

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MARCH 16, 1999**

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

Rob Kappa
Mary King

Larry Lancaster
Jeff Marshall

Also present:

Dan Bartlett,
City Manager
Gary Firestone,
City Attorney

Charlene Richards,
Assistant City Manager

Martha Bennett,
Assistant City Manager

John Gessner,
Associate Planner

Jim Brink,
Public Works Director

CONSENT AGENDA

It was moved by Councilor King and seconded by Councilor Marshall to adopt the Consent Agenda that consisted of:

- 1. City Council minutes of February 24 and March 1 & 2, 1999; and**
- 2. OLCC Application for 7-11 Store, 6303 SE Harmony Rd.**

Motion passed unanimously.

AUDIENCE PARTICIPATION

Linda Hatlelid, 8617 SE 36th, addressed the Council regarding her concerns with Johnson Creek Blvd. improvements. She was opposed to the Phase 3 improvements between 36th and 45th Avenues because they would expand the existing right-of-way from 40 to 45 feet. Speeders would only be encouraged by wider travel lanes, and drivers would also use the bike lanes. She was told by Maggie Collins, former Milwaukie Community Development Director, and Mulvey Johnson, City of Portland, that measures would be taken to calm traffic, but nothing has happened. Drivers are not ticketed until speeds exceed the posted limit by 11 mph.

Hatlelid was also concerned that all on-street parking between 32nd and 45th Avenues would be eliminated. Why must Johnson Creek Blvd. have bike lanes that go nowhere? She was also very concerned with what would happen to established trees lining the street. She collected signatures of 241 residents confirming their desire to keep any road improvements on Johnson Creek Blvd. between 36th and 45th Avenues within the existing right-of-way.

Staff will respond to these issues and make copies of Hatlelid's documents for the Mayor and Council.

Richard Cayo, 4203 SE Johnson Creek Blvd., commented, that after watching the March 10 Council work session, he hoped the visions would become reality. He was concerned, however, that citizens seemed to be pitted against civil servants. He discussed a recent Ardenwald Neighborhood District Association (NDA) meeting at which staff requested that citizens sign a form agreeing that Johnson Creek Blvd. needed to be widened. **Cayo** discussed the \$4 monthly storm water charge from which few people saw any tangible improvements.

Cayo outlined his proposal for a waterfront aircraft museum. He was willing to loan the City two of his planes to get the project going. He felt it would be a big attraction to out-of-town visitors. The City and its residents need something in which they can take some pride and find a reason to get involved.

Mayor Tomei suggested that Cayo present his ideas at upcoming Riverfront Board meetings.

Dale Potts, 12177 SE Grove Loop, Milwaukie. He has often been critical of the City Council, but he felt they had done something right in its rejection of a new bridge in Milwaukie.

PUBLIC HEARING

Planning Commission Recommendation of Functional Plan Compliance Amendments (CPA-98-05, ZA-98-02) and Elective Zoning Amendments (ZA-98-03)

Mayor Tomei opened the public hearing at 6:20 p.m. and continued it to a date certain on April 6, 1999, at 6:00 p.m.

Appeal Planning commission Decision on Minor Land Patition File No. MLP-98-07, Richard Kassebaum, 5005 SE Park Street

Mayor Tomei called the public hearing to order at 6:21 p.m.

The purpose of the hearing was to consider the appeal of the Milwaukie Planning Commission's approval of application MLP-98-07. This appeal was made by the Interim Planning Director. The appellant requested that condition of approval No. 6, requiring a deed restriction to limit the height of the subsequent house on the new parcel to one story be deleted. The applicable standards to be considered are Zoning Ordinance, Section 301,R-7 -- Residential, and Section 1011.3 -- Minor Quasi-Judicial review, and the Subdivision Ordinance, Title 17 of the Milwaukie Municipal Code.

Mayor Tomei reviewed the order of business. The appellant had the burden of proving that the Planning Commission erred in its February 23, 1999, decision in the particulars they allege. She outlined the conduct of the hearing.

Conflicts of Interest: **Councilor Kappa** had visited the site. There were no ex-parte contacts or potential conflicts of interest and no challenges to any Councilmember's impartiality or ability to participate in the decision.

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

Staff Presentation: **Gessner** presented the staff report. Staff represented an appeal by the Interim Planning Director to remove the Planning Commission's condition of approval requiring a deed restriction on parcel 2 of Application MLP-98-07 that would limit future development to a one-story structure. This condition was imposed outside the Commission's legal jurisdiction. He referred to staff report page V.B.9 and indicated that some of the marks were made on the drawing by staff and had no relevance to the plan or the application.

Correspondence: Firestone received a fax from Kassebaum's attorney Wendie Kellington, Schwabe, Williamson & Wyatt. He read the March 9, 1999, letter into the record which addressed issues outside the scope of the appeal itself and commented on the alteration of the sketch as Gessner had pointed out in his presentation.

Gessner said staff does not believe it has code authority to impose this condition and recommended Council uphold the appeal.

Testimony in Support of Appeal: **Richard Kassebaum**, 18370 S. Matthew Court, Oregon City. He told the Council he had never agreed to the deed restriction and did not have an opportunity to comment at the Planning Commission hearing. There is no legal authority for this deed restriction, and he requested that it be deleted.

Wendie Kellington, Attorney representing Kassebaum, Schwabe, Williamson & Wyatt, 1211 SW Sixth Avenue, Portland 97204. She submitted a packet of material for the City Council record.

Firestone discussed the material being submitted and advised the Council to accept it with the proviso that only those portions relating to the issue would be accepted.

Mayor Tomei with concurrence of the Council accepted the material and only those portions relevant to the appeal.

Kellington supported the staff recommendation based on state law and provisions.

Testimony of those Opposed to the Appeal: None.

Neutral Testimony: **David Aschenbrenner** 11505 SE Home Avenue, Hector Campbell Neighborhood District Association (NDA). The Association was not opposed to removing this condition, and he hoped the neighborhood could work with the developer on a one-story structure. In response to Councilor Marshall's question, he said he believed most of the houses surrounding the site were one-story.

Questions from City Council to Staff: **Councilor Kappa** asked for clarification if all the other conditions would remain. **Firestone** responded the modification would include removal of one condition and a review of the deed restrictions to confirm they fit with City standards.

Councilor Kappa asked if the other conditions were out of the ordinary. **Gessner** responded that Council adopted regulations in November for these types of restrictions and protections.

Close Public Hearing: **Mayor Tomei** closed the public testimony portion of the hearing at 6:40 p.m.

Discussion and Decision by Council: **It was moved by Councilor Marshall and seconded by Councilor King to grant the appeal of the Interim Planning Director and modify the decision of the Planning Commission by deleting condition of approval number 6 as imposed by the Planning Commission and replacing it with condition number 6 as proposed by staff in the memorandum dated March 4, 1999. Motion passed unanimously.**

OTHER BUSINESS

Building Permit Review (Short) Fee -- Resolution

M. Bennett presented the staff report in which the City Council was requested to adopt a resolution to recreate a fee that was inadvertently omitted from the recently adopted fee resolution, No. 12-1999. The review for which this fee is charged complies with the Comprehensive Plan and involves little staff time.

Councilor Marshall asked how long the process took. **Gessner** responded that type of review normally takes about two hours. **Bartlett** added that the fee resolution is based on 60% recovery.

The group discussed the cost of service study proposed for fiscal year 1999 - 2000.

It was moved by Councilor King and seconded by Councilor Kappa to adopt the resolution setting the building permit (short) fee. Motion passed unanimously.

RESOLUTION NO. 15-1999:

A RESOLUTION OF THE CITY OF MILWAUKIE, OREGON, SETTING THE BUILDING PERMIT (SHORT) FEE AND CLASSIFYING THE FEE IMPOSED BY THIS RESOLUTION AS NOT SUBJECT TO ARTICLE XI, SECTION 11B OF THE OREGON CONSTITUTION.

Contract for Temporary Services -- On-Site Commercial and Environmental

Richards provided the staff report in which the City Council was requested to authorize the City Manager to sign a blanket purchase order not to exceed \$35,772.07 with On-Site Commercial and not to exceed \$29,137.38 with On-Site Environmental. She discussed the projects for which the Public Works Divisions had requested temporary employees.

Several departments used On-Site to fill temporary needs, and the amount paid had exceeded the City Manager's authority. She discussed the types of positions and circumstances, such as extended employee leaves and short-term projects, under which temporary employees were hired. Staff will be responsible for tracking this type of contract closely in the future.

Councilor Marshall asked if the salary of an employee on extended leave covered the cost of a contract worker, and **Bartlett** replied the money in personnel services would offset the material and services expenditures.

Councilor Lancaster asked if a contract employee costs less than a regular employee, and **Richards** said that was correct.

Councilor Kappa commented this issue seemed to be a matter of signature authority and saw hiring temporary employees as an administrative issue. He suggested reviewing the City Manager's maximum signature authority.

Bartlett recommended looking at the limits after this legislative session.

Councilor Lancaster asked if there was a review of these contractors, and **Richards** said departments evaluate and make determinations based on the type of technical expertise needed.

Councilor King asked if those projects for which Public Works wished to hire temporary employees would benefit the City as a whole, and **Richards** said these temporary employees would work on projects linked to City Council goals.

It was moved by Councilor Kappa and seconded by Councilor King to authorize the City Manager to sign a blanket purchase order not to exceed \$35,772.07 with On-Site Commercial and not to exceed \$29,137.38 with On-Site Environmental. Motion passed unanimously.

Metro Correspondence

Mayor Tomei read a letter from Mike Burton recognizing Richards for her participation on the Greenspaces Technical Advisory Committee.

City Newsletter

Councilors Marshall, Lancaster, and Kappa reported on the public's response to shortening *The Pilot* from eight to four pages during June, July, and August. They felt the newsletter was a step in the right direction to improving communications with residents and should not be shortened. Some felt the publication could fill a void between the *Oregonian South Metro* and the new *Review* format. Several Neighborhood District Associations felt the newsletter was instrumental in increasing monthly meeting attendance.

Councilor King had supported reducing the number of pages to save money; however, if the Budget Committee agreed there was enough money, she would readily agree to keeping the eight-page format.

Mayor Tomei had not heard any comments about the proposed four-page, three-month trial period.

The group agreed to keep the publication at eight pages and evaluate the format after one year. They discussed the feasibility of a "letters to the editor" section.

Information

1. **Bartlett** provided talking points for Metro's Priorities 2000 meetings.
2. **Mayor Tomei** announced the upcoming Tri-Met Listening Post meeting.
3. **Bartlett** announced the Council Goal Setting session on Saturday, March 20, from 9:00 a.m. to noon in the Community Meeting Room.

ADJOURNMENT

It was moved by Councilor Marshall second by Councilor King to adjourn the meeting. Motion passed unanimously.

Mayor Tomei adjourned the meeting at 7:15 p.m.

Pat DuVal, Recorder