

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
MAY 2, 2000**

**Call to Order**

The one thousand eight hundred and thirty-eighth meeting of the Milwaukie City Council was called to order by Mayor Tomei at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Jeff Marshall  
Mary King

Larry Lancaster  
Brian Newman

Also present:

Dan Bartlett,  
City Manager

Tim Ramis,  
City Attorney  
Charlene Richards,  
Assistant City Manager

Martha Bennett,  
Assistant City Manager

JoAnn Herrigel,  
Program Specialist

**PLEDGE OF ALLEGIANCE**

**CONSENT AGENDA**

**It was moved by Councilor King and seconded by Councilor Marshall to adopt the Consent Agenda that consisted of the City Council minutes of April 15, 17, and 19, 2000. Motion passed unanimously.**

**AUDIENCE PARTICIPATION**

**Richard Cayo**, 4203 Johnson Creek Boulevard. He spoke regarding the City Council comments made at the end of the April 18, 2000, meeting. He read his December 14, 1998, letter to the Council offering his plans for a waterfront antique airplane museum. He will continue reading documentation of his offer and the City's response at a subsequent meeting.

**Ron Gray** urged people to not only vote in the May 2000 Primary election but also to vote for all of the positions so the person elected would be the true representative.

**PUBLIC HEARING**

**Junior High Property Purchase -- Resolution**

**Mayor Tomei** called the public hearing on the resolution of necessity to acquire land for public purposes to order at 6:12 p.m.

The purpose of the hearing was to consider public comment on the City's proposed purchase of the Milwaukie Jr. High School property. She reviewed the conduct of the hearing.

**Staff Report:** **Bartlett** presented the staff report in which the City Council was requested to consider adopting a resolution establishing the City's need to purchase the Milwaukie Jr. High School property for public purposes. He explained that the School Board had postponed the move to Rowe Middle School for one year, so the entire process was slowed. The City could not occupy the building until 2002.

The proposed resolution rescinded resolution 39-1997 and established a new authority under which the property would be purchased. If the property were sold in the future, earnings from sale would have to go toward other parks purposes.

**Bartlett** said there would probably be several committees formed around the project including both building and grounds uses. He reviewed the timelines and potential funding sources.

**Councilor Lancaster** asked, if a future Council decided there was a higher and better use for part of the site, would the portion sold have to be replaced with an equivalent space and would there any specificity.

**Bartlett** responded that any indebtedness would have to be retired first. The governing body at the time would have to determine either how the funds were spent or to set them aside in an acquisition fund.

**Councilor Marshall** asked if there would be a public hearing process if a future Council wanted to do something else with the Jr. High property.

**Ramis** said public hearings are required both to declare a public property surplus and to sell it. The public would have several opportunities to provide input.

**Councilor King** believed that everything possible was being done to preserve and safeguard the property in the future.

Correspondence: None.

Audience Testimony: **Sally Collins**, Kids First, thanked Mayor Tomei and Councilor King for attending the Kids First Town Hall on April 30. She believed it was time for problem resolution and planning. She was encouraged that fourteen people had signed up through Kids First to be on a citizen task force. She was concerned that state statute might preclude a commercial outlet in the building.

**Ramis** said that would depend on the degree and intensity of the commercial use. A purely commercial venture, for example, would be prohibited. Businesses that were accessory to the overall public use would be permissible. The test would be to determine if it supported the parks purpose.

**Collins** asked if part of the property could be used as a commuter rail station.

**Ramis** responded that, if that was what the community wanted, it could go through the public hearing process and declare that portion of the property surplus. The proceeds from the sale could then be used for recreation purposes.

**Collins** asked if the language in the resolution having to do with condemnation would offend the School District.

**Ramis** explained that the City is required to declare its intent to purchase property and under what authority it will do so. The resolution states the parameters under which the property is being acquired, and in this case it would be limited to parks purposes.

Questions of Clarification: **Councilor Marshall** asked if there were any covenants or deed restrictions on the City Hall property.

**Bartlett** responded that City Hall is a conditional use. A prior school board had restricted the use to a central city park. Deed records tend to show that there was an exchange of parcels, and both the Jr. High and City Hall buildings were WPA projects. At that time, 21<sup>st</sup> Avenue was not a through street, so it was one continuous parcel.

**Councilor Marshall** wanted to keep the option open of consolidating city services at the Jr. High. He was not convinced that twelve or so tenants would be the best use.

**Bartlett** said the use of the property after it is acquired is a Council policy decision.

**Councilor King** thought the citizens sent a clear message that relocating city services to the Jr. High site was not their preference.

**Councilor Newman** asked if concessionaires would be precluded.

**Ramis** said not as long as they were an accessory use and hours of operation coincided with events.

**Bartlett** added another general test could be a comparison to those types of uses in state or federal parks.

Close Public Testimony: **Mayor Tomei** closed the public hearing at 6:35 p.m.

Discussion among Councilmembers and Decision:

**Mayor Tomei** read the resolution in its entirety for the benefit of the public.

**It was moved by Councilor Newman and seconded by Councilor King to adopt the resolution establishing the City's need to purchase the Milwaukie Jr. High School property for public purposes. Motion passed unanimously.**

**RESOLUTION NO. 13-2000:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DECLARING THE NEED TO ACQUIRE PROPERTY FOR THE PURPOSE OF ESTABLISHING OR ENLARGING PUBLIC RECREATION AND ACCOMMODATION FACILITIES INCLUDING PARKS, PUBLIC SQUARES, PLAYGROUNDS, OR COMFORT STATIONS.**

**OTHER BUSINESS**

**Intergovernmental Agreement with Metro for South Corridor Study**

**This item was pulled from the agenda because the intergovernmental agreement was not ready for consideration**

**Request for Additional Marking on Johnson Creek Boulevard**

**Bennett** presented the staff report seeking Council direction on Linda Hatlelid's request for additional right-of-way marking on Johnson Creek Boulevard. Hatlelid feels the marking so far does not sufficiently identify the existing right-of-way. At Milwaukie's request, the City of Portland sent survey crews in October, December, and February. The staff report contained photos of the "old" and "new" right-of-way markings. Few additional acquisitions would be needed on the north side of the street, and there are still tree-related issues. When ODOT goes out to purchase property this fall, it will do marking at that time.

**Councilor Lancaster** asked if all of the property owners had been notified of the marking.

**Bennett** replied that property owners were not re-notified of the second survey.

**Councilor Lancaster** asked if one could reasonably assume that all of the property owners had a chance to see where the stakes were.

**Bennett** said she believed so and added that there were no calls when the north side was marked.

**Councilor Marshall** asked when the construction project would start.

**Bennett** said funding will be available for construction in summer 2002.

**Councilor Newman** asked when right-of-way acquisition was planned.

**Bennett** said negotiations are scheduled to begin with property owners as soon as possible.

**Councilor King** asked how much the City had already spent on re-surveying.

**Bennett** said the second staking in February was \$2,000.

**Linda Hatlelid** said the existing 40-foot and proposed 44-foot rights-of-way marking on both sides of Johnson Creek Boulevard have not been done. The first marking in October 1999 was only on the south side of the street and did not clearly define the properties. She discussed the discrepancies between the 1917 and 1924 plat maps. The February 2000 marking was also incomplete. The photos Bennett provided did not adequately represent the neighborhoods concerns and tended to be misleading. Still, some of the properties have never been marked. She asked what the labels "4M Offset" on some of the stakes meant.

**Hatlelid** said neighborhood frustrations have increased over the past ten years. She has gone through all of the normal channels and still not gotten her questions answered. She wanted someone to go to each property owner and explain just what the 40- and 44-foot rights-of-way and the 1917 and 1924 plots meant.

**Bennett** was not sure what the surveyors were trying to communicate by "4M Offset" but said she would check with Portland. She explained she had a total of seventy photos and chose those which she felt were most representative.

**Councilor Newman** asked if affected property owners had gotten maps of the project.

**Bennett** said maps and brochures explaining the right-of-way acquisition process were mailed to affected property owners.

**Councilor Lancaster** asked if the City had any control over the conflicting surveys.

**Bennett** responded there are five affected parcels, and conflicting survey issues needed to be resolved at the County level.

**Councilor King** suggested the City Council sign a letter to Clackamas County insisting that the issue be clarified.

**Councilor Newman** asked if staff had a recommendation.

**Bennett** believed staff had already acted, and it will ask Portland for another survey if City Council so directs.

**Councilor King** asked, hypothetically, what she would get if she called Public Works to find out how her property was impacted by the project.

**Bennett** responded that staff would send her a map.

**Councilor King** suggested a second mailing of the map and brochure.

**Councilor Marshall** commented that if he were a property owner on Johnson Creek Boulevard and there were conflicting surveys, he would get an attorney. As far as he was concerned, the City has spent enough money up to this point. He requested a future work session with ODOT and City of Portland staff to go over the project's history.

**Mayor Tomei** commented that the people attending the fall open house did not seem overly concerned.

**Art Ball** asked if any of the project was in the Lewelling Neighborhood District Association (NDA) boundaries.

**Councilor Marshall** believed a portion of it was, but the Lewelling NDA was not included at the fall meeting. The focus was on the Ardenwald neighborhood.

**Bartlett** commented that the project was started before NDA lines were re-drawn to reflect the school attendance area.

**Councilor Newman** asked if it would be feasible to re-survey only specific properties and not the whole project.

**Bennett** replied about 60% of the project properties are in the City of Milwaukie. There would probably be little cost difference between marking individual properties and marking all of them.

**Hatlelid** said her photos clearly showed that some properties have not been marked at all. The City does not understand the impact of having survey markers going through the middle of one's home.

**It was Council consensus to continue this discussion in work session in order to reach a more satisfactory conclusion for the neighborhood. Council also agreed staff should re-mail information to affected property owners.**

### **Cooperative Agreements with Metropolitan Area Communications Commission**

**Herrigel** presented the report in which staff was seeking Council authorization to draft an intergovernmental agreement with the Metropolitan Area Communications Commission (MACC) to transfer administration of the AT&T contract. Staff was also seeking authorization to draft a membership agreement with MACC to negotiate with Wide Open West (WOW) and other telecommunications franchises.

Currently, Herrigel handles all telecom issues for the City of Milwaukie, and it is becoming increasingly difficult to respond to new provider requests. She is also attempting to monitor Milwaukie's AT&T franchise, but there is little time to do that. The PEG access studio will close at the end of this year, and she felt she should devote time to identifying an alternate site. I-NET is also in need of review to determine the best use of the new fiber optic system.

**Herrigel** recommended that administration of AT&T franchise be done under an intergovernmental agreement and franchise negotiation be done under an actual MACC membership agreement. Milwaukie staff will work on locating an alternate access studio site, identifying and purchasing I-Net equipment, and registering telecom providers.

MACC is a cable regulatory agency that works for fourteen local governments. The annual cost for Milwaukie would be \$25,000 to \$40,000. The Commission governing body is made up of one member from each participating jurisdiction, and staff proposed that Herrigel be Milwaukie's voting member and Assistant City Manager Richards be the alternate. The MACC Board meets quarterly or as needed.

**Herrigel** announced that the AT&T channel line up changed on May 2. Also during May, the call center for the entire Portland Metro area will be located in Beaverton. Agreements with MACC would allow for needed legal, financial, and technical assistance for the increasing number of telecom providers interested in coming into Milwaukie.

**Councilor King** thought it made good sense to join a consortium.

**Councilor Newman** understood that Milwaukie could back out of the agreement if it was warranted.

**Herrigel** said there are some restrictions.

**Ramis** thought, since MACC is new to Clackamas County, that could be a negotiable part of the agreement.

**Councilor Lancaster** asked Herrigel if she would monitor MACC's negotiations to assure that it operates in the best interest of the City.

**Herrigel** said it has been her experience that the members are normally very thorough in their discussions.

**Mayor Tomei** understood the terms of the various franchises might be different and asked if that would bind the City.

**Herrigel** said she would have to look at that as the agreements were drafted, but she believed the City could opt out of one and stay in the length of the term on another franchise.

**Councilor Marshall** asked if Council had to make its decision at this meeting.

**Herrigel** she could attend the next MACC meeting and discuss a letter of intent. The Council's decision at this meeting is whether or not to commit to developing documents in pursuit of a future agreement and membership.

**Bartlett** reminded the City Council that the MACC Board only meets quarterly.

**Councilor Marshall** still had concerns about giving up local control.

**It was moved by Councilor Newman seconded by Councilor King to authorize staff to draft the IGA for AT&T franchise administration and membership agreement for future telecommunications franchise negotiations. Motion passed unanimously.**

## **INFORMATION**

**Herrigel** announced Down to Earth Day on May 6.

**Bartlett** said the City Council needed to meet in executive session to discuss its upcoming meeting with the School Board.

**Councilor King** discussed her feelings about the Kids First Town Hall on April 30. She felt it was an ambush. All of the meetings, changes to the draft plan, and communication seemed to be for naught. Everyone was back to their adversarial positions, and she was especially upset by the invitation for people to picket. She understood that after she left the meeting to fulfill personal commitments, people said she had left in a huff. The City Council and staff have done everything possible to communicate and make Milwaukie a better place, and she felt hurt and dishonored by this lack of trust.

The group discussed Milwaukie's centennial in 2003.

**Councilor King** announced the Mothers' March against Gun Violence and the Annie Ross Spring Planting event on May 6.

## **ADJOURNMENT**

**It was moved by Councilor Marshall and seconded by Councilor King to adjourn the meeting. Motion passed unanimously.**

**Mayor Tomei** adjourned the meeting at 7:35 p.m.

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Pat DuVal, Recorder