaukie. She said most of the houses were positioned on the lots so flags could be developed, and the Martin property was not unique in that respect. When she spoke with Realtors, most of them agreed personally that they would like to live in the neighborhood with lots as they are, but flag lots could make more money for everyone. Her family owns five lots in the neighborhood. She said she was demolishing her home next year in order to build a new one. Everyone who buys in the area is looking for a large lot. She discussed the situation of one resident who had six neighbors and has lost privacy and open space. Streets in the neighborhood are deteriorating and there are no plans for maintenance. Ardenwald School is already at capacity. The wildlife in the area would be negatively impacted. Many of the long term residents will move when new families come into the neighborhood. Crime will increase because neighbors will not be able to see each other because of fences.

Greeley-Roberts showed a video of the neighborhood and the large backyard. She said the name Victory Gardens came from discussions with longtime residents of the area. She expressed concern that the Planning Department was motivated by improvement to the tax base. The Comprehensive Plan calls for neighborhood preservation. She discussed the possibility of the neighborhood becoming a historic district.

Councilmember Kappa asked if there had been a neighborhood association meeting on this issue. **Greeley-Roberts** said the association does not meet during the summer.

Councilmember Farley asked the location of the five lots her family owned. **Greeley-Roberts** responded with the approximate locations.

Neutral Testimony: None.

Staff Comments: **Krogh** said Victory Garden was a term from W.W.I in which people helped supplement the food supply by home gardens. He referred to the question about the hedge along the access strip. The Planning Commission did not add any condition to that effect, and the minutes reflect the intent that the hedge should not be removed for placement of a fence. He discussed the process in which a neighborhood participates to receive a historic district rating.

Questions of Clarification: **Councilmember Kappa** asked what the average frontage was in the area. **Krogh** said most frontages were 72 feet. **Councilmember Kappa** said he was concerned that the Martin property was considered unique. **Krogh** said he felt that each application should be reviewed under its own merit.

Applicant's Rebuttal: **Martin** said he intended to repair the existing house and would be flexible with the neighbors regarding the hedge and fence. The neighbors can enjoy their lots in any fashion they wish, but they cannot impose something on the adjacent property if that owner complies with codes. He referred to a questionnaire from Connie Iverson, 2835 SE Malcolm, who has lived on a flag lot for about 14 year. She indicated she supported the variance because new homes would increase property values and make a better neighborhood. He said the property he purchased had been on the market for about six months. The existing house was difficult to finance because it did not have a foundation. He said a flag lot proposal can keep the cost of new housing more affordable. He referred to a photo with a number of utility trailers and campers on what he believed to be the property of the opponent concerned with parking. He said the video showed nice yards and gardens, but a house on a flag lot does not mean the people living there and the yards will not be nice. He said he was trying to improve the neighborhood by upgrading the existing house and building a new one.

Mayor Lomnicki said the testimony focused on the variance. What about the question of the minor land partition? **Ramis** said there is really one decision. The partition depends on granting the variance. Those testifying decided to focus on the variance. One vote can resolve both issues.

Close Hearing: **Mayor Lomnicki** closed the public testimony portion of the appeal of VR-94-01/MLP-94-01 at 9:35 p.m.

Discussion among Council Members: **Councilmember Schreiber** said staff recommends upholding the Planning Commission denial of the appeal, and City Council is reviewing a decision that has already been made. **Ramis** said the City Council may modify the conditions proposed by the Planning Commission.

Councilmember Farley said all we are determining is if the appeal stands. **Ramis** said City Council may either agree or not agree, but it does have the latitude to modify the decision. **Councilmember Farley** said City Council approved an Ordinance that changed a driveway from 20 to 15 feet. **Bartlett** said Martin made his application before that Ordinance was adopted. City Council must decide if the Applicant and the Planning Commission were correct in their findings.

Councilmember Kappa said this is a de novo hearing with all new testimony and information. **Ramis** said City Council can rely on the record created by the Planning Commission and can take into consideration the decision and findings.

Bartlett said the staff report was written as if the findings were for City Council. There is one set of findings each for the variance and the minor land partition. If City Council agrees with the preliminary decision to support the Planning Commission decision, it can direct the City Attorney to review and modify those findings.

Councilmember Farley discussed the Knepper appeal. **Bartlett** said the variance criteria were different in that case. The criteria are in place, but the types of variances are different. Findings must be considered in a quasi-judicial decision.

Ramis said it was not necessary to draft the findings at this time. The City Attorney will convert the information into a final order for consideration at a subsequent meeting.

Councilmember Farley said he was concerned about the comments regarding the need for additional utility poles. **Ramis** said the hearing would have to be reopened in order to explore this factual information.

Mayor Lomnicki said this is a difficult decision and comes down to Applicant's comments about individual rights and neighborhood perception of livability issues. The neighborhood does not have protection at this time. He urged neighbors to explore the possibility of becoming a historic district. If there are to be restrictions, those interested in buying property must know about them. Extra-large lots are valuable to the City, but the developer has the right within the rules of the City. He said he believed the Applicant's strongest argument was that the house is not significantly changing the character of the neighborhood; there will be little visual impact on the neighborhood. There will be impact on the adjacent property owners, but the Applicant will meet setback standards of an R-7 zone. The testimony in opposition reflected the residents' desire to preserve their area. He said he believed the Applicant had the right to do what he is doing. Zoning Ordinances maintain neighborhood livability by upholding the standards. **Mayor Lomnicki** said he agreed with the Planning Commission's denial of the appeal. He added that the Planning Commission had done an excellent job in reviewing these matters.

Councilmember Schreiber said the conclusions do not indicate that a fence was around the property.

Mayor Lomnicki said the fence seems to be an issue between the Applicant and the neighbors.

Councilmember Farley said he was concerned about the neighbor's hedge and fence. **Bartlett** said according to variance conclusion #4, the Applicant was required to construct a six foot sight obscuring fence around the perimeter of the flat lot and along the west boundary of the access strip. If there is to be fencing along the east side, the Fire Marshal would have to approve it.

Councilmember Kappa asked if 60 feet was the minimum frontage. **Bartlett** said 60 feet was the minimum, and the Applicant was asking for 57 feet.

Mayor Lomnicki said this percent variance is allowed at an administrative level. A lot width variance of 5% and seems like a very minute change.

Councilmember Schreiber said the 25% driveway variance seemed substantial, but City Council has already adopted an Ordinance allowing a 15 foot driveway which has not gone into effect yet.

Ramis said it would be useful to take a vote on a tentative decision and set adoption of findings and conclusions for the August 16 meeting. This will become a Notice of Decision and be appealable to LUBA.

It was moved by Mayor Lomnicki and seconded by Councilmember Knudson to uphold the Planning Commission denial of the appeal based upon City Council discussion and the findings and conclusion in the staff report. Councilmember Schreiber said she would like the motion amended to reflect that City Council would review the document at the next meeting to determine if the criteria discussed were accurately reflected.

It was moved by Mayor Lomnicki and seconded by Councilmember Knudson to amend the motion by adding that staff was directed to prepare findings and conclusions supporting the denial of the appeal and consider these at the August 16, 1994, meeting. Councilmember Kappa asked why not approve it completely at this time. Ramis recommended that City Council vote once in a tentative manner in order to prepare the findings in a final form for the final decision. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Mayor Lomnicki suggested that a historic review be initiated. It seems that the neighbors are concerned and that the area might need an overlay so that those buying property in the neighborhood will know how they will be directly impacted.

Mayor Lomnicki and **Councilmember Schreiber** discussed the possibility of property owners putting in streets rather than creating flag lots.

It was moved by Mayor Lomnicki and seconded by Councilmember Schreiber to direct, Planning Commission, Historic Review Commission, and staff to look into a special historic district in the neighborhood east of 32nd Avenue. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Suspension of City Council Rules

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to suspend City Council rules and extend the regular session beyond 11:00 p.m. Motion passed 4 - 1 with the following vote: Mayor Lomnicki, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; Councilmember Farley nay; no abstentions.

Utility Franchise Fee - Ordinance

Mayor Lomnicki called the public hearing to consider the Utility Franchise Fee to order at 10:20 p.m.

Mayor Lomnicki said the purpose of the hearing was to consider a proposed Ordinance that would impose an eight percent franchise fee on the City's Water and Sewer Funds to maintain funding for street maintenance.

Staff Report: Tim Corbett, Public Works Director, presented the staff report in which the City Council was requested to consider an Ordinance to establish franchise fees to be charged to the Sewer and Water Utilities with revenues being transferred to the State Gas Tax Fund. This would help fund street cuts. This was the last fiscal year in which staff was authorized to transfer funds from Water and Sewer as a repayment for street cuts.

Councilmember Farley asked if this meant that each household in the City would see an increase on their utility bill. Corbett said this is not an additional charge. This is a continuation of the current cost of service study.

Correspondence: There was no additional correspondence that was not included in the agenda materials.

Audience Testimony: Anne Smith, Citizens Utility Advisory Commission (CUAC) Chair, spoke in support of the Franchise Utility Fee as a temporary measure and implemented if: (1) it can be substantiated on a cost of service basis; (2) any development subsidies are eliminated; and (3) the City assesses its practices on other franchise fees to determine if any portion should be allocated to the Street Fund. This recommendation passed with a 5 - 0 vote on July 27, 1994.

Staff Comments: None.

Questions of Clarification: **Councilmember Kappa** said so you want to be sure that the money coming in goes directly to the Street Fund. **Bartlett** said the cost of service study will determine if the costs are allocated properly and if the fees are equal to the expense. **Corbett** said our current fee for hook up does not pay the full cost of the service.

Mayor Lomnicki said the 8% franchise fee will generate about half of what is needed.

Councilmember Farley asked if this increase would be seen on the utility bills. **Corbett** said the cost of service study took this into account when the increases were calculated.

Councilmember Kappa asked if there would be a dramatic increase to the water and sewer bills to cover this franchise fee. **Corbett** said if the City Council decides not to implement the franchise fee, it will have to consider direct charges. This fee was taken into account in the cost of service study.

Councilmember Kappa asked if this action could be challenged. **Ramis** said there is no established case law. Portland has specific language in its Charter to do this, and Salem has general language. The maximum protection would be to put something in the Charter.

Councilmember Kappa said he was concerned with public perception. **Ramis** said other jurisdictions are taking similar action, and there is a rationale.

Mayor Lomnicki said street maintenance is very important to the City, and City Council is looking for a legitimate way to fund it.

Close Hearing: **Mayor Lomnicki** closed the public testimony portion of the hearing at 10:37 p.m.

Discussion among Councilors and Decision: It was moved by **Councilmember Schreiber** and seconded by **Councilmember Kappa** to read the Ordinance imposing a franchise fee on the water and sewer public utilities operating within the City of Milwaukie for the first time by title only.

Councilmember Kappa said he would like to make sure the recommendations of the CUAC were part of the Ordinance. **Bartlett** said this would not be appropriate because the Ordinance will be codified. There will be the ability to review the Cost of Service Study and to look into existing laws. **Mayor Lomnicki** said he wanted to be sure that it was staff knowledge that there was a CUAC recommendation. **Corbett** said there would probably be a review after staff looks at the pavement network.

Motion passed 5 - 0 with the following vote: **Mayor Lomnicki, Councilmember Farley, 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 Schreiber and seconded by Councilmember Kappa to read the Ordinance imposing a franchise fee on the water and sewer public utilities operating within the City of Milwaukie for the second time by title only. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, 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 Schreiber and seconded by Councilmember Kappa to adopt the Ordinance imposing a franchise fee on the water and sewer public utilities operating within the City of Milwaukie. Motion passed 4 - 1 with the following vote: Mayor Lomnicki, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; Councilmember Farley nay; no abstentions.

ORDINANCE NO. 1770:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, IMPOSING A FRANCHISE FEE ON THE WATER AND SEWER PUBLIC UTILITIES OPERATING WITHIN THE CITY, CLASSIFYING THE FRANCHISE FEE NOT SUBJECT TO THE PROPERTY TAX LIMITATIONS OF ARTICLE XI, SECTION 11(B) OF THE OREGON CONSTITUTION AND DECLARING AN EMERGENCY.

AUDIENCE PARTICIPATION

Jim Backenstos, 3626 SE Harrison, spoke regarding Buck Ambulance, his work with DEQ on a discharge into Johnson Creek, and an anonymous letter addressing employee concerns.

Mayor Lomnicki said it was City Council policy not to respond to anonymous letters. City Council is aware of this letter, and the City Manager is preparing a response.

Backenstos said he was very concerned about some of the statements, and it is best to respond to the issues. He added that he continued to be concerned with the cost of consultants and studies.

Greg Drechsler, City Engineer, discussed the events at the Johnson Creek pump station. The main pump, backup pump, and alarm system all failed. The discharge, estimated at about 100,000 gallons, lasted about 24 hours.

Councilmember Schreiber asked if there was usually a daily visual inspection. Drechsler said there was, but not during the weekend. He said he believed it was most important to determine what can be done so the system does not fail again. Records indicate that this was the second discharge in 12 years.

Councilmember Farley asked how often relays are checked. **Drechsler** said they are checked daily, Monday through Friday.

Councilmember Farley asked how they were checked. **Drechsler** said one control can be taken out of service. One pump is more than adequate to serve the station needs.

Councilmember Kappa asked how old the system was. **Drechsler** said the station was installed in 1964. The City is looking at eliminating that station by hooking up to the Lents interceptor.

Backenstos asked what auxiliary backup was used. **Drechsler** said the controls can be battery operated. The City has a mobile generator that can power any station.

Mayor Lomnicki thanked **Backenstos** for being observant and notifying the City and DEQ.

OTHER BUSINESS

Consider Support of South/North General Obligation Bond Measure - Resolution

Maggie Collins, Community Development Director, presented the staff report in which the City Council was requested to consider a Resolution supporting a \$475 million general obligation bond measure for South/North Light Rail construction to go before the voters on the November 1994 ballot. The proposed measure comes about through recommendations from JPACT as a ten-year financing strategy. She discussed the local share and federal funding. She discussed a similar Resolution supporting westside light rail adopted in 1990.

Councilmember Farley asked if this action directly impacted residents in three counties. **Mayor Lomnicki** said the taxpayers in the Tri-Met District within those three counties would be impacted, including Milwaukie residents.

It was moved by **Councilmember Kappa** and seconded by **Councilmember Farley** to adopt the Resolution supporting Tri-Met's proposal to refer a general obligation bond for light rail construction to the voters at the November 1994 General Election. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

RESOLUTION NO. 31-1994:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, IN SUPPORT OF TRI-MET'S PROPOSAL TO REFER TO THE VOTERS A GENERAL OBLIGATION BOND MEASURE TO CONSTRUCT LIGHT RAIL TRANSIT IMPROVEMENTS AT THE NOVEMBER 8, 1994, GENERAL ELECTION.

Consider Acquisition of Antique Fire Engine

Dan Olsen, Fire Chief, presented the staff report in which the City Council was requested to consider authorizing the Fire-Rescue Department to receive a 1937 Seagraves Fire Engine. A private benefactor has offered to purchase the engine for the City. Restoration will take about five to ten years. Donations and volunteer labor will be sought, and firefighters will take it on as a special work project.

Mayor Lomnicki asked if there would be any future budget requests for refurbishing the engine. Olsen said there may be an expense in the vehicle maintenance fund.

It was moved by Councilmember Schreiber and seconded by Councilmember Knudson to authorize the receipt of a 1937 Seagraves Fire Engine into the departmental equipment. 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 Pavement Rehabilitation Master Plan Study Contract

Tim Corbett, Public Works Director, presented the staff report in which the City Council was requested to authorize the City Manager to sign a contract with Pavement Management Systems, Inc. (PMS) in the amount of \$52,200 to develop a Pavement Rehabilitation Master Plan Study. The Consultants have specialized equipment to assess all the streets in the City and can put the information in a data base that can be used in the GIS system.

Councilmember Farley asked if this was something City employees could do. **Corbett** said the City does not own the necessary equipment or software for the project. **Bartlett** said Milwaukie is a small organization that does not have the personnel available. In the long run, it is cheaper to contract with someone who has equipment, trained personnel, and software. The data will be used to help City employees do their daily work.

Councilmember Kappa said the consultant will go out and let us know which streets need maintenance. **Corbett** said the consultant will look at streets that need attention and gather data for transportation planning and budget preparation. He added that the City would be able to work with Clackamas County because they are on the same system.

Councilmember Farley asked if the streets would be categorized. **Corbett** said the data would be used to develop cost figures to help City Council with their policy decisions.

It was moved by Councilmember Kappa and seconded by Councilmember Schreiber to authorize the City Manager to sign a contract with Pavement Management Systems, Inc. (PMS) in the amount of \$52,200 to develop a Pavement Rehabilitation Master Plan Study. 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 Ballot Title for Charter Review - Resolution

Dan Bartlett, City Manager, presented the staff report in which the City Council was requested to consider a Resolution calling for an election amending the Milwaukie City Charter. The action is to adopt a resolution with a ballot title and sets the election date. The ballot title has been tested and approved.

John Siefer, former Civil Service Commission member, said this matter had been worked on for the past eight years and took great consideration of those employees not covered by union contracts. He discussed the Complaint Resolution Process. He said he did not believe any employees would be left out if the Commission was eliminated. An employee may object to a member of the review committee; appeal to City Council; sue the City; and be protected by state and federal laws.

Councilmember Knudson asked how the panel members were appointed. Siefer said there was (a) one nonmanagerial employee for another department; (b) a managerial employee from another department; and (c) a managerial employee from another agency. The employee may select either (a) or (b) and may reject the first selection made by the City Manager for (c).

Bartlett said he was concerned with the implication that management was unfair with employees.

Councilmember Farley said he was concerned with the employee and their ability to hire an attorney if necessary. **Bartlett** said under the Civil Service process, attorneys were hired. The nonunion worker has a more defined process. This type of mechanism ensures that the process is fair and that the employee is heard.

Councilmember Kappa recommended adding "outside the City" to (c), page 28.

Councilmember Knudson asked if these safeguards did not currently exist. **Siefer** said these were not being changed. **Bartlett** said the Civil Service Commission is an additional process in the Charter which most agencies have found attorney oriented. Those few who still have the Civil Service Commission believe it is a new type of court.

Councilmember Farley asked if one man making a decision would work in this instance. **Ramis** said what is proposed here is a different process that does not require lawyers. It is a workable, economical system that could be employed without spending a lot of money.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to adopt the Resolution calling for an election amending the Milwaukie City Charter. Motion passed 3 - 2 with the following vote: Mayor Lomnicki, Councilmember Schreiber, and Councilmember Kappa aye; Councilmember Farley and Councilmember Knudson nay; no abstentions.

RESOLUTION NO. 32-1994:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CALLING FOR A SPECIAL ELECTION TO SUBMIT TO THE QUALIFIED VOTERS OF THE CITY THE QUESTION OF AMENDING THE MILWAUKIE CITY CHARTER.

Consider City Attorney Agreement

Dan Bartlett, City Manager, presented the staff report in which the City Council was requested to consider authorizing the Mayor to sign the revised agreement for City Attorney services. The rate schedule was changed based on charges to other cities.

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to authorize the Mayor to sign a revised agreement for City Attorney services. 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 Commission Appointments

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to appoint Nancy Anderson to the Traffic Safety Commission and Bill Knox to the Parks and Recreation Commission. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Municipal Court Judge Agreement

It was moved by Councilmember Schreiber and seconded by Councilmember Knudson to authorize the Mayor to sign a revised agreement with Ronald Gray for Municipal Court Judge Services. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

CONSENT AGENDA

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to adopt the Consent Agenda with amendments which consisted of the City Council Minutes of July 5, 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

Parks District Update

Councilmember Schreiber discussed City Council review of proposed park rules.

ADJOURNMENT

Mayor Lomnicki adjourned the meeting at 11:50 p.m.

Pat DuVal
Pat DuVal, Recorder/Secretary

