

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
SEPTEMBER 1, 1998**

The one thousand seven hundred and ninety-eighth meeting of the Milwaukie City Council was called to order by Mayor Tomei at 6:00 p.m. in the Milwaukie Public Safety Building Community Meeting Room. The following Councilors were present:

Larry Lancaster
Mary King

Jeff Marshall
Rob Kappa

Also present:

Dan Bartlett,
City Manager
Charlene Richards,
Assistant City Manager
Gary Firestone,
City Attorney
Jim Brink,
Public Works Director
Susan Heiser,
Planning Director

Janet Wright,
Assistant Planner
Paul Roeger,
Civil Engineer
Dave Butcher,
Utility Specialist Trainee
Tara Michie,
Engineering Intern
Travis Kruger,
Engineering Intern

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Proclamation: Women in Construction

Mayor Tomei read a proclamation naming September 7 – 11, 1998, as *Women in Construction Week*. **Sharon Van Horn** was present to discuss the activities of the National Association of Women in Construction.

BOARD AND COMMISSION INTERVIEWS

The Mayor recessed the regular session, and Council interviewed Michael Martin, Rebecca Langdon, Don McCarty, Barbara Cartmill, and Dave Green for various advisory board and commission positions.

After the regular session resumed, **Councilor Kappa** asked that flaglots be discussed in the "Other Business" portion of the agenda.

CONSENT AGENDA

It was moved by Councilor Kappa and seconded by Councilor King to adopt the Consent Agenda that consisted of the City Council minutes of August 17 and 18, 1998. Motion passed unanimously.

AUDIENCE PARTICIPATION

Jean Schreiber, 10753 SE 29th Avenue. She had attended the previous night's Council work session and expressed her concerns with the processes she heard discussed. One concern was voting during work session on issues such as the proposed flaglot moratorium. She believed this was a major issue that would require enough time for input from Milwaukie citizens and Neighborhood District Associations (NDA). Her other concern was the Council's considering a proposal, in this case a flaglot moratorium, contrary to the advise of City staff and City Attorney. She heard the City Council suggest taking a position, and, if it became troublesome, negating it. **Schreiber** considered that poor planning and not the approach she wished her City leadership to take. The Council should consider all the alternatives prior to taking its position and then hold it. She was concerned if this course were pursued, citizens would lose their confidence in the function of City government. She felt strongly that more credibility needed to be developed in government on the hometown City level.

Councilor Marshall appreciated the comments and felt this perception was a result of the Council's televising its work sessions. When Councilors have a general conversation among themselves, people may perceive the Council is making a decision. A work session is time to discuss possibilities. When Council made the decision to televise the work sessions, it recognized the possibility that portions of a conversation could be taken out of context and perceived as a decision.

Councilor Kappa commented that was one of his concerns about the Council's voting during work sessions. He wanted to continue the discussion under "Other Business" at which time he would express his views.

BOARD AND COMMISSION INTERVIEW

Liam McGill was interviewed for a vacancy on the Planning Commission.

PUBLIC HEARING

Willow Street Local Improvement District Assessments – Ordinance

Mayor Tomei called the public hearing on the Willow Street Local Improvement District assessments to order at 7:50 p.m.

The purpose of this hearing was to consider written objections and property owner testimony regarding the spreading the assessments against the benefited properties. On September 2, 1997, the City Council adopted Ordinance 1821 establishing the local improvement district for street, curb, sidewalk, and storm improvements on Willow Street in the Lewelling neighborhood. The project has been completed and the final construction costs tabulated. The proposed ordinance apportions the costs among those benefited properties.

Staff Report: **Brink** presented the staff report. The Willow Street LID was completed at a cost of \$61,752.06. It was previously determined that the benefited property owners would pay 43% of the total cost and the City 57%. The City will pay the full amount of the storm drainage improvements. The scope of work included sidewalk, curb, and street repair. There was no additional information from residents other than what was included in the agenda packet.

Correspondence: None.

Testimony: None.

Staff Comments: None.

Questions from Council: None.

Close Public Testimony: Mayor Tomei closed the public testimony portion of the hearing at 7:55 p.m.

Bartlett referred to Ordinance Section 4 and recommended the interest rate be established at 6% per anum consistent with other LID interests and the amount the City earns on its other investments.

Deliberation and Vote:

It was moved by Councilor Kappa and seconded by Councilor King to read the ordinance apportioning the costs among the benefited properties in the Willow Street Local Improvement District, direct the entry of assessments in the City lien docket and county lien records, and sets the interest rate for delinquent and installment payments for the first time by title only with the addition of 6% in Section 4. Motion passed unanimously. The ordinance was read for the first time by title only.

It was moved by Councilor Kappa and seconded by Councilor King to read the ordinance apportioning the costs among the benefited properties in the Willow Street Local Improvement District, direct the entry of assessments in the City lien docket and county lien records, and sets the interest rate for delinquent and installment payments for the second time by title only with the addition of 6% in Section 4. Motion passed unanimously. The ordinance was read for the second time by title only.

It was moved by Councilor Kappa and seconded by Mayor Tomei to adopt the ordinance apportioning the costs among the benefited properties in the Willow Street Local Improvement District, direct the entry of assessments in the City lien docket and county lien records, and sets the interest rate for delinquent and installment payments with the addition of 6% in Section 4. Motion passed unanimously.

ORDINANCE NO. 1842:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, SPREADING THE ASSESSMENTS AGAINST BENEFITED PROPERTIES IN THE WILLOW STREET LOCAL IMPROVEMENT DISTRICT; DIRECTING THE ENTRY OF THE ASSESSMENTS IN THE CITY LIEN DOCKET AND THE COUNTY LIEN RECORDS; SETTING THE INTEREST RATE FOR DELINQUENT AND INSTALLMENT PAYMENTS; AND ESTABLISHING CONNECTION REQUIREMENTS.

Drefshill Street Local Improvement District Assessments – Ordinance

Mayor Tomei called the public hearing on the Drefshill Street Local Improvement District assessments to order at 7:58 p.m.

The purpose of this hearing was to consider written objections and property owner testimony regarding the spreading of the assessments against the benefited properties. On March 3, 1998, the City Council adopted Ordinance 1828 establishing the local improvement district for sanitary sewer improvements on Drefshill Street in Milwaukie. The project has been completed and the final construction costs tabulated. The proposed ordinance apportions the costs among those benefited properties.

Staff Report: **Roeger** presented the staff report. The project's final cost was \$44,342.14 which was \$4,816 less than estimated. The benefited property owners will pay 75%, and the developer will be responsible for 100% of the improvements. Staff also recommended the City pay \$327 (33%) as an incentive for early connection no later than December 1, 1998. Connection to the

municipal system would be required at the time the property is sold, when the system failed, or within a maximum three-year time period ending September 1, 2001. The fiscal impact was \$44,342.14 from the Sewer Systems Development Charge (SDC) Fund; \$2,943 if all property owners of existing homes took advantage of the early incentive; and \$10,800 if all nine of the existing homes participated in the City financing program.

Councilor Marshall asked if property owners had already been notified of the early incentive date. **Roeger** said three property owners have already connected to the municipal system, and the incentive was discussed at the property owners meetings.

Councilor Kappa asked how long the City had been working on the Willow Street LID project. **Roeger** said in 1989 the property owners had decided not to participate in the LID, but staff began discussions in earnest at the beginning of this year.

Councilor King asked if the City loaned people money to pay their share. **Bartlett** said property owners have the option to sign a finance agreement, and, on a project this size, the City will carry the loan. The property owners make two annual payments at 6% interest. Those who choose the time payment option can take up to ten years to repay it.

Correspondence: None.

Testimony: **Bruce Wollmuth**, 5623 SE Drefshill, Milwaukie. He wanted to put on record that this had been a very good process and thanked Brink, Roeger, and Safayi for being extremely helpful. He had used the finance process, and found it to be easy. He urged the City Council to support the early hook-up incentive for those property owners not qualifying for HUD loans.

Staff Comments: None.

Questions from Council: **Councilor Lancaster** noted the Council did not have a policy on the property owners' share of the cost, and a practical judgement is made based on the circumstances of the project.

Councilor Kappa thought Council might have a discussion on developing such a policy.

Close Public Testimony: **Mayor Tomei** closed the public testimony portion of the hearing at 8:10 p.m.

Deliberation and Vote:

It was moved by Councilor King and seconded by Councilor Kappa to read the ordinance apportioning the costs among the benefited properties in the Drefshill Street Sanitary Sewer Local Improvement District, direct the entry of assessments in the City lien docket and county lien records, and sets the interest rate for delinquent and installment payments for the first time by title only with the addition of 6% in Section 4. Motion passed unanimously. The ordinance was read for the first time by title only.

It was moved by Councilor King and seconded by Councilor Kappa to read the ordinance apportioning the costs among the benefited properties in the Drefshill Street Sanitary Sewer Local Improvement District, direct the entry of assessments in the City lien docket and county lien records, and sets the interest rate for delinquent and installment payments for the second time by title only with the addition of 6% in Section 4. Motion passed unanimously. The ordinance was read for the second time by title only.

It was moved by Councilor Kappa and seconded by Councilor Marshall to adopt the ordinance apportioning the costs among the benefited properties in the Drefshill Street Sanitary Sewer Local Improvement District, direct the entry of assessments in the City lien docket and county lien records, and sets the interest rate for delinquent and installment payments with the addition of 6% in Section 4 Motion passed unanimously.

ORDINANCE NO. 1843:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, SPREADING THE ASSESSMENTS AGAINST BENEFITED PROPERTIES IN THE DREFSHILL STREET SANITARY SEWER LOCAL IMPROVEMENT DISTRICT; DIRECTING THE ENTRY OF THE ASSESSMENTS IN THE CITY LIEN DOCKET AND THE COUNTY LIEN RECORDS; SETTING THE INTEREST RATE FOR DELINQUENT AND INSTALLMENT PAYMENTS; AND ESTABLISHING CONNECTION REQUIREMENTS.

OTHER BUSINESS

Community Development Block Grant Agreement for Handicapped Access Ramp Project

Michie and Kruger presented the staff report. The City Council authorized staff to submit the Sidewalk Ramp Project to the Community Development Block Grant (CDBG) program. The project includes 78 locations and is expected to be complete by March 1999. The fiscal impact was \$13,000 from the Streets Capital Projects with \$47,000 in CDBG funds. Staff recommended the City

Council authorize the City Manager to sign an agreement to construct these ramps.

Kruger explained the ramps were Americans with Disabilities (ADA) improvements for handicapped pedestrians in the City of Milwaukie. The ramp projects began in the downtown core and are reaching out to other parts of the community with a focus on school areas.

Councilor Lancaster said the intent of the project was to comply with ADA. Since the City's pays 20% of the total cost, who controls the project. **Kruger** said Milwaukie Associate Engineer Shelton was the project coordinator, Clackamas County administers the project.

Councilor King asked if there would be a lot of areas in the City that will still need this type of ramp. **Kruger** said this project of 78 ramps will address most of the needs in the City, although there will not be ramps at each corner.

Mayor Tomei added newer sidewalks installed after ADA went into effect require ramps.

Councilor Lancaster noted a reference on page two of the agreement that allowed a 10% credit for in-house engineering services. He asked for clarification of how this affected Milwaukie. **Brink** said the project is being matched to existing curbs, so there is no design work. If the City did provide engineering services, it would get up to a 10% credit that could be applied to additional construction. The City can be flexible in cases like this depending on the staff time available.

Councilor Lancaster noted the City of Milwaukie does the final inspection and asked if there was a deadline for completing these ADA improvements. **Kruger** said the City will do as many locations as possible with the grant funds. According to the agreement, the project is due to be completed by March 1999.

Councilor Lancaster referred to agreement page 4 of 7 regarding the City's bearing the risk of loss and asked if the City bore the full liability for any losses on the project. **Bartlett** said the project is under control of the City and on City property, so the County does take responsibility.

It was moved by Councilor King and seconded by Councilor Kappa to authorize the City Manager to sign a Community Development Block Grant agreement with Clackamas County to construct between 60 – 78 handicapped access ramps in the City of Milwaukie. Motion passed unanimously.

Planning Commission Bylaws

Wright presented the staff report regarding adoption of revised Planning Commission bylaws. The Commission worked with legal counsel and reviewed bylaws from other cities. The proposed revisions reflect the current Oregon Revised Statutes (ORS).

Councilor Kappa referred to Article III.D regarding vacancy and removal. He asked why the Planning Commission felt it was necessary to add the sentence “a member of the Planning Commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.” **Wright** said this language was from the ORS and supercedes any City ordinance.

Firestone said the City Attorney reviewing the bylaws had provided the opinion that this provision was required by state law.

Councilor Kappa referred to Article IV – officers and staff. He asked why the sentences “the chair shall have general supervisory and directional powers over the Commission” and “review Commission agendas with the staff liaison. The chair shall also be an ex officio member of all subcommittees and shall be the sole spokesperson for the Commission unless the responsibility is delegated in writing.” He was concerned in the past the chair has been asked to provide guidance to new members, and this language seemed to take away that responsibility. **Wright** believed the Commission felt it was a more up-to-date statement of what it felt the chair should be doing.

Mayor Tomei felt, having herself been the Planning Commission chair, that it was important for the chair to review the agenda with the staff liaison. She proposed that section of Article IV.B not be stricken, and the other Councilors concurred.

Councilor Kappa felt it was important that the chair have the opportunity to work with new members and the staff liaison.

Mayor Tomei and **Councilor King** noted typographical errors in Article VII.A. and Article III.E, and staff said those would be corrected.

It was moved by Councilor Kappa and seconded by Councilor Marshall to adopt the Planning Commission bylaws with the amendments stated by Council in its discussion. Motion passed unanimously.

Councilor Kappa said, in the past, the Planning Commission shared its work plan with the City Council after the bylaws were adopted. He asked when that meeting would take place.

Bartlett felt the Planning Commission was waiting for final adoption of the City Council goals so it can build its action plan.

Storm Drainage Issues

Mayor Tomei said this was an opportunity for the City Council to gather information and asked those wishing to speak to limit their testimony to 3 – 5 minutes.

Bartlett pointed out a memorandum from the Friends of Kellogg and Mt. Scott Creeks Watershed. This is a code enforcement case, and Planning and Public Works had provided a memo regarding the site. It is on Mt. Scott Creek north of Hwy. 224, west of Rusk Road, and south of Weiko Way. It is an area that has flooded. Staff was at the site the week of August 10 in response to a citizen complaint. The property owner was issued stop work orders in 1996 and 1997; however, the person resumed construction. Tort claim notices were issued to both the City of Milwaukie and Clackamas County in February, so certain discussions would have to be held in executive session with legal counsel.. He believed the City Council could discuss the incident. Community Development has sent a letter to property owner Steinman issuing a stop work order and requiring him to come to the Johnson Creek facility and begin the permit process. He has not responded to date.

All members of Council stated they had been contacted by property owners.

Bartlett suggested the City Council take public comment and enter it into the record as part of the enforcement action. He reviewed the City's code enforcement procedures.

Steve Berliner, Board Member and Director, Friends of Mt. Scott and Kellogg Creeks, PO Box 22373, Milwaukie, OR 97269. He wanted the history of the issue before the City Council because it is a very serious matter. The tremendous dike and levy were illegally constructed without good engineering and plans. There were some serious deficiencies that, he felt, did not reflect well on the City to the citizens and the public at large. He referred to the chronology of events. After the February 1997 tort claim was filed against the City, all compliance action seemed to end. It appears the City allowed the illegal construction that took place between February 1997 and August 1998. Staff and enforcement officers came back to the site only after repeated outcries from the neighbors. It sounded as if Bartlett had outlined the correct due process, and he urged the Council to make things right with the community and citizens.

From his five years' of advocacy experience, Berliner did not feel any legitimate developer would put up this type of structure in a water controlled facility. It would not pass muster with permit authorities. Tons of fill were brought in, and

tons of concrete slabs were erected without being anchored. Other deficiencies were: no wetlands delineation; no evaluation of existing FEMA or current updated flood elevation; no grading permit; no erosion control plan; no surface water detention in conjunction with the development; no landscape or re-vegetation plan; no development permit including development in a floodplain; no mitigation plan of any type; no in stream work permits; no environmental impact statement; no DEQ water quality assessment or project approval applications; and no compliance or respect for natural resource sensitive zones or restrictions.

Many of these items would have allowed for public review and comment had they been pursued correctly. All would have proceeded in an orderly fashion if Steinman had been held to the proper process. After following due process, all of the components not in compliance with federal, state, and local regulations would, in all likelihood, have to be removed. He regretted the removal being done at taxpayers' expense and noted it would have to take place under proper supervision.

Bev Neal, 4119 SE Northridge Drive; owner of the property at 13033 SE Rusk Road, Milwaukie. She provided photographs taken from the Century 21 parking lot. She cautioned Steinman against purchasing the property because of the area's flooding history and showed him 1996 photos of the property under water. Steinman laughed off the potential and mentioned building a structure, and Neal had told him he could not do that in a floodplain. He purchased the property and proceeded to remodel the house, and it was flooded in November 1996. In December 1996, Neal called the City complaining about the fill Steinman was hauling in to build a huge berm. The City issued stop work orders, but the work never really stopped. She was concerned the concrete slabs could be washed out by high water, catch on the bridge, and cause more flooding. Steinman must know what he is doing is not right, because he continues to do work on week ends at night. Neal understood the City needed to follow the rules but urged some action be taken before the rainy season started.

Tony King and **Bobbie Bonner**, 12951 SE Rusk Road. King moved to his property in August 1996, and, since it was not disclosed, he found out about flooding the hard way. Steinman, on the other hand, was aware of the flooding potential when he purchased the property. He does not live on the property and only bought it as an investment. Steinman is jeopardizing all of the other families and homes for his profit and gain. King understood he was operating a business and questioned if he had a license. In the 1996 flood, King had three feet of water around his property. When the water starts rising and leaving the creek, it is the area between his and Steinman's property that floods first. In extreme cases, the barricade Steinman built will cause the water to rise higher than normal. Something needs to happen as soon as possible. The dike has been there for a year, and nothing has happened. The fill will be washed down the creek, and the barricade could damage the bridge and highway. He urged Councilors to visit the site.

Bonner thanked King for visiting the site and touring the area. Steinman has an easement to use the road, and he totally destroyed Bunn's property by raising the level by about eight inches. There is no more grass, only gravel. Steinman asked Bunn if he could build a small speed bump to slow traffic, and she agreed. He put in ten large concrete slabs and put dirt over them. He did this as soon as she (Bonner) left for the day. The height of the concrete slabs prevented Bunn from opening her gate.

King said the yard was raised at least four inches. **Bonner** added that any fill dirt used in a floodplain must come from another floodplain to prevent contamination.

Councilor Marshall asked if the concrete slabs were engineered or just randomly collected from construction sites. **King** said Steinman had confided to him that these slabs were used for railroad crossings and engineered for that purpose. There have been a lot of calls to the media and Ron Wyden's office regarding this problem. What is taking place at this meeting is setting a precedent for all creeks in the area. The newspapers and the media are interested in any failure of action on a stop work order.

Councilor Kappa asked King what he thought would happen if the structure stayed in place when the rainy season began. **King** said his property would flood, and he would suffer thousands of dollars of damage.

William T. Wilson III, 13001 SE Rusk Road, Milwaukie, 97222. He purchased his property in February 1987, and in the past eleven years he has been completely flooded around his house. Steinman's dike will cause flooding under and into his house because the water will have no place to go. What right did Steinman have to continue construction after the stop work orders were posted? He asked why the City could not simply have the dike removed since so many families could be impacted. On August 10, 1998, he called the Corps of Engineers, State Land Division, Brink, and Butcher. They met at his house to discuss the problem. Another meeting was to have been scheduled to discuss the solution, but Wilson was never contacted. He knew the City Council would have to give the residents a hand if that dike is not removed. The other property owners and residents could sue Steinman, but it would do no good if he did not have the money.

Councilor Lancaster understood Bartlett to say even though time is of the essence, the City's actions are constrained by statutory time frames. The City can cite on the case in order to establish a court date. He suggested City Council and staff meet in executive session with the City Attorney.

Bill Yoakum, 12992 SE Rusk Road, Milwaukie, 97222. He has lived in his home since 1979. His major concern was the construction materials blocking the creek and bridge during the rainy season. Something could hit the pillars and crack the bridge. All of the residents have lived there for a long time, and no one has ever done anything so potentially damaging to another neighbor. Clackamas County is working on a detention project upstream that is supposed to make Mt. Scott controllable, but the project will not be completed this year. He felt what Steinman had done would create a tremendous problem for all the neighbors, and he urged the City take action as soon as possible.

Mayor Tomei asked Yoakum to comment on the difference between the floods of February and November 1996. **Yoakum** said the November flood was a sudden downpour and was much worse for that area. His property has not flooded since 1981. What Steinman has done will create a serious problem.

Berliner added the February 1996 flood was a result of a quick snow melt throughout the Cascades.

Mayor Tomei felt this was an extremely serious issue and appreciated the neighbors' comments. The City Council would discuss this in executive session after the regular session adjourned because of pending litigation.

Judy Bunn, 6690 SE May Street, co-owner with her mother of the property next to King. Her property was severely damaged, and Steinman has not ventured to do anything. She was the person who stopped him. He told her he was going to put in a speed bump, but it was more like a bridge. Once there was grass, but now there is only sand, gravel, dirt, and mud. She told Steinman he needed a permit and to get an agreement with the neighbors and engineers. Steinman said if he did the work on the sly, no one would know, and he claimed an engineer friend had told him he had the right to do it. Both she and her mother are disabled, so they would have to hire someone to clean up their property. When she went on Steinman's property and saw what he had done, she told him he had to stop. If the water flows onto King's property, he had the right to sue her. Steinman knew what he had done with no consideration to the neighbors, and then he went on vacation.

Neal pointed out a photo that would show that the back of the property had been raised about eighteen inches.

Bonner said Steinman was due to return from vacation the next day.

It was moved by Councilor Marshall and seconded by Councilor King to adjourn the regular session and go into executive session.

Councilor Kappa agreed this was a serious issue, but he objected to ending the meeting without discussing flaglots.

Councilor King suggested the flaglot issue be discussed at the next City Council meeting.

Councilor Lancaster wanted to make some comments on the flaglot issue.

Mayor Tomei called for the question.

The motion to adjourn the meeting passed 3 – 2 with the following vote: Mayor Tomei, Councilor King, and Councilor Marshall aye; Councilor Kappa and Councilor Lancaster nay; no abstentions.

ADJOURNMENT

Mayor Tomei announced the City Council would meet in executive session to consult with legal counsel. The regular session was adjourned at 9:22 p.m.

Pat DuVal, Recorder