

MINUTES

MILWAUKIE CITY COUNCIL JUNE 10, 2003

CALL TO ORDER

The 1911th 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:

Councilor Barnes
Councilor Lancaster

Councilor Loomis
Councilor Stone

Staff present:

Mike Swanson,
City Manager
Gary Firestone,
City Attorney
Alice Rouyer,
Community Development/
Public Works Director

Paul Shirey,
Engineering Director
Tom Larsen,
Building Official

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Mayor Bernard read a summary of the minutes from the 10th City Council meeting held on October 8, 1903. Milwaukie Museum Curator Madalaine Bohl is preparing this series of historical notes in honor of the City's Centennial Year.

CONSENT AGENDA

It was moved by Mayor Bernard and seconded by Councilor Barnes to consider agenda items VI.B – *Certification of May 20, 2003 Election Results* in the consent agenda. Motion passed unanimously.

It was moved by Councilor Barnes and seconded by Mayor Bernard to adopt the consent agenda, which consisted of:

- A. City Council Minutes of April 14, May 5, 19, & 20, 2003;
- B. Award Contract for Stormwater Master Plan;
- C. Final Acceptance of 40th Avenue/43rd Avenue Storm Project;

- D. Intergovernmental Agreement with the City of Portland and Oregon Department of Transportation to Increase Federal Funding Level by \$800,000 for Johnson Creek Boulevard Improvement Project
- E. Purchase Order for Sewer Rate Adjustment for City of Portland Customers in Milwaukie;
- F. O.L.C.C. Applications for:
 - 1. 7-Eleven, 10435 SE 42nd Avenue
 - 2. City Grill, 11050 SE 21st Avenue
 - 3. Miller Brewing Company, 9696 SE Omark Drive; and
- G. Resolution 22-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Recording the Certified Election Results for the May 20, 2003 Special Election.

Councilor Stone asked if the resolution certifying the election results needed to be formally adopted.

Mayor Bernard said it would be adopted as part of the consent agenda.

The motion to adopt the consent agenda passed unanimously.

AUDIENCE PARTICIPATION

Rick Bantz, 4439 SE Pennywood Drive, Milwaukie, spoke regarding the house currently stored at 21st Avenue and Lake Road. He is tired of the house and wants it gone. It is an attractive nuisance, and he is concerned someone will be hurt. He is sick of it and what it looks like. There has been plenty of time, and more, to get it out of there.

Ernest J. Bisio, 3695 SE Lake Road, Milwaukie, spoke on behalf of saving the Marinos house. Everyone regrets that the old St. John's Church was torn down. He urged not doing that with the Marinos house. It is well-built, architectural house, and it should be kept. The process that has to be done to get it moved should be done right away. The house should be kept to remind us we are not losing all the good artifacts we have had.

Sharon Phillips, 11028 SE 28th Avenue, Milwaukie, spoke regarding the Marinos house. She looked at the lot on Jackson Street where Emmert is proposing to move the house, and it looked fine to her. It would fit with the neighborhood. The older homes should be kept for the history of Milwaukie, and she urged giving Emmert time to move it. She thanked JoAnn Herrigel and Joe Loomis for their work on the May 18 Historic Downtown Walk that attracted about 70 participants. She also thanked Steve Campbell for getting a property owner to repair a section of sidewalk where she had fallen.

Councilor Lancaster thanked Phillips for her work on the Historic Walk.

Julie Wisner, 3325 SE Wister Street, Milwaukie. She read the City Mission Statement to the audience because she believes it directly applies to the Marinos house. Emmert should be allowed the time it takes to move it. She believes recent events relating to this house fly in the face of this Mission Statement. This troubles her as a citizen. She would like to see the Council uphold its own Mission Statement and not destroy a house because a parade is coming through town. The house is obviously in transit. Let Emmert put it up on wheels with a sign stating this house is moving as part of the Centennial. Tell people we preserve our older structures and are honoring them by moving them as part of the Centennial. Rejuvenation House Parts has built a multi-million dollar business around the arts and crafts bungalow. The Marinos house is an arts and crafts bungalow design, and that is exactly what Rejuvenation House Parts exists for. It is one of the largest businesses in the nation for that house style, and it is a very desirable house that should be preserved and moved. Anything short of that, she feels, would be a horrible mistake by the City of Milwaukie and a bad public relations move. Just because Milwaukie Festival Daze is coming through town does not mean an 81-year old house is possibly a temporary nuisance. This has not been proven by crime reports. Crime and vandalism are happening at the Milwaukie Marketplace and the transit center. The property values have not gone down in that area as local businessmen have contended. Tax assessments have all gone up in the period of time the house has been on that site. She encouraged giving Emmert the time he needs to move the house. He has moved the Spruce Goose, the Simon Benson house, and the list goes on and on. Put aside the issues, which she feels are other than just the house, which to her seem petty. Do not sacrifice a structure for personal issues. She wants to see the house moved. It would be typical of Milwaukie to get rid of its historic homes. It sent St. John's Episcopal Church down the river to Sellwood, the Crystal Lake Church was shipped out to North Clackamas Park, the Seth Luelling house was destroyed, and the Adams homes were destroyed to put up the health spa. The Texaco station is where the Seth Luelling home stood, and the pioneer catholic church was torn down. It should stop now; we have little left to preserve. She hopes Council will preserve this house in light of its own Mission Statement – our Mission Statement, the citizens of Milwaukie

Larry Secor, 11774 SE 32nd Avenue, Milwaukie, went on record to say this grand old house should be preserved and placed in an appropriate place.

Fannie Scarin, 12027 SE 31st Place, Apt. 8, Milwaukie, went on record to say the house should be preserved in its original condition

Greg Arquit, 1000 SE 15th Avenue, Portland, Emmert International employee. Terry Emmert acted in good faith, initially, by agreeing to a contract that put the burden of the house on him. No one can argue that he has not tried to perform his due diligence by not looking for different lots for the house. In addition to staff time and resources, Emmert has incurred a tremendous monetary amount of debt just trying to place this house, an extraordinary amount. He is not sure if

anyone realizes just how much money has been sunk into this project. Emmert International did go past some deadlines, and everyone has gotten frustrated. People driving by and business owners see the house sitting there. Council is under a lot of heat from its constituency about removing the house. In addition the festival is coming up, and the City does not want it there. Emmert International seems to have come up with a feasible solution for moving the house to a good lot. He is not sure Emmert was given a chance to put it on a lot that will work. A decision was made to go ahead with the demolition. So, if given the choice of demolishing or putting it onto a lot that will work, we at least owe it to ourselves, given all the work that has gone into the project, to see if it is feasible. There was dialogue about posting a performance bond, and he believes Mr. Emmert was going to agree to that. He fully believes the new lot needs to be given a fair shake before the house is demolished. It seems to be a one-sided decision. There are some Council members who are willing to consider the new lot, while others have already made up their minds. He encouraged the City Council, given the fact Emmert International has a lot in place that appears to be perfect, to take it into consideration.

Councilor Stone asked how much debt Emmert has incurred in trying to get this house moved and purchasing new lots?

Arquit deferred to Mr. Emmert for the answer. Three to four staff people have worked on it along with realtors. Earnest money has been involved and lot acquisitions. Emmert International has made a substantial investment on this project.

Councilor Stone asked Arquit, as he understands it, the status in terms of this lot being a viable lot.

Arquit has not dealt directly with the City, but it is his understanding Emmert International has submitted a plot plan that shows the proper setbacks. Everything is in order for this new lot. The decision was made to go ahead with the demolition, and they are not looking at the plans to even see if it is a feasible solution. That is his understanding.

Councilor Stone asked Swanson to clarify the statement about staff's not looking at the plans.

Swanson said the Planning Department is proceeding completely separately from the abatement proceedings. The department is working on it.

Howard Tikka, 14690 SW 106th Avenue, Tigard. He is a concerned citizens who has spent many years working the Milwaukie area, and he sees a lot of charm in the older houses. He especially enjoys Sellwood for example. They have made great efforts to preserve historic structures. He thinks it would be a shame to demolish this house. He shared Julie Wisner's point of view.

Stephen Vaughn, 10509 SE Rex Street, Portland, Emmert International employee. Although his point of view may seem biased, his affinity to his house goes back to when he started with Emmert International. There were two houses. One mover got the house this far, and Emmert International moved the other moved to 3845 SE Jefferson. Emmert went through all the code compliance work, spent money, and put people to work. There is no litter, and the home is well preserved. It is an asset to the City and adds to the tax rolls. Previously there was a burned out house on that lot. He has been through the Marinos house, and there will not be a huge profit to Mr. Emmert. Now he is involved because historic preservation is the right thing to do. He appreciated Ms. Wisner comments; she did some great research. To address a couple of concerns expressed by the first speaker. Emmert International's involvement has been recent, so now a few deadlines have been passed. He strongly suggested the City Council consider the whole timeframe, and then the length of Emmert's involvement to reach some reasonable conclusions. He sees strong community support concerned about the loss of historic assets. Here is something that can be saved and last for an indefinite period of time. There has been some bad press and conflicting personalities. He would like to have those difference set aside for the sake of saving this home. It would be good for the community and an excellent effort by the Council to vote in a positive manner. The City and City Council will benefit from the positive press that will far outweigh the risk of a few weeks or whatever time it might take to save this house.

Bob Wisner, 15695 SE Dana Avenue, Oak Grove. He is a lifelong resident of Milwaukie and the surrounding area. The City Council has an opportunity to be recognized as the people in the City who are working for the City, who actually halted the destruction of historic properties. As one reads publications about Milwaukie and its history in the development of Oregon, the City has played a prominent role. There were houses of very significant architectural styles that are no longer existent. There is a problem with legacy, history, and the preservation of all these things that mean so much to a lot of people. When one drives through a city, one sees vegetation, architecture, and pavement. If the architecture goes away, all that is left is vegetation, which may be beautiful, and pavement. To destroy this house would be a mistake. With so few styles of architecture left in Milwaukie, the City Council needs to act to preserve something that will be a legacy to the entire City. He believes Emmert has a viable plan. When dealing with an expert who is known for completing a job in an expeditious manner, he does not see how the City can lose. He is ready to go, and the City needs to help him make that happen. With the amount of money Mr. Emmert has personally told him he has personally spent on this, it would be a mistake to cut it short just on the verge of probably making it happen. It is right on the cusp. At the City Council meeting at the end of January, the City Council gave him a deadline. He recalls it was mentioned that if Emmert ran up to the deadline, there may be consideration given for a small extension. The City

Council needs to extend the deadline and help Emmert make it happen to preserve the history and heritage of Milwaukie.

Bob Brady, 3200 SE Washington Street, Milwaukie. As newcomer to the Milwaukie area, he was struck by the charm of the architecture and older structures. If there is a vacant lot, building ticky tacky boxes all in a row would be an error in his opinion. He is in favor of saving this house.

Ron Evans, 2895 SE Oak Glen Court, Oak Grove. He and his family have lived in Milwaukie for 17 years, and he and his wife have spent considerable time talking about this house and are aware of the possibilities. He and his wife are in favor of keeping this house especially after learning how close it is to being successfully moved. He does not believe the house is dangerous. He and his family have participated in the Festival Daze parade, and he is not concerned about any danger in going by it. There is certainly an expert who can get the house moved quickly. He has never attended a City Council meeting, but he and his wife feel strongly about this issue. They love this City – its smallness and progress which can both happen at one time.

Councilor Lancaster appreciated Evans' coming to this meeting during a busy day in order to provide input and asked how he found out about this meeting.

Evans said he saw the announcement in the paper, and his wife heard about it from a neighbor.

Councilor Lancaster asked Evans that question because the City tries so many avenues of communication on every issue, but City Council feels many times that no one is listening.

Roy Emmert, 11811 SE Hwy. 212, Clackamas, Emmert International employee. He requested the City Council save the building and employ people. He grew up in Milwaukie near Railroad Avenue, and he would like to see these older buildings saved for the future. We need to save historical buildings, and Emmert International has put a lot of time and effort in making this happen. He would like to see the City Council vote in favor of keeping the house and turn it into tax revenue for the City.

Patty Wisner, 3325 SE Wister, Milwaukie. She is currently a Milwaukie Design and Landmarks Commission member, although she is speaking tonight as a citizen. After attending the previous night's work session, she is again voicing her support for a reasonable extension to allow Mr. Emmert to move the house to the new lot. She understands John Gessner finds the proposed lot the correct size for the structure. Based on what was said during the work session, there are concerns the festival is coming soon. The house has been up on blocks in storage during this event for a couple of years without incident. There are no crimes on the books from the Milwaukie Police Department, and there is no loss

in property value with the house being stored at that site. We are at the 1-yard line at the goal. We have to snap the ball and make the touchdown now. We have the man who can do it, and he says he will negotiate to take on additional costs if there is a conflict with the demolition contractor. He said he will clean up the site and get the house on wheels and put a moving sign from his company on the house to make it more presentable for the festival. This can be a win-win situation. She understands the exasperation and frustration because she has been dealing with this since January 2001 when she began the process to preserve the house. She is very appreciative of all the effort the Planning Department has gone to through the whole long process – the documentation, the work of the city manager and staff to try to resolve the conflict as well as the support of the City Council. We are ready to make a touchdown here. She asked the City Council for its support to extend this deadline to its reasonable conclusion. She hopes the application process could be expedited and give Emmert the time to get utility company approval to lower the lines and get the house moved and permanently sited. We can all go on to our next order of business for the City of Milwaukie once this is completed. She serves as a volunteer to preserve historic architecture and significant landmarks in this City and to promote quality architecture in this town. To save each viable, older home of significant architectural design is a boon to this community. It says a lot about us as people and will say a lot about us in the future as we preserve these significant homes. This is the first, and we have learned a lot on this whole project. We will have to face this again some time, and she wants us to work our hardest as leaders and volunteers to send the message that Milwaukie cares about cultural heritage, architectural heritage, and quality of life. We will make the effort to live up to our vision statement, to preserve our heritage, to preserve our built structures, and to live those words by the deeds that we do. This is our chance; this is our defining moment as leaders and volunteers in Milwaukie to really stand up and make a tangible testimony to living up to those values we have all pledged to serve this community with. She encouraged the City Council to vote and to allow this extension. Let's make this house happen and make it a permanent part of our landscape.

Patty Scruggs, 6942 N. Villard Avenue, Portland. She did not wish to speak but was present to support saving the house.

Larry Scruggs, 6942 N. Villard Avenue, Portland. He did not wish to speak but was present to support saving the house.

David Aschenbrenner, 11505 SE Home Avenue, Milwaukie, Hector Campbell Neighborhood District Association (NDA) Chair. He has no problem saving and preserving houses. He asked why, when this house was first moved, was a non-profit group not formed to solicit money from the community in order to find a suitable location where it could serve as an historic resource. No one came to him or the NDA about moving this house to the Hector Campbell neighborhood. Emmert International looked at two lots, and in one instance the adjacent

property owners said flat out they would not give up additional land. To put the house on the currently proposed lot, it will have to be modified. He is upset because he believed that neighborhood associations were valued in this community, and that people would go to the neighborhoods to talk to them about this type of proposal. It never happened. It did not happen on the other house that was moved into the Hector Campbell neighborhood. That house was supposed to have been a single-family residence, but, in fact, it is a drug and alcohol rehab house. He hopes this will not happen again. He does not want a bunch of those types of houses in his neighborhood. This is difficult. He wants to save historic houses. The question is, is this the place to put this house? How will others know this is an historic house after it is moved? Will it be open for tours once a year like some houses in Portland are? This house is being stuck on the back side of Jackson Street which is unimproved. How will people know this is a significant house? Will there be a plaque? All we know is the house is being moved. There is no foundation or non-profit group behind it that could use this house for other purposes. We know the museum needs more space. Was there any thought of forming a non-profit that would locate the house near the museum, so it could be used as an annex? It is a slap in the face to the neighborhood association when no one talks the members. The NDA has to track down information by talking to the neighbors about what is going on around them. He wished when it first became public that this house would have to be moved from school property, that those who are concerned about this house would have stepped forward to create a non-profit organization to find a suitable location and make the house nice and use it as a centerpiece of historic architecture. This never happened as far as he knows. It has been wait to the time limit and then plead for an extension. The attendees at the Hector Campbell NDA meeting were not really in favor of putting the house on Jackson Street and do not know the value of putting it there. It is not a convenient place to tour because there is no parking, and the house is being squeezed onto a lot. It is difficult to support the house being moved to that location. Maybe it should be moved to a temporary location somewhere else until an appropriate site can be found. If there is another historic house like this that needs to be moved, he hopes the backers will step up to the plate and form a non-profit to try to raise funds and place it on an appropriate site. The plan now is to cut off part of the house, shoe horn it in, drop it on the ground and leave it. The question is, what will go on there? Will it be like the last house moved into his neighborhood? He hopes not because residents were told one thing, and then something else happened. He understands there are federal laws regarding group homes, but he sees it coming again.

Councilor Lancaster how many residents attended the neighborhood meeting last night?

Aschenbrenner said about 10 people attended, and all were opposed.

Councilor Stone responded to some of Aschenbrenner's comments. Is it the Planning Department's responsibility to notify NDAs of land use changes? Should the neighborhood liaison be in touch? She understands his frustration with not knowing from the City when these kinds of things happen because she believes it should.

Aschenbrenner said it is his understanding that people filing for permits are encouraged to meet with the neighborhood associations. No one involved with this house, other than the City, let the NDA know what was going on.

Firestone added, if there is a land use application, there is notice. If something is going in as an outright permitted use, such as a single-family residence in a residential neighborhood, there is no land use procedure, just a building permit.

Councilor Stone understood from Aschenbrenner this house would have to be altered structurally. This was discussed at the work session, and it seems the sun porch was built right on to the existing exterior wall. The original structure would not be changed. In terms of having a non-profit group rescue this house, she knows the family was involved from the beginning and worked closely with North Clackamas School District to try and find a suitable owner for this house. It is not like at the eleventh hour people are just stepping up to the plate. Patty Wisner testified she has been working on this since 2001, so people have been involved. She understands Aschenbrenner's frustration in terms of things coming into his neighborhood, but she would certainly rather have a beautiful historic arts and crafts home her neighborhood than a mobile home. Lots of those have been going in. As of this date, the house has not been designated an historical site.

Aschenbrenner knows the Wisner's have been involved for a long time. He has not seen anyone going through the process of forming a non-profit to do something in the way of a community outreach to save this house. He knows they have done it personally, but he has not seen the Wisner's do anything to rally the community behind this house.

Councilor Stone knows there has been a big campaign on the Wisner's part. She has not been privy to everything but knows they have been diligently working toward preserving this house.

Joe Johns, 1806 SE St. Andrews Drive, Portland, Clackamas County. He belongs to neighborhood association Sellwood Moreland Improvement League (SMILES). The group is currently working on the car barns located at 13th Avenue and Linn. The building itself was sold by Reed College for \$2.5 million. SMILES found a developer to restore the building, and this is the place to go if the Council wants to see what can be done with old buildings. The clubhouse has been restored, and it is absolutely amazing. You want to save old buildings. The neighborhood association has created an economic development committee to help save that building. Why is this important? It is no different than what the

federal government has done in Washington D.C. when it spent \$30 million to restore an old warehouse. What can be done to help the citizens? He read letters from Parks and Recreation Department/State Historical Preservation regarding the availability of funds for structures put on the registry. There are three banks willing to put up the funds for this building. He referred to letters from Portland Mayor Vera Katz, Diane Linn, and Senators Gordon Smith and Ron Wyden urging Reed College to save the building. The point is, save the building. It will pay for itself. The National Historical Preservation Act of 1966 established a program to save additional historical properties throughout the nation. When you preserve something like that through them, you get money from the architects association because they help fund these projects. There is money available, and there are investors who will put money in to these projects for tax purposes. It is a win-win situation, and something the City needs will be saved.

Councilor Stone requested Johns leave a business card with Swanson.

Councilor Barnes understands Johns is saying there are grant opportunities for the owner of the house to get into some kind of historical situation.

Johns said the City of Portland has a Landmarks Commission, and it helps with historical buildings. State Parks and Recreation has an historical arm, and if a representative determines it is eligible, it will get on there. He discussed Portland's proposed denial of demolition ordinance.

Councilor Barnes understands there is money available to owners of historical properties.

Johns said that was correct. He recommended the City Council look at the clubhouse. It is very beautiful and original.

Councilor Stone asked its location.

Johns replied it is at 12th and SE Linn in Portland just behind the Molded Container building.

Katie Daniel, 9900 SE Lawnfield, Clackamas. She has been working on this project for months, and she would like to see the house moved just as much as anybody on this Council and in this town. Several points were brought up at this meeting and the work session regarding Emmert's due diligence on this project. It has been stated Emmert International did not fill out any paper work or turn in any building permits. We did not work on this project; we have been stalling. She had in front of her all the applications she personally tried to turn in to Mr. Gessner and were denied. It was flat out denied. They are signed and dated if the Councilors would like to see for themselves because it has been said they do not exist. Well, here they are. The applications started in November with Renee

Bagley, and he was told not to turn in those applications because there was a property line adjustment and a variance that was going to be needed in order to get the house to the first original property that we wanted to move the house to. Later, as a few months rolled by and the house was still there, the reasons for Mr. Gessner not accepting those applications seemed to change. She actually had a letter from Mr. Gessner as to why he says he did not accept the applications after the fact. Basically stating, if it was just the property line adjustment, it would be one thing. A property line adjustment and the setback variance, it would take too much time. He used the City building code in order to shut down every opportunity Emmert had to move that building. It was as if he was not trying to work within the code to make it happen. He was trying to use and bend the code in order to stop the project and to put up roadblocks the entire way. She looked up the variance codes herself, and with the little amount of variance Emmert needed, Mr. Gessner himself could have approved it over the counter according to the Council's own code. In a letter he stated to her it would take up to 90 days, so that was why he would not accept the application. That was the first attempt. Then Emmert had a piece of property that was disputed for three weeks if it was even a legally created lot. We had to do a title search and prove it was created legally. This was the Balfour property. Emmert had a backup property off Malcolm if something did not go right with the Balfour property. The wire costs were prohibitive, and Emmert could not reasonably move that building there. Emmert has finally found the lot that fits into the box that Mr. Gessner has put in front of us to fit into. It has not been an easy process; it has not been prompt dealing with the planning department. She understands they have very difficult jobs, but we were expected to promptly move a building that has been sitting there for a year and a half. Yet, when it is within his power to approve something with his signature – an 18-inch variance would have had this house moved by the end of December like they wanted – he would not do it.

Now, here it is. The entire package tied up with a bow, right in front of him and the City to make sure this project goes through – is completed. Otherwise, we are basically just giving up. It is not Emmert who is giving up. It has not been Emmert who has been putting up roadblocks. We have been jumping them, hurdling them as fast as we possibly can and come up with four possible alternatives. Here we are, and we finally have it. Mr. Swanson understood that prior to executing the contract with the contractor to demolish the house. This has not been a secret. We have been in communication with both sides of the government here hoping they would communicate with each other. Let the other know what is going on. Like she said, it has been claimed many times that we have not even filled out paperwork until just now. Everyone was aware we had this lot and were going forward with it. Still the contracts were executed to have the house demolished and not because he had to by the letter of the law but because he had the option to. That she does not understand.

Councilor Stone asked Daniels what she has learned as of this date in terms of the viability of this lot from the planning department.

Daniel responded this is viable lot and fits within the code. She spoke with the building department regarding the transportation permit, and it is being approved. The traffic control plan has just been approved, and that is a huge issue. All utilities have been notified. We are at the 1-yard line; we are there. It is a matter of weeks, not months.

Councilor Stone understands planning has approved it.

Daniel said planning has not denied it. Every one of the check marks is going just as planned. Everything is fine. It should be approved within 14 days.

Councilor Stone asked if PGE is contacted once the permit is approved in terms of lifting wires.

Daniel said PGE has been contacted as well as the other utilities. At this point in time, Emmert needs to give them deposits to do the engineering. That does not take long at all. Emmert has a great relationship with the person who will engineer the project to get this on its way.

Councilor Stone asked Daniels, in her best estimate, what could be expected in terms of moving the house if approved in 2 weeks.

Daniel said the house could be moved within 5 weeks.

Councilor Lancaster asked what could go wrong at this point.

Daniel replied the only thing that could go wrong is for you to say "no."

George Van Bergen, 12366 SE Guilford Drive, Milwaukie. He heard about this meeting last night as a sidebar to a work session, not as a specific meeting. He has been to all of the meetings about this piece of property that he once owned and worked out of for over 20 years. He bought the house, paid for it, remodeled it as well as the one next door, and doubled the size of a then 3-car garage. He has some knowledge of the property. It will require a lot of effort to put it back in any kind of a livable condition. He has never been opposed to moving the house to an acceptable site that complies with all City ordinances. He used part of the money he got from the sale of the property to the School District in condemnation build a house in Milwaukie. He paid over \$10,000 for permit approval which was gone over in detail including architects plans, special earthquake bracing, setback inspections, and sewer, plumbing, wiring, concrete, and water inspections. He thought it was inspected to death, but that is part of the deal. Will this house required to qualify for that type of inspection on the new site that will permit commercial uses or a single-family dwelling unit? The City is in this

position because it got boxed in on a deal that never went forward as expected. All of the moving timelines and promises failed. It has been talked to almost the point of absurdity, and he has been a participant. That brings us down to the what-ifs. If the City does go to abatement and demolition, there should be no risk given to the persons who own the fence, trusses, and blocks because that is not part of the house. Those people need to be notified. The whole matter has become a rather large debacle. If the City Council decides to give Emmert more time, Van Bergen recommended putting a commitment on the person seeking that extension with something on the table that can be approved and within a specific period of time and backed with a cash surety bond. He would like the City Council to comply with ex parte communication laws of the State of Oregon and that, in Council members' beliefs, these ex parte communications have not prejudiced their votes on this matter.

Firestone said this is not a land use proceeding, so the ex parte rules do not apply. The rules that do apply are the Government Standards and Practices Commission rules primarily concerned with financial interest and benefit.

Van Bergen said Firestone's interpretation is different than his.

Terry Emmert, 10470 SE Hillcrest Drive, Portland. One of the most important things is to remember is that the City came to Emmert International last fall to ask for help in saving the house. This was not Emmert's problem. No citizen has ever been hurt in over 35 years and 10,000 projects Emmert has completed. The company has never failed to complete a project. He mentioned the company's history in Milwaukie. It started here. His first residency after high school was here. Not only did he coach at LaSalle High School but also Milwaukie, Gladstone and Putnam players on his summer teams for 15 years. Emmert International has been involved with almost every civic fundraiser from LaSalle to St. John's to every high school around. The company helps every one of them. This is becoming a matter of principle. Emmert International moved the Brownell house, the Eric Ladd house, Boeing Delta 4 rockets, PT boats, Paul Bunyan, The Bomber, Corvallis railroad depot, Pier 42 in San Francisco, Troutdale railroad depot, Oregon City depot to Portland then back to Oregon City for restoration for former Oregon City Mayor Dan Fowler, the Simon Benson house, Spruce Goose, Triest submarine, and many others. Never did the company have to go fight to save something. There was usually cooperation. He has never been stonewalled so much nor his staff. He would be more than happy to furnish the documentation, but someone said maybe it lies halfway in between. It does not lie halfway in between; his company was refused the applications. They could not even be turned in; the answer was "no." He thought if they had gone before the Planning Commission, the house would have been moved, set up, and in business today.

He sees that it is prejudicial because they do not like the house that was moved to Jefferson Street. This is still America, and you have a right to occupy under

the laws and federal guidelines. He commented he does not choose who moves into his neighborhood and starts a crack house or something. He is stuck with those turkeys until the law gets them out. An Oxford House is a rehabilitation center. He has helped set up seven of them. They are not profitable, but Emmert is doing something good. He has never had a problem with any of them unlike rentals in other places where he has constant problems. He has an Oxford House set up on his farm on Springwater Hwy. where he tries to spend every spare minute. He has his grandkids and relatives there along a \$1 million worth of animals. That house is a pride of ownership. They are good neighbors who police themselves.

He talked to the demolition contractor as he promised. He agreed and has called the City with the numbers and is willing to void the contract to save the house. He truly believes that extra time is warranted, and if Council really looks it will see where the roadblocks were. Before it goes a lot farther, the Council should see those things and make a fair judgment on how much money was spent and wasted because of the lack of help. No home has to go to a homeowners' association to be built. If he builds or removes a home, he hopes it will not come to the point of being prejudicial. As far as being set up as an Oxford House, the answer is "no."

Councilor Stone said Katie gave an estimate of approximately 5 weeks to move the house if everything is okay. Is that on the mark?

Emmert said it is just as accurate as the amount of time the City told him when he took the project on that the City could approve his permit. It did not happen; it was not approved. In this particular instance, he thinks that Katie's idea of a 5 – 6 week window is probably realistic. The utilities will all have to be scheduled on the same day. No more money will be thrown in until a building permit is issued. Every time he has done it before, he has eaten the whole cost. He thinks the Council is looking at a real short window. Emmert will go as fast as it can, but remember, these are public utilities and do work on their own agenda. One of them was owned by Enron, so sometimes they are not the easiest to work with. We do get good cooperation, and Emmert has never had any problem with the City's road department. Emmert is at the City's mercy to issue the building permit. He does not pour the foundation until the building is moved to the site. As far as Katie's timing, he believes 5 – 6 weeks is realistic.

Councilor Stone asked about the contract for demolition. The city manager has not yet authorized demolition, but the City does have a viable contract. She understood Emmert to say he has spoken with this contractor, and he is willing to withdraw the contract without any financial obligation to the City.

Emmert talked to him, and he is willing to void the contract. There is a cost because he has spent money at the instruction of the City to do certain things even though he was not given an order to proceed. He expressed surprise no

one has told Council this. The contractor gave those costs directly to the City today. He thought maybe staff would have informed Council. He asked Mr. Swanson if he had that information.

Swanson believes the cost incurred by the contractor was about \$135. He will provide other costs later.

Emmert said the expenses are insignificant and are about one one-hundredth of what Emmert International has wasted so far.

OTHER BUSINESS

Municipal Building Code Changes – Ordinance

Tom Larsen, Building Official, provided the staff report in which the City Council was requested to approve minor amendments to Municipal Code Titles 2, 15, and 16 relating to the building code. Amendments outlined the process for appealing the building official's decision and deleted reference to the Construction Board of Appeals, replaced references to the county plumbing code with Oregon Plumbing Specialty Code, and amended language relating to seismic conditions. The proposed amendments would bring the municipal code in line with the State Building Codes.

Councilor Lancaster asked if everything is fixed or will other inconsistencies emerge.

Larsen believes it is updated as far as the building division goes.

It was moved by Mayor Bernard and seconded by Councilor Stone for the first and second reading by title only and the adoption of an ordinance amending Municipal Code Title 2, Administration and Personnel, Title 15, Buildings and Construction, and Title 16, Environment.

The motion passed unanimously.

The City Manager read the ordinance for the first and second times by title only.

The City Recorder polled the Council: Mayor Bernard, Councilor Barnes, Councilor Lancaster, Councilor Loomis, and Councilor Stone aye; no nays.

ORDINANCE 1923:

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON,
AMENDING THE MUNICIPAL CODE TITLE 2, ADMINISTRATINO
AND PERSONNEL, TITLE 15, BUILDING CODES AND**

**CONSTRUCTION, AND TITLE 16, ENVIRONMENT TO AMEND
THE PROCEDURE FOR APPEAL OF DECISIONS OF THE
BUILDING OFFICIAL.**

House Stored on 21st Avenue

Mayor Bernard commented the City Council has already made the decision this structure is a nuisance, and the city manager is authorized to deal with it. He asked Swanson to provide a status report.

Swanson believes he has three options. One is to issue a notice to proceed with the demolition. Second would be to wait for 5 days to see what happens and postpone the notice to proceed for that period of time. His third option would be more in line with Council deliberations on January 21, 2003. A number of times at tonight's meetings, there were comments about giving Emmert the time to make the move; that we are ready to make the touchdown; and the entire package is tied up with a bow. He would have to say this is not just about time, which is only one element. It is about a number of issues. His third option is where he deals with those issues. If he were using a sports analogy, we are not on the one yard line ready to make a touchdown. We are playing a game of golf, and we are still trying to get a tee time. The entire package is not yet tied up with a bow; we are still trying to find the present. We can get there. We can get the tee time and complete 18 holes of golf. We can find the appropriate present, get the wrapping, and tie it up with a bow.

Time is merely one of the elements. This is not about Festival Daze. This is not about the timing to coincide with what is happening later this month. The timing of Festival Daze was the farthest thing from anyone's mind on January 21 when April 27 was selected as a trigger date. If he were trying to do something to coincide with Festival Daze, he would have moved a lot faster after April 27; he would not have dragged his feet. He would have preferred to get something done earlier in the month of May than playing chicken with the date of Festival Daze.

This is not about Festival Daze. This is about the nuisance provisions, about the municipal code and how we chose to effect those provisions, and whether or not we wish those provisions to mean something. As we sit here, the City has other nuisance situations that are as serious or even more serious. It is a provision of the code upon which we rely.

Swanson clarified comments made at the previous night's work session. One person said this house is not a nuisance. That is true. The situation constitutes a nuisance, and it is not the house that is a nuisance. It is the situation in which the house and the property find themselves together that constitutes the nuisance. The fact that a nuisance complaint was filed is not a statement about the house or about the value or lack of value of the house. The fact that a

nuisance complaint was filed is indicative of the fact that we have a code, and that it is part of our obligation to enforce that. Secondly, one person on staff took some pretty hard hits at the work session. That person is John Gessner. He and Mr. Gessner have worked together for a number of years, and he knows him to be one of the most conscientious, hard working, worrisome people in terms of doing the right thing. He personally felt bad that he did not say something about that at the work session. He has a great deal of faith in Gessner, what he does, his word, and his professionalism. He needs to make that up.

Having said that, the third option is to in fact open up the possibility, once more, for saving the structure, as we talked about last January, in terms of deadlines and measurements by which accountability can be determined. It is not about time; it is about accountability. He outlined his proposal to Emmert International as an option for saving the structure, some of which were suggested earlier by Councilor Lancaster. Swanson noted he had left some of the dates and costs blank at this time.

Basically, the process would be that Swanson would exercise his discretion to hold off on issuing a notice to proceed, but under certain conditions. The first: immediate action, within days, to clean up the property where the house is currently stored and to make the house presentable. Mr. Emmert had mentioned skirting at the work session. Others commented on adjacent properties which are not accessible, and those have to be cleaned up. We can talk about nuisance/not nuisance, saving the house/not saving the house. It is not presentable, and that has to change. That is a condition. The legal status remains where it is as a second condition. Number 3 is that we finalize all necessary filings and payment of City fees and charges to secure building and moving permits. Gessner believes everything is mostly in place. He will underline this includes payment of systems development charges. Number 4, once Emmert International has secured those permits, the City of Milwaukie will be provided with dates certain for utility moves and given permission to inquire with those utilities to ensure things are moving forward. He understands Emmert International would be, to some extent, at the mercy of PGE and other utilities. He does believe, however, an outside date needs to be set beyond which it is simply inappropriate. He will work on those dates. The next condition is to secure the agreement of the City's demolition contractor to both an extension of the contract and a termination of the contract without a cost to the City if the abatement occurs pursuant to these terms. The City would have to give necessary authorization to Emmert International to contact the contractor to talk to him about adjusting the contract between the City and the demolition contractor. Another condition is payment of costs. Swanson will refine and evaluate a list of costs incurred by the City to determine what Emmert will be assessed. He is considering reducing the total costs he has at this time. Additionally, a condition of the agreement is payment of a performance bond. He has yet to determine the amount. The bond would secure the move from the present site pursuant to deadlines, secure the move itself, and be for the purpose

of ensuring the process was completed to a certificate of occupancy. One can drive around the region and see a number of structures on blocks. If this one is going to move, it must be completed. One way to do that is through the performance bond. Finally, a failure to meet the deadline, which he will establish on the move, will result in the notice to proceed and demolition. This is a power granted under the code. If the certificate of occupancy is not secured within the deadline, then the City could elect to execute on the performance bond.

Swanson said at this point in time his intention is to reduce his notes to writing with the blanks filled in, and send a completed document to Emmert International tomorrow. It would result in things being aligned so that the house could be saved. In constructing the agreement, one must remember his first client is the City, and that bias probably shows through.

Mayor Bernard commented the codes were developed by a community process, and he constantly hears that code enforcement is a priority in this community. Swanson has the right to negotiate, and the City Council asked Swanson to abate. He personally supports any negotiation Swanson may work out at his discretion.

Councilor Lancaster commended the city manager for putting together a well thought out, balanced, fair, and appropriate final proposal to make this work. He believes Swanson is on the right track.

Councilor Loomis agreed with Lancaster's comments.

Councilor Stone had a question in terms of timelines that were discussed. Is that sort of where he is heading, and would that be 6 weeks?

Swanson responded yes. The successful removal of the house is a much more positive outcome for staff as well. He will call or e-mail the City Council when he has the agreement finalized.

The group discussed how the public would be informed, and Swanson will contact *The Oregonian* and possibly publish something on the City website.

Councilor Stone had a question in terms of legality. Is a motion necessary to accept Swanson's proposal?

Firestone said in this process there were basically 3 options. One option is that a Council member voting with the majority could have moved for reconsideration. That would have been the formal action, and the only action that could dictate the outcome. Another option is to do absolutely nothing with the assumption Swanson would proceed as suggested. The other option is to pass a non-binding motion to support the position as stated and expresses the Council's general thoughts and concerns.

It was moved by Mayor Bernard and seconded by Councilor Barnes to support the city manager's negotiating what is best for the community. Motion passed 4 – 1 with the following vote: Mayor Bernard, Councilor Barnes, Councilor Lancaster, and Councilor Loomis aye; Councilor Stone nay.

Councilor Stone clarified she voted against the motion because it seemed so general. It is not that she is not in support of what the city manager is doing. She wants to make sure that all the "i's" are dotted and "t's" are crossed in terms of we are doing everything possible to try to save this historic structure. Hopefully, when it does get moved, it will be designated officially as an historical home in our City.

Councilor Lancaster suggested a sign on the house identifying it as a Centennial preservation project, and **Councilor Stone** supported that as good public relations.

ADJOURNMENT

It was moved by Councilor Lancaster and seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the meeting at 7:50 p.m.



Pat DuVal, Recorder

