

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 7, 2003**

OATH OF OFFICE

Municipal Court Judge Ron Gray administered the oaths of office to Councilors Susan Stone and Deborah Barnes, Interim Councilor Jeff Marshall, and Mayor James Bernard.

CALL TO ORDER

The 1901st meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:10 p.m. in the City Hall Council Chambers. The following Councilors were present:

Deborah Barnes
Larry Lancaster

Jeff Marshall
Susan Stone

Staff present:

Mike Swanson,
City Manager

JoAnn Herrigel,
Program Administrator

Tim Ramis,
City Attorney

Paul Shirey,
Engineering Director

Alice Rouyer,
Community Development/
Public Works Director

Steve Campbell,
Code Compliance Officer

John Gessner,
Planning Director

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**

Mayor Bernard announced that Milwaukie had received a grant to administer a fluorescent lamp recycling program.

CONSENT AGENDA

It was moved by Councilor Lancaster and seconded by Councilor Marshall to approve the Consent Agenda that included:

1. City Council Minutes of December 17, 2002;
2. Resolution 1-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the *Clackamas Review* and the *Oregonian* as the Papers of Record for the City of Milwaukie; and
3. Resolution 2-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the First and Third Tuesdays of Each Month as the Regular City Council Meeting Dates.

The motion to adopt the Consent Agenda passed unanimously.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING**Appeal of Planning Commission Denial of a Three-Lot Minor Land Partition with Two Flag Lots, File No. MLP-02-07**

Mayor Bernard called the public hearing on the appeal of the Planning Commission's denial of a request for a minor land partition, File No. MLP-02-07, for property located at 5650 SE King Road to order at 6:15 p.m.

Mayor Bernard announced the appeal of the Planning Commission denial of a three-lot minor land partition with two flag lots, File No. MLP-02-07, will be continued to the January 21, 2003 regular Council meeting.

Protest of Nuisance to Abate Property Located at 21st Avenue and Lake Road

Campbell and **Gessner** provided preliminary staff comments related to the protest of the notice to abate a nuisance filed by Katie Daniel of Emmert International on January 2, 2003. The subject of the abatement is a house presently stored on railroad property at 21st Avenue and Lake Road.

Ramis outlined the Council's options in terms of the actions it can take at this time. These were: (1) conduct a hearing at tonight's meeting and reach a decision; (2) conduct a hearing, declare a nuisance, and continue the matter to a date certain; or (3) proceed with the continuance this evening. Ramis did not have a specific recommendation.

Gessner said Emmert has identified a potential lot for the house south of Balfour Street and north of the Clackamas County Housing Authority property on A Street. Although it is not a strong staff recommendation, an extension could clarify some uncertainties about the site. If the site proves viable, the need to take abatement action, to find another house mover, or, failing that, to demolish the house on site would be eliminated. He thought a workable solution might be identified by the January 21, 2003 meeting.

Gessner reviewed the activities that have taken place to date. Emmert worked initially with a property owner at 30th Avenue and Madison Street, but it was determined that variances and certain subdivision actions would be required. Staff advised Emmert it was not a suitable site since the lengthy land use process required would not result in the prompt removal of the house. When it became evident this option would fail, Emmert began considering a property he owns on Balfour Street. There are, however, utility and easement access issues.

Councilor Stone understands Emmert's intent is to move the house, but he has not complied with the given time frame. Emmert International is a widely known company and seems to be reputable and responsible. She asked staff if they had reason to believe Emmert would not comply.

Gessner responded staff is concerned about the overall lack of performance to date.

Councilor Stone does not wish to see the house demolished. The North Clackamas School District did not go through a public process when deciding how to dispose of the structure. In her opinion, Mr. Peterson was not the proper person to take over initial ownership. She felt Emmert should be given time to locate a suitable site, since he took it over from Peterson only about 2 months ago.

Swanson said this has been a challenging issue from the beginning because the City took action when it really was not obligated to do so. There are 2 competing interests: the preservation of an historic structure and the reasonable enforcement of City regulations. Thus far, the City has made a lot of allowances, particularly in Peterson's case, to protect the structure. Whatever action the City takes, Emmert must be impressed with the fact that the house must be moved. In the past 4 to 5 months, he has gotten more phone calls from people who wish to see the house relocated. Both points of view are valid, and Emmert holds the key to maintaining a balance between preservation of an historic structure and upholding the integrity of Milwaukie's code. It is absolutely necessary that removal move forward expeditiously.

Mayor Bernard asked if a motion was required to hold an abatement hearing.

Ramis responded Council has code authority to proceed with the hearing. If it wishes to continue the hearing, it does so by motion.

Councilor Marshall asked if the City has gotten a commitment from Emmert to have the structure removed by a date certain.

Gessner responded Emmert has not provided the City with a removal date.

Councilor Marshall asked if there was any indication of approximately how long it will take to get that commitment.

Gessner said staff knows the required steps but has not identified specific time frames.

Councilor Barnes asked how much time and money the City has spent on trying to resolve this issue.

Campbell estimated about 100 man-hours have gone into the issue.

Mayor Bernard suggested going through with the abatement hearing.

Councilor Lancaster was agreeable to a continuance since there is a reasonable possibility of a resolution. A date certain should be set based on City code and the move executed without extensions. Extraordinary efforts have been made to save the structure, and either Emmert will perform or not.

Councilor Marshall stressed that the date certain must be set in the very near future.

Councilor Barnes asked if the City could require a deposit from Emmert.

Mayor Bernard understands the City could force a bond.

Ramis explained the City could not force a bond without conducting the hearing unless the bond is volunteered. The decision at this meeting is whether or not to continue the hearing. If the Council commits to having a hearing, the message is clear to the parties responsible for the structure that something needs to happen, or on January 21, the Council will determine the City was correct in declaring the nuisance and carry on with the abatement process.

Mayor Bernard was concerned that continuing the hearing would automatically add 2 weeks to what has already been a lengthy process. He understands the Council can determine that a nuisance does exist at this meeting.

Ramis said the City Council could determine at the close of the hearing that the facts establish it is a nuisance.

Mayor Bernard and **Councilor Barnes** were in favor of having the hearing at this meeting, declare the nuisance, and continue the hearing.

Ramis said if that were the Council decision, it would conduct the hearing at this meeting, hear a report from staff, allow Emmert to make a presentation, and at the close, determine whether or not there is a nuisance. If the City Council agrees with staff, it could then declare the nuisance and return on an agreed upon date to impose the sanction. This would create a window of opportunity to solve the problem.

Councilor Marshall suggested that Emmert return at the January 21, 2003 meeting with a date certain for removal of the structure.

Councilor Barnes's concern was that many opportunities have already been extended since the house was moved to the railroad property. A lot of time and man-hours have gone into the issue, and in her opinion it should be moved. Tonight is the night to give Emmert a due date, and, if it cannot be met, then Emmert should pay. The City cannot continue to pick up the tab.

Councilor Marshall said this City Council has been very supportive of having the house moved. At this point, he did not feel 2 more weeks would make a big difference.

Councilor Stone agreed. Even though this issue has been dragging on for more than a year, Emmert has only owned this house for about 2 months. She is dedicated to preserving historic structures and advocated for having a hearing in 2 weeks. There are citizens who did not know this issue was going to be on the Council agenda, and she feels they should have an opportunity to speak on the matter.

Councilor Lancaster did not have a problem with holding the hearing in 2 weeks, but at the end of that hearing there must be a date certain for either removal or abatement.

Katie Daniel and Craig Arquit, 11811 SE Hwy 212, Clackamas, Oregon, 97105, represented Emmert International. Daniel said the original site selected for the house had setback issues, which were discovered in early December when the survey was done. Balfour Street is a suitable location, and the style of the house conforms with the surrounding neighborhood. The Clackamas County Housing Authority has stated in writing that it is not opposed to granting an easement or using A Street as access. The contract states the house must be moved as soon as possible, and that will occur once the City gives the necessary planning and building approvals and the utilities are notified. Emmert has only had control of the property for 2 months, and making all the arrangements is time consuming. She was just informed earlier today that water is not accessible from the housing development, and the owner to the north would have to be contacted about granting an easement.

Arquit believes it is reasonable to establish a timeline and make a commitment to moving the house by a certain date. Emmert is sensitive to the issues, but it has been challenging to coordinate things during the holidays. He would like to be able to have approximately a week to establish a viable timeframe in which to move the house. If it cannot be moved to the alternate site, the situation will have to be rectified by other means.

Councilor Stone was in favor of Emmert's returning at the next City Council meeting with that information and providing a status report.

Councilor Marshall wanted a commitment from the other property owner, a schedule with milestones, and a date certain for removal at the next Council meeting.

Councilor Stone asked if the abatement process required a certain timeframe in which to close the issue.

Ramis responded that the municipal code says the City Council will conduct a hearing quickly but also gives board discretion. One possibility for achieving Councilor Marshall's suggestion is to spend the next 2 weeks working with Emmert on a stipulated order. In 2 weeks there will either be an agreement that declares the house to be a nuisance and further that it will be moved by a date certain, or abatement will commence. If that agreement cannot be reached with Emmert, the City Council would conduct the hearing and set the order itself at the close of the hearing.

Councilor Stone commented to the fact that Emmert has only had the property for about 2 months. She does not wish to chastise Emmert International for what took place under Peterson's ownership. She did not want to be presumptuous and not give Emmert time to find another site for the house.

Mayor Bernard said there is a lot of concern in the community about moving the house. Business and property owners in that area are very upset because they feel it is a deterrent to doing business or selling property. He wants to see some action at the next meeting with Emmert providing a date certain for removal or the City will abate.

Councilor Stone agreed the house is unsightly, and something should have been done long ago. However, she would hate to see it demolished because the City Council could not wait a little longer.

George Van Bergen, former owner of the house, feels having the house sitting around the neighborhood is not good and is contrary to living in a community. Due diligence has been performed, and this is a material breach. He was surprised the railroad is not present because under abatement proceedings the lien would be against the land. He is concerned this will be an ongoing issue. The subject house is an old house, but it is not historic. He questioned if the house would comply with current building codes. He believes it is fair to require Emmert to put up a cash surety bond 2 times the amount of the building permit that is refundable if the deadline is met.

Catherine Brinkman, 2513 SE Lake Road, Milwaukie. Continued growth of Milwaukie is another issue to consider. It is less important to worry about Emmert's feeling than it is to move the house. People shopping for homes in Milwaukie see this boarded up house and are not interested in buying because of the impression this house leaves. It is an eyesore that detracts significantly from property values and makes the town look like a dumping ground. She urged the City Council to work as hard as possible to immediately remove or destroy the home.

It was moved by **Councilor Marshall** and seconded by **Councilor Lancaster** to continue the nuisance abatement protest hearing to the next scheduled City Council meeting on January 21, 2003 at which time the owner of the structure will provide the Council with a schedule that includes a date certain for moving the house from the property, and if the owner fails to provide an adequate agreement from the Council's perspective, then the protest hearing would continue.

Mayor Bernard restated the motion: Emmert will come to the January 21, 2003 Council meeting with a date certain for removing the house. If Emmert does not accomplish this, the City Council will hold a hearing on the abatement.

Motion passed unanimously.

Councilor Marshall further directed staff, with Council's consent, to develop a schedule with 3 or 4 milestones critical to removing the house. If a milestone is missed, then there must be a plan for what happens.

Councilor Stone asked if this is a typical timeline for a process like this. It would seem Emmert needs a certain amount of time to settle all the issues.

Gessner responded this is not a typical timeline for submitting an application.

OTHER BUSINESS

Portland General Broadband Franchise Agreement

Herrigel provided the staff report in which the City Council was requested to adopt an ordinance granting a 5-year nonexclusive franchise to Portland General Broadband (PGB) to use the public rights-of-way within the City to provide telecommunications services. PGB proposes to place above and below ground fiber optics that will be leased to other telecommunication providers. PGB will pay a minimum annual franchise fee of \$4,000 or 5% of its gross revenues earned in providing telecommunications services including the lease or resale of its facilities within the Milwaukie city limits whichever is greater.

Councilor Barnes asked if the proposed franchise fee was typical of the amount given in other cities' agreements.

Karen Lee, PGB counsel, said she has negotiated 8 contracts, and the franchise fees have ranged from \$0 to a \$10,000 fee in the City of Portland.

Councilor Barnes requested the names of the current lessees.

Lee said that issue is addressed in the franchise. The contracts are private, and she was hesitant to provide the lessees' names since the meeting was being televised. PGB agrees to notify the City of these names and addressees so staff can make contact regarding registration obligations and potential franchise agreements.

It was moved by Mayor Bernard and seconded by Councilor Lancaster to read the ordinance granting Portland General Broadband a nonexclusive 5-year franchise for the first time by title only. Motion passed unanimously. The ordinance was read for the first time by title only.

It was moved by Mayor Bernard and seconded by Councilor Stone to read the ordinance granting Portland General Broadband a nonexclusive 5-year franchise for the second time by title only. Motion passed unanimously. The ordinance was read for the second time by title only.

It was moved by Mayor Bernard and seconded by Councilor Stone to adopt the ordinance granting Portland General Broadband a nonexclusive 5-year franchise. Motion passed unanimously.

ORDINANCE NO. 1915:

AN ORDINANCE GRANTING TO PORTLAND GENERAL DISTRIBUTION, LLC, dba PORTLAND GENERAL BROADBAND A NONEXCLUSIVE FRANCHISE PROVISION OF TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF MILWAUKIE.

Intergovernmental Agreement for Qwest Audit

Herrigel provided the staff report in which the City Council was requested to authorize the city manager to sign an intergovernmental agreement (IGA) with other participating Oregon jurisdictions to hire a consultant to complete a joint financial audit of Qwest. Milwaukie was 1 of 24 cities that performed a similar audit of PGE in 2001. The group formalized its association and adopted the name Oregon Municipal Audit Review Committee (OMARC). Milwaukie spent about \$2,800 on the PGE audit and netted nearly \$145,000. Milwaukie's share of the Qwest audit, based on population and franchise fees received, is \$10, 223.56.

Swanson said notwithstanding his recent interaction with PGE counsel on franchise fees, PGE was very cooperative during the audit. He is not convinced Qwest will do the same. Cities agree Qwest is the next financial audit that should be undertaken.

Herrigel noted cities are adding franchise agreement language stipulating that audit costs are covered by the grantee. This verbiage is included in the PGB agreement.

It was moved by Councilor Barnes and seconded by Councilor Stone to authorize the city manager to sign an intergovernmental agreement (IGA) with other participating Oregon jurisdictions for hiring a consultant to complete a joint financial audit of Qwest.

Councilor Lancaster asked if the same 24 cities from the PGE audit are also involved in the Qwest audit.

Herrigel said 52 Oregon cities have Qwest franchises, and the 24 cities from the PGE audit are likely involved.

Swanson believed many PGE franchises are in the metropolitan area, whereas, Qwest serves a broader area.

Councilor Lancaster asked if Milwaukie was moving forward without knowing if other cities were committing to the project.

Herrigel said most cities are moving forward simultaneously.

Ramis commented that conducting these types of audits is part of doing city business. Even without conscious wrongdoing on the part of the franchisees, boundary changes and new construction can lead to some under collection by city governments. He does, however, support future costs being borne by the utility.

Swanson said, with the exception of a small number of cities that were overpaid and had to refund PGE, most participants did receive payments.

Lee added PGE is in the midst of auditing a few remaining cities. She explained that Qwest does cover a different area than PGE.

Councilor Lancaster asked if the Qwest audit is independent of the litigation.

Herrigel said the audit is a separate issue and is based on correctly identifying the number of customers receiving service within a given city boundary.

Councilor Lancaster questioned the cap on Portland's share of the expenses.

It is **Herrigel's** understanding that OAMRC established the cap.

Swanson explained the methodology developed by the consultant will be used for both providers, and Milwaukie will pay only for the Qwest audit.

Councilor Lancaster understands it is a good business practice to perform these audits periodically but hoped there would be another mechanism in place to make them less costly.

The motion to authorize the city manager to sign an IGA for the Qwest audit passed unanimously.

Community Development Block Grant Intergovernmental Agreement for Design and Construction for King Road/Harvey Street/40th Avenue Sidewalk Project

Shirey presented the staff report in which the City Council was requested to authorize the Mayor to sign an intergovernmental agreement (IGA) with Clackamas County to allow for the design and construction of the King/Harvey/40th Street and Storm Improvements Project in the Ardenwald neighborhood. Milwaukie was awarded \$295,000 in Community Development Block Grant (CDBG) funds. The City's local match is 20% of the total project, or all costs for the design and construction in excess of the amount awarded, whichever is greater. Staff estimates about \$55,000 will be allocated from the street fund and \$25,000 from the storm fund. These funds were approved in the 2002 – 2003 budget. Staff will work with residents to obtain easements for the project.

Councilor Stone asked if the project calls for sidewalks on both sides of Harvey Street and if on-street parking would still be allowed.

Shirey will review the plans and provide an answer.

Rouyer explained sidewalk options are still being considered. Sidewalks on only one side of the street would extend the length of the project; however, Harvey Street has a lot of traffic, so it may be appropriate to construct sidewalks on both sides of the street.

Councilor Stone believes there is parking only on the north side of Harvey Street at this time. She wants to ensure neighborhood involvement will be part of the decision making process.

It was moved by Councilor Stone and seconded by Councilor Lancaster to authorize the Mayor to sign an intergovernmental agreement (IGA) with Clackamas County to allow for the design and construction of the King/Harvey/40th Street and Storm Improvements Project in the Ardenwald neighborhood. Motion passed unanimously.

Change Date of First Regular City Council Session in February

It was moved by Mayor Bernard and seconded by Councilor Lancaster to adopt the resolution changing the date of the first regular City Council session in February. Motion passed unanimously.

RESOLUTION NO. 3-2003:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DETERMINING THE FIRST REGULAR COUNCIL SESSION OF FEBRUARY 2003 WILL BE CALLED TO ORDER ON FEBRUARY 3, 2003 AT 5:00 P.M. UNDER THE BIG TENT IN THE CITY HALL PUBLIC PARKING LOT ON MAIN STREET TO MARK THE OPENING CEREMONY OF MILWAUKIE'S CENTENNIAL YEAR CELEBRATION.

North Main Developer Selection Open House

Rouyer announced the North Main Developer Open House has been rescheduled to February 6.

Advisory Board Appointments

Mayor Bernard, with the consent of Council, appointed Gary Hubbard to the Budget Committee and Ed Miller to the Citizens Utility Advisory Board. Carlotta Collette and Kevin McNally, who also interviewed for the Budget Committee position, will be advised

of other available advisory board vacancies. **Councilor Stone** recommended adding verbiage to letters going out to applicants encouraging neighborhood association involvement.

Executive Session

Mayor Bernard announced the City Council would meet in executive session pursuant to ORS 192.660(h) to discuss real property transaction.

Adjournment

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

Mayor Bernard adjourned the meeting at 7: 30 p.m.

Pat DuVal

Pat DuVal, Recorder