

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MAY 15, 2001**

Call to Order

The 1862nd meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King
Larry Lancaster

Jeff Marshall

Staff present:

Mike Swanson,
City Manager Pro Tem
Gary Firestone,
City Attorney
Martha Bennett,
Assistant City Manager
Alice Rouyer,
Planning Director

JoAnn Herrigel,
Program Specialist
John Gessner,
Associate Planner
Kenneth Kent,
Associate Planner

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

Mayor Bernard read the list of consent agenda items:

- A. City Council Minutes of April 30 and May 1 & 2, 2001**
- B. Amendment to an Intergovernmental Agreement with Clackamas County for Electrical and Plumbing Services**
- C. Resolution 13-2001: A Resolution of the City Council of the City of Milwaukie, Oregon, Electing Application to Join Oregon Public Employees Retirement System (OPERS) Local Government Rate Pool**

It was moved by Councilor King and seconded by Councilor Marshall to adopt the consent agenda. Motion passed unanimously among the members present.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Appeal of Planning Commission Decision, File AP-00-01; Appellant Sara Weagant, 12005 SE 19th Avenue

Mayor Bernard called the public hearing on the appeal of the Planning Commission's approval of applications WG-00-01 and NR-00-06 which require replacement of trees

located along the Willamette River for the property located at 12005 SE 19th Avenue to order at 6:05 p.m.

The purpose of the hearing was to consider the appeal of the Milwaukie Planning Commission's approval of applications WG-00-01 and NR-00-06. This appeal was made by Ken Sandblast on behalf of Sara M. Weagant. The appellant requests the Council weighs if the Planning Commission erred in its application of the Willamette Greenway Zone regulations.

The applicable standards to be considered are Zoning Ordinance Section 1002 (Appeal from Ruling of Planning Commission); Zoning Ordinance Sections 322 -- Natural Resource Overlay Zone, 320 -- Willamette Greenway, and 600 -- Conditional Uses for replacement of unauthorized removal of trees; and 1011.3 -- Minor Quasi-Judicial Review.

Mayor Bernard reviewed the order of business. The applicant has the burden of proving the application complies with all relevant criteria of the Comprehensive Plan and Zoning Ordinance. The appellant must demonstrate the Planning Commission erred in its decision in the alleged particulars identified in the appeal.

All testimony and evidence must be directed toward the applicable substantive criteria. Failure to address a criterion precludes an appeal based on that criterion. Failure to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in circuit court. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by the Board. Persons with standing are those who testify or sign the City Council Attendance sheet at the information table in the hall.

Mayor Bernard reviewed the conduct of the hearing. Any continuance or extension is subject to the limitations of the 120 day rule, unless the continuance or extension is requested or agreed to by the applicant.

Conflicts of Interest and Site Visits: **Councilor King** visited to subject site.

Ex parte Contracts or Conflicts of Interest: None.

Challenges to Impartiality or Ability to Participate: None.

Jurisdictional Issues: None.

Staff Presentation

Gessner presented the staff report in which the City Council was requested to deny the appeal, adopt the findings in support of the applications NR-00-06 and WG-00-01, and approve the applications with the recommended findings and conditions as amended.

The property owner was cited for removing trees in the Willamette Greenway and Natural Resource Overlay Zones without approval. The Municipal Court accepted a signed agreement in lieu of prosecution in July 2000. The Planning Commission held a public hearing on February 14, 2001, and approved the applications WG-00-01 and NR-00-06 with conditions which resulted in an appeal being filed. The appellant was scheduled for a Council hearing on April 3, 2001, but was given additional time to prepare a landscape plan. The City did not receive the plan by May 2, so the issue is before Council at this meeting. **Gessner** provided a diagram and photographs of the site. Several of the photos taken in January 2001 showed an arborist measuring the tree stumps.

Councilor Lancaster noted the appellant said the tenant cut the trees against her instruction.

Gessner said, according to Weagant, she instructed her tenant not to cut the trees, but the City has no documentation that would elaborate on the point.

Correspondence: None.

Appellant Testimony

Daniel Kearns, 610 SW Alder, Suite 803, Portland, Oregon, 97205, and **Fred Small** Pacific Habitat, 9450 SW Commerce Circle, Wilsonville, Oregon, spoke on behalf of the appellant.

Kearns indicated his client did not have a problem with the Planning Commission's decision but with the ambiguity of the condition related to the number of trees that have to be re-planted. The renter acted against the property owner's wishes in order to open up the view of the river.

The appellant understands some planting will have to occur and that staff is allowing some flexibility so as not to require an unreasonable number of trees. The area in question is approximately 100 square feet, and **Kearns** showed photos of how cut trees were already sprouting. A re-vegetation plan has been prepared for the site.

Small understands a certain amount of habitat and structural diversity was lost; however, he noted the existing root structure is healthy. On a river this size, vegetation provides bank stability, wildlife habitat, and, to some extent, water quality protection. The plan is to help provide a variety of trees and shrubs along the riverbank and allow the cottonwoods to sprout. Terrence Flannagan, arborist, submitted his comments in January 2001, and Jim Grimes, Oregon Department of Fish and Wildlife (ODFW), reviewed the buffer widths and non-urban riparian goals. Wind throw concerns can be addressed by selecting the strongest sprouts which can, with the proper treatment, recover successfully. He further suggested planting other trees and shrubs around the established root system.

Councilor King asked if Weagant agrees to provide a professional arborist when it is time to prune the sprouts.

Kearns understands this would be done for a period of time. He explained it will be difficult to plant the specified number of trees around the existing stumps. The sprouts could grow to be vigorous trees that serve riparian value and meet the City's requirements. He suggested adding language to condition #2 allowing the appellant to plant a sufficient number of trees to adequately meet riparian functions.

Gessner responded staff will make its recommendation based on its review of submitted materials. The Planning Commission specifically delegates a certain amount of authority to the Planning Director, although it is not clearly defined. Based on testimony before the Planning Commission, there is concern with the proposal to let the stumps sprout because they would not be as secure as native plants. Additionally, the violation resulted in an immediate loss of tree cover. If the stumps are allowed to regenerate, there is an unacceptable risk of loss as well as ongoing maintenance issues. The Commission decision also includes native under story plants to continue riparian values and functions lost through cutting.

Councilor Marshall asked how this act came to the City's attention, and **Gessner** said it was first noticed by public works staff during field work.

Councilor Marshall asked the approximate cost of replacing each tree, and **Small** responded \$20 - \$30 each for 1 -1/2" caliper trees.

Councilor Marshall asked if the City Council could override a Municipal Court decision, and **Firestone** said it cannot.

Other Testimony in Support of Appeal None.

Testimony of those Opposed to the Appeal: None.

Neutral Testimony

Carl Jacob, 10450 SE 44th Avenue, Milwaukie. He is concerned people are losing more and more control over their property. Property owners should be able to find out what does and does not belong to them.

Rebuttal Testimony - Appellant

Kearns feels a lot of time is being spent on a minor infraction. The appellant made the effort to hire experts in order to develop a good landscape plan.

Small discussed tree size. Typically a 1-1/2" caliper tree does not have a high survival rate without maintenance. Restoration projects have a greater success rate by planting smaller material and more of it.

Kearns noted condition #3 requires the appellant to ensure compliance with the findings for 2 years.

Staff Recommendation

Deny the appeal based on the staff report analysis and authorize the Planning Director to work with the property owner.

Closure of Public Hearing

It was moved by Councilor Lancaster and seconded by Councilor Marshall to close the public testimony portion of the hearing on the appeal of the Planning Commission Decision, File AP-00-01. Motion passed unanimously among the members present.

Mayor Bernard closed the public testimony portion of the hearing at 6:55 p.m.

Council Discussion

Councilor Lancaster was in favor of denying the appeal and giving the Planning Director responsibility for working with the property owner.

Councilor King said there was clearly a violation of city ordinances and felt it was important to uphold the Planning Commission decision to ensure others will be careful in similar situations.

Councilor Marshall supported the Planning Commission's decision and the role of staff as mediator.

Firestone said the Council should consider adding the language to condition #2 requested by the appellant. Language would refer to replacement of riparian functions and values which existed prior to the tree removal but no additions related to reducing the number of trees to be planted.

Kearns understood this would give the Planning Director some discretion when reviewing the plan.

Mayor Bernard supported the Planning Commission's decision.

Councilor King suggested plantings outside the subject site if it became overcrowded.

Firestone explained property owners are responsible for what happens on their property including landlord/tenant relationships. The City Council must consider this appeal based upon Willamette Greenway and Natural Resource regulations.

Councilor Lancaster believed Kearns' language was appropriate based on the Planning Commission's decision, but he did not support reparations beyond the specific area.

Gessner believed Kearns' request was already a condition since the Planning Director has the authority to negotiate the number of trees to be re-planted.

Kearns was satisfied.

Decision by Council

It was moved by Councilor Marshall and seconded by Councilor Lancaster to deny the appeal of the Planning Commission's decision on applications NR-00-06 and WG-00-01; adopt the recommended findings in support of the applications, and approve the applications with the recommended findings and conditions as amended. Motion passed unanimously among the members present.

Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights.

Lewelling Community Park Master Plan and Comprehensive Plan Land Use Designation Amendment -- File CPA-01-01 -- Ordinances

Mayor Bernard called the public hearing on the Lewelling Community Park Master Plan and Comprehensive Plan Land Use Designation Amendment filed by the City of Milwaukie to order at 7:05 p.m.

This amendment was considered by the Planning Commission at its April 10, 2001, public hearing, and the Commission recommended approval of the application. The Council hearing is de novo.

The purpose of the hearing was to consider the Milwaukie Planning Commission's recommendation to approve the request for a Comprehensive Plan Amendment incorporating the Lewelling Community Park Master Plan as an ancillary document and amending the Comprehensive Plan Land Use Map to change the land use designation from "low density residential" to "public" for the property located at the northwest corner of Stanley Avenue and Willow Street.

The applicable standards to be considered include Zoning Ordinance Section 905.1 (Amendments), and Comprehensive Plan Chapter 2, Objective 1, Policy 7, and 1011.4 Major Quasi-Judicial Review.

Mayor Bernard reviewed the order of business. The applicant has the burden of proving the proposal conforms with all applicable criteria of the City's Comprehensive Plan and Zoning Ordinance. He reviewed the conduct of the hearing.

Conflicts of Interest and Site Visits: **Councilors King** and **Marshall** visited the site.

Ex parte Contracts or Conflicts of Interest: None.

Challenges to Impartiality or Ability to Participate: None.

Jurisdictional Issues: None.

Staff Presentation

Kent presented the staff report in which the City Council was requested to adopt an ordinance incorporating the Lewelling Community Park Plan as an ancillary document to the Comprehensive Plan and to change the land use designation from low density residential to public on the park site.

The property, approximately 1 acre in size, was annexed into the City by Council action on March 6, 2001, and retains the County's low density residential designation. The first ordinance adopts a master plan to guide future park improvements, and the second changes the land use designation to "public." Any future park development will be reviewed by the Planning Commission. The Commission held a public hearing on April 10, 2001, and recommends Council adoption.

Applicant Testimony

Herrigel provided details on the master plan and described the Lewelling neighborhood efforts, particularly those of Art Ball and Jean Michel, to acquire and improve the property for a community park. There was a drug house on the property which was demolished after the City purchased it through the City's Parks, Open Space, and Trails (POST) Acquisition Program. The NDA was able to get a volunteer to prepare the master plan. There has been no neighborhood opposition to the development.

Councilor Lancaster noted the 2 wetland sites on Stanley Avenue and asked if these would be negatively impacted.

Herrigel said these are fabricated wetlands which will be buffered from the street and adjacent homes.

Correspondence: None.

Testimony in Support of the Application: None.

Testimony of those Opposed to the Application: None.

Neutral Testimony: None.

Staff Recommendation: None.

Questions from City Council to Staff: None.

Closure of Public Hearing

It was moved by Councilor King and seconded by Councilor Marshall to close the testimony portion of the public hearing on the Lewelling Community Park Master Plan and land use designation amendment. Motion passed unanimously among the members present.

Mayor Bernard closed the public testimony of the hearing at 7:20 p.m.

Council Discussion: No further discussion.

Decision by Council

It was moved by Councilor Marshall and seconded by Councilor King to read the ordinance adopting the Lewelling Community Park Master Plan (CPA-01-01) as an ancillary document to the Comprehensive Plan and the ordinance amending the Comprehensive Plan Land Use Map to change the land use designation from low density residential to public on the park site for the first time by title only and provide \$5,000 for master plan work to encourage neighborhood participation.

It was agreed the funding proposal should be a separate motion.

Motion passed unanimously among the members present. Both ordinances were read the first time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to read the ordinance adopting the Lewelling Community Park Master Plan (CPA-01-01) as an ancillary document to the Comprehensive Plan and the ordinance amending the Comprehensive Plan Land Use Map to change the land use designation from low density residential to public on the park site for the second time by title only. Motion passed unanimously among the members present. Both ordinances were read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor Marshall to adopt the ordinance adopting the Lewelling Community Park Master Plan (CPA-01-01) as an ancillary document to the Comprehensive Plan and the ordinance amending the Comprehensive Plan Land Use Map to change the land use

designation from low density residential to public on the park site. Motion passed unanimously among the members present.

ORDINANCE NO. 1888:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1437, THE COMPREHENSIVE PLAN, BY ADOPTING THE LEWELLING COMMUNITY PARK MASTER PLAN (CPA-01-01) AS AN ANCILLARY DOCUMENT.

ORDINANCE NO. 1889:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1437, THE COMPREHENSIVE PLAN, BY CHANGING THE LAND USE DESIGNATION FROM LOW DENSITY RESIDENTIAL TO PUBLIC.

LUBA Appeal Information

Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights.

It was moved by Councilor Marshall and seconded by Councilor Lancaster to allocate \$5,000 from the current year's budget to the Lewelling Neighborhood District Association (NDA) for park design work.

Councilor Lancaster was concerned about setting a precedent although he supported the intent. The Lewelling Community Park is a model project.

Councilor Marshall felt this project exemplifies what the City wants to encourage.

Councilor King was concerned about equity since the Hector Campbell NDA has done so much with Homewood Park.

Councilor Lancaster asked the monetary value of the volunteer services.

Ball responded the pro bono master plan works was about \$7,100, and, additionally, there has been neighborhood volunteer work.

Swanson recommended reducing the \$362,000 transfer from the riverfront fund to the general fund by \$5,000 to make the proposed expenditure in the current fiscal year.

Councilor King requested time to talk to other NDAs before making this decision.

Herrigel believed there would be at least 1 NDA requesting similar treatment in the near future.

Councilor Marshall arrived at the figure because he felt it was an acceptable amount to really make a difference and show the City support for positive community activity.

Councilor Lancaster did not disagree with the philosophy, but, realistically, it should be seen as a \$35,000 decision to reward neighborhoods equally as park development occurs.

Swanson agreed this is a \$35,000 decision, so it carries some budget implications. The Lewelling Community Park allocation can be made this year, and he will recommend an amendment when the Council adopts the 2001 – 2002 budget.

Motion passed 3 – 1 with the following vote: Mayor Bernard, Councilor Lancaster, and Councilor Marshall aye; Councilor King nay; no abstentions.

OTHER BUSINESS

North Industrial Area State Transportation and Growth Management Grant Application

Rouyer presented the staff report in which the City Council was requested to authorize staff to apply for a \$60,000 - \$70,000 grant from the State of Oregon to evaluate transportation and zoning in the northern industrial area, north of Hwy. 224. Labor will be the City's 10.5% match. This study will address a long-term Planning Commission goal.

The group discussed the need for Council to approve this type of request. If the grant is approved, an agreement will have to be signed with the State of Oregon. Some grants also require a demonstration the governing body supports the application. The policy makers need to understand there will likely be code amendments at the end of the project.

Councilor Lancaster said his ongoing question will be how to streamline processes. The group agreed to look at the purchasing procedures and signature authority.

It was moved by Councilor King and seconded by Councilor Marshall to authorize staff to apply for a \$60,000 - \$70,000 grant from the State of Oregon to evaluate transportation and zoning in the northern industrial area, north of Hwy. 224. Motion passed unanimously among the members present.

Amend Surface Transportation Program Agreement SE 32nd Avenue to SE 45th

Mayor Bernard announced there would be public comment after the staff report.

Bennett outlined the 2 intergovernmental agreements before the Council. The agreement with Portland authorizes the \$1.076 million expenditure for Phase 3 of the

Johnson Creek Project and agrees to an \$80,000 local match. In the second agreement, Clackamas County agrees to pay the city \$80,000 in the form of in-kind services for the local match, assist in resolving the map dispute, and turn over road jurisdiction to Milwaukie at the satisfactory conclusion of the reconstruction project.

Councilor Lancaster asked the name of the federal representative working with the City of Portland, and **Bennett** responded it is an ODOT federal aid specialist.

Councilor Marshall asked the sidewalk width, and **Bennett** said one sidewalk is 6 feet and the other is 5 feet.

Rebecca Lillie and **Brad Inman**, SE Johnson Creek Boulevard residents. They expressed concern with the information Council received at its May 14 work session. When the County accepts surveys, it agrees they meet statutory requirement but does not verify the content. Lillie acquired a copy of a 1914 plat from the City of Portland Traffic Engineering Department which puts the road in the same location as the 1924 map. The 1917 map puts the road through her house. She urged the Council to investigate all information related to this project since there are discrepancies in road width and plats.

Gene Hatlelid, 4277 SE Johnson Creek Boulevard, Milwaukie. He did not believe the City Council had enough accurate information to represent the citizens of Milwaukie. He submitted his written comments on the proposed agreements identifying errors and misleading information. He noted the staff report did not contain the sidewalk widths. Other issues and questions were: explain why the improvements cannot be made in the existing 40-foot right-of-way; define "future phases" in ODOT agreement related to right-of-way acquisition; explain the funding change from \$800,000 to \$1.9 million in ODOT agreement; clarify the matching amount for Milwaukie and Portland; describe implication of County agreement item #6 and impact of downgrading the road; clarify the County's \$80,000 in kind-payment in section 2.a; supply all interested parties with maps as outlined in 2.d; define City's obligations for permits, design, etc.; and describe length of project consistently.

Hatlelid did not feel the Council could make a decision until these issues are resolved.

Linda Hatlelid, 8617 SE 36th Avenue, Milwaukie. She felt the Council had not received all of the background material it needed to make a decision. These include petitions and other correspondence supporting the 40-foot right-of-way, meeting minutes, videos, and letter of support from the Traffic Safety Board. If the Milwaukie City Council votes "no" on phase 3 of the project, Portland and Clackamas County will do the needed repairs. Staff information on the environmental zone and tree removal is incomplete. Staff updated the Council in a way that encouraged a vote in favor of phase 3. She urged the City Council to vote "no" and support the majority of citizens. A 40-foot right-of-way is acceptable.

Bennett responded to citizen comments and questions. Lillie's comment about the map discrepancies is accurate, and there is language in the County agreement requiring it to help resolve right-of-way disputes arising from these discrepancies. ODOT will begin meeting with property owners in June. When the project is finished, the intent is to vacate unused property.

Hatlelid was correct in saying the sidewalk widths were omitted in the staff report. The sidewalks are designed to be 1 5-foot and 1 6-foot.

The proposed ODOT amendment should resolve the dollar amount issue. She agreed to provide a total breakdown of prior and future costs. The amendment accounts for an influx of federal funds and new local match. Milwaukie is obligated to pay 60% of the match based on the number of properties in the City.

Recitals 3 & 4 of the County agreement recognize Johnson Creek Boulevard is a county road and justify spending money in the Milwaukie city limits. In Milwaukie's street classification plan, Johnson Creek Boulevard is designated as a minor arterial, and the Regional Transportation Plan (RTP) it shows as a collector. Because of the RTP and implementation of the Transportation System Plan (TSP), staff is discussing the feasibility of asking the City Council to downgrade the road to collector status. Traffic calming efforts will be limited by the street classification. The County further agrees to meet with affected property owners to discuss issues related to right-of-way alignments as well as provide technical assistance to the City and ODOT. The only financial part of the agreement is in-kind payment of \$80,000 to help cover the local match. In terms of the federal funds, the \$800,000 was for the phase 2 stormwater improvements.

Addressing L. Hatlelid's comments, **Bennett** reported the documents she referred to are on file including the Traffic Safety Board's recommendation for a 40-foot right-of-way. The City of Portland agreed to mark to 40- and 44-foot rights-of-way on those properties which would be impacted. On May 1, 2000, Council directed City staff to go no further on the staking project.

Councilor Lancaster asked what would happen if Milwaukie voted against going forward with the project.

Bennett said Milwaukie has an existing agreement with Portland, but one Council cannot bind future Councils. This is a Council choice, and if the first agreement is not approved, the Council will have decided not to go forward. The \$800,000 completed stormwater improvement will not function if curbs are not installed, and Milwaukie does not have the \$2 million to complete the project on its own. If the agreements are not signed by July 1st, the funds go back into the regional pool.

Councilor Marshall asked if there could be some mechanism requiring completed traffic calming during the street construction phase.

Bennett responded Milwaukie could request a concurrent, city funded project on those 6 blocks in the city limits.

Firestone added this would be up to the entity letting the construction contract; however, he would not anticipate a problem if the City agrees to pay.

Councilor Lancaster commented this is considered a regionally significant project because of the decisions to build the I-205 interchange and Tacoma overpass. Milwaukie is ultimately paying the price for these earlier projects. The state and federal government are pedantic and inflexible on bike paths and widths. He was not comfortable making a decision or moving forward until all citizens' questions are answered. This seems to be a classic example of chasing the dollar. At some point, citizens will have to endure a tax increase to make streets usable. Until all questions answered, **Councilor Lancaster** could not support moving forward.

Councilor King suggested tabling the decision for a short period of time until property owners' questions are answered. Milwaukie is a regional link, and it is important to plan for future generations. For these reasons, she will likely vote in favor of the agreements. If one sidewalk is delayed, the improvements will actually be in the 40-foot right-of-way. She felt 2 bike lanes were necessary for safety.

Councilor Marshall said the road is deteriorating, and there are no funds to repair it. He will also probably vote to move forward on the project after getting the final questions answered.

Mayor Bernard wants to speak with a federal official to get the final word on funding requirements.

Bennett explained ODOT signed off on the agreement in 1991. Federal regulations require jurisdictions to comply with own design standards which, in Milwaukie's case, is a 60-foot wide road. Milwaukie is waiving its own standards in this instance.

Councilor Lancaster added there are unanswered questions creating confusion about what can or cannot be done. He believes the Hatlelid's are a fair representation of the group opposed to the project and asked for a copy of their questions.

Swanson suggested the questions be submitted to him in writing by the end of the week.

Councilor Lancaster understands a 40-foot right-of-way is acceptable to property owners. Why this cannot be done is, he believed, the defining question. He wants it demonstrated there are no other options.

Bennett explained the future sidewalk is a compromise. Travel lanes, bike lanes and one sidewalk would be a 39-foot project. The group discussed safe bike lane widths and the significance of a multi-modal project.

Other Items

The group discussed pending electric rate increases, and **Councilor Marshall** suggested turning off half the city street lights. **Bennett** reported staff is looking at getting loans to purchase more efficient pumps, replacing windows at City Hall, and options for cutting street lighting costs.

Councilor King discussed water conservation and pesticides.

ADJOURNMENT

It was moved by Councilor Marshall and seconded by Councilor Lancaster to adjourn the meeting. Motion passed unanimously among the members present.

Mayor Bernard adjourned the meeting at 9:05 p.m.

Pat DuVal, Recorder