

MINUTES

MILWAUKIE CITY COUNCIL AUGUST 19, 2003

CALL TO ORDER

The 1916th 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 Deborah Barnes	Councilor Joe Loomis
Councilor Larry Lancaster	

Staff present:

Pat DuVal, Acting City Manager	Larry Kanzler, Police Chief
Gary Firestone, City Attorney	John Gessner, Planning Director
Alice Rouyer, Community Development/ Public Works Director	Steve Campbell Code Compliance Coordinator
Steve Smith, Finance Director	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Mayor Bernard read brief summary of the eleventh Milwaukie City Council meeting held in October 1903. Milwaukie Museum Curator Madalaine Bohl is preparing this series of historical notes in honor of the City's Centennial Year.

Mayor Bernard expressed his appreciation to Centennial Committee members Ed Zumwalt, Kathy Rose, Wilda Parks, Kelly Howell, Jim Newman, Kathy Buss, Madalaine Bohl, and Gloria Totten. The Mayor has a very long list of volunteers to thank and will continue at subsequent meetings.

The City Council interviewed Pat Lent and David Colpo for a vacant position on the Library Board; Ray Bryan for the Historic Milwaukie Neighborhood Association position on the Public Safety Advisory Committee; and Richard McConnell for the Cable Access Studio Ad Hoc Committee.

AUDIENCE PARTICIPATION

Roger Weidner, 3526 SE Franklin, Portland. He indicated he was a former attorney and public prosecutor who ran the consumer fraud department in the Multnomah County District Attorney's Office 25 years ago. For the last 15 years he has been fighting pervasive corruption in the State of Oregon court system by dealing with people who have had their property, children, or lands taken in sham proceedings. For attempting to speak in court like he is speaking to Council, he has been repeatedly arrested and jailed for contempt because he insisted on making a record in the courtroom about the criminal conduct of attorneys, judges and bureaucrats in stealing innocent people's property. He thought it was focused just in Multnomah County, but he started getting calls from people around the state. He is finding that people are having their children, their lands, and properties taken from them, and then they cannot get into a courtroom to be heard on the record in front of a jury as the law provides. Cases are dismissed on one pretense or another.

The reason Weidner is speaking to Council is because the Heckmann's, who are property owners in this community, had a piece of property worth \$100,000. They were issued some fines for code violations. Council drafted the code violations, hired a public contractor judge and a public contractor prosecutor who prosecuted and took judgment against the Heckmann's for \$100,000, and then forcibly removed them from their property. The Heckmann's retained an attorney, Mr. Henry, who, without their knowledge or consent, stipulated to these horrific fines totaling \$100,000 against Mr. Heckmann and Dannie Heckmann and his wife. They have serious health problems. They went ahead and imposed these and prepared a supporting document, went into circuit court, and got Judge Selander to sign off allowing seizure of the property.

When property of that value is taken in that manner, you are basically turning those code violations into felony violations. Imposing a \$100,000 fine on people is not a code violation; it is a felony violation when a government does that. As an historian, he is also very well versed in the Constitution. In this county, this city, and this state, we have one class of citizen - equal. Councilmen are public employees who work for a corporate entity. The State of Oregon is a corporate entity. No corporate entity, whether the City of Milwaukie or the State of Oregon has authority to take from a sovereign citizen property without affording that citizen equal protection of the law and due process of the law.

He asked the Council to look at this case again. It is scandalous that a city would take as a fine everything. The City has taken the entire property. Judge Gray is employed by the Council and the prosecutor who is employed by the City Council took action and took that property away. Now who does it belong to? It belongs to the City of Milwaukie. He has filed an action in Clackamas County to quiet title on that property. The Heckmann's have quit claimed their interest to him. He wanted to bring that matter to the Council's attention. This is not an isolated incident. It is going on around the state. He has appeared before the Supreme Court, not seeking favor, but to expose

corruption. He has had 9 county judges on the stand as adverse witnesses charging them; they have not denied it. Four of them he has charged on the bench, and they have run out of the courtroom. He has been going into the courts with 60, 70, 80, 90 people because he was forced to do that. When he came in with 1 or 2 he was being arrested to be kept from speaking. Now with crowds, the judges are sitting, like the Council, listening and letting a record be made. He is seeing a big change in the behavior of the judicial system because the citizens will simply not and cannot tolerate it. He wanted to raise this issue and ask the City Council to look very seriously at this Heckmann issue and this property and come to some reasonable sort of fine that may be a deterrent. To take absolutely everything for some code violation is draconian at best. He asked Council for its consideration and thanked them for their time.

There were no questions or comments from any City Council member.

CONSENT AGENDA

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

- A. City Council Minutes of August 5, 2003; and**
- B. Resolution No. 34-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Amending the Local Contract Review Board Administrative Rules to Reflect Laws Recently Adopted by the State Legislature.**

The motion to adopt the consent agenda passed unanimously.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

Amend Municipal Code Section 5.08.110 to Clarify and Simplify the Business Tax Exclusion Afforded Construction and Landscape Contractors – Ordinance

Finance Director Steve Smith provided the staff report in which the City Council was asked to approve an ordinance that would amend the section of the municipal code relating to business tax exclusions afforded construction and landscape contractors who hold a Metro license.

Councilor Lancaster was curious how the City ever got to having these things on the books. What is the benefit to the City of a Metro-issued license?

Smith said the City sends a monthly report to Metro and receives money based on the number of permits issued to these contractors. Last year Metro sent Milwaukie for a little over \$4,000.

It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second reading by title only and for adoption of an ordinance amending Municipal Code Section 5.08.110.1 – Exclusions. Motion passed unanimously among the members present. The City Attorney read the ordinance twice by title only.

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

ORDINANCE NO. 1924:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE SECTION 5.08.110.1 TO CLARIFY AND SIMPLIFY THE BUSINESS TAX EXCLUSION AFFORDED CONSTRUCTION AND LANDSCAPE CONTRACTORS.

Amend Municipal Code Section 10.50.030.C (3) Relating to Inventories of Impounded Vehicles – Ordinance

Police Chief Larry Kanzler presented the staff report in which the City Council was requested to adopt an ordinance authorizing the Milwaukie Police Department to conduct vehicle inventories in accordance with contemporary Oregon State law and current court rulings when impounding vehicles. When officers take a vehicle into custody and tow it, they are prohibited from taking a complete inventory of the contents of that vehicle. As a result, there have been questions about whether or not what was in the vehicle was there when they went back to pick it up. Adopting this ordinance would allow officers to check containers that are capable of containing money or items of value. This would eliminate a false claim for property that was reportedly stolen that was in fact never there to begin with.

Councilor Lancaster said it makes perfect sense to expand the inventory to containers and allow a thorough search of a vehicle. Does this amendment address containers that might be attached to the outside of a vehicle?

Kanzler said an officer can ask for consent to search closed containers, and there are some circumstances that allow for an immediate search based on weapons and reported criminal activity. The proposed code amendment relates to more routine, administrative vehicle tows such as driving with a suspended license or driving while impaired. It is meant to be an inventory of the contents of the vehicle in order to accurately record property of value and/or money left in the vehicle when it goes to the

tow yard. This amendment is intended to be an administrative tool rather than an investigative tool with a focus on the interior of the vehicle.

Councilor Lancaster asked if the City is using liberal construction on the interpretation of container.

Kanzler said it is interpreted as a container is capable of holding items of value. The container could be small holding a diamond ring for example or a container as large as a backpack or suitcase. If a container were capable of carrying items of value, the officers would look in it to assure that items of value are recorded.

City Attorney Gary Firestone explained the language contained in the proposed ordinance is designed for carrying money and/or valuables. The reason for that language is because that is what the courts allow. Courts have held there are restrictions on searches of opaque containers that do not appear to be designed for carrying valuables or are not of the kind that usually carry valuables. The words in the text are essentially dictated by the court rulings. "Designed for" does include things like briefcases, backpacks, closed fanny packs, as well as some of the more obvious items. Responding to a question about looking in an Altoid box, Firestone responded though a box such as that could contain money, it is not designed for that purpose and is something the courts would have to decide later.

Kanzler added, if during the course of taking this person into custody, another Altoid container was found in his/her pocket full of money, one would be justified in believing another Altoid container in the vehicle might also contain money.

Councilor Barnes asked if this might include something like a film canister. Does the police officer on the scene make the decision or does a ranking officer make it once the vehicle is impounded?

Kanzler said the car is not being impounded as a result of a criminal action. This is an administrative procedure.

Councilor Barnes asked if an officer stopping someone and noticing a film canister on the floor of the car could open that film canister.

Kanzler said this code would be used, for example, when a vehicle is stopped and it is determined the driver's license is suspended or revoked, when the driver is under the influence and the police take that person into custody, or if there is a warrant. The car is not abandoned on the street. The police take possession of that vehicle administratively. There will likely be items of property in clear view in the car. The officer looks in those containers that can hold money or items of value and inventories them. This is routine practice. The City's current ordinance does not provide for the expansion the courts have now ruled is appropriate. If there is a film container in the car, it will be inventoried, but there is no reason to think it contains any items of value. If at some point, someone alleges the film container held a thousand dollar bill, then the

burden will be on the claimant because the officer's inventory was reasonable in that it safeguarded the inventory in the car. The intent is not to detect or identify evidence for another crime. It is to protect the property that is in the vehicle and to protect the City from liability should something disappear from the car. It is an administrative procedure, not a criminal investigation.

It was moved by Councilor Lancaster and seconded by Councilor Loomis for the first and second reading by title only and for adoption of an ordinance amending Municipal Code Section 10.50.030.C(3) – Inventories of Impounded Vehicles. Motion passed unanimously among the members present. The City Attorney read the ordinance twice by title only.

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

ORDINANCE NO. 1925:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE SECTION 10.50.030 SECTION C, SUBSECTION 3 – TO ALLOW PROPER INVENTORY OF IMPOUNDED VEHICLES.

Consider Lien in Amount of City Costs for Abating the Nuisance on Certain Real Property Owned by Union Pacific Railroad – Resolution

Firestone presented the staff report in which the City Council was requested to consider a resolution setting a lien amount on property owned by Union Pacific Railroad. Anyone with an interest has the right to make a statement, and Firestone explained a procedure the City Council might wish to consider.

The City declared a nuisance on property owned by the Union Pacific Railroad located west of 21st Avenue, north of Lake Road, and east of the railroad tracks having first complied with all applicable code requirements. After the nuisance was declared and the nuisance was not abated, the City took steps to abate the nuisance which was an unpermitted house temporarily stored in violation of various regulations. The abatement consisted of demolishing the building and restoring the site to a reasonable condition. As required by Milwaukie Municipal Code section 8.04.200, the city recorder provided notice of the cost of abatement. In response to that notice, the property owner, Union Pacific Railroad, filed a timely objection to the amount. Another objection was filed as well. Comments have been received on behalf of Mr. Peterson who at one point had an interest in the property.

Code Compliance Coordinator Steve Campbell explained 2 adjustments to the abatement amount. The Metro disposal fee was adjusted to \$17.10 less. The abatement survey was actually \$50 instead of \$55. The total abatement cost with these adjustments would be \$22,500.87. The City contracted for an asbestos survey in the

amount of \$1,075 and lead-based paint survey in the amount of \$50. These are typical surveys in a demolition scenario.

Firestone said the City is authorized to include administrative costs in abatement costs under Code section 8.04.200.A.1. This is a quasi-judicial proceeding, and the Council's role is to decide on the objections and to set the abatement assessment amount. Staff requests that the City Council adopt the proposed resolution but adjusting the cost downwards by \$22.10 for a total amount of \$22,500.87.

Jack Hammond, 21790 Willamette Drive, West Linn, attorney representing Rich Peterson. There is a long record of this proceeding, and he sympathizes with the City Council on its perseverance on this epic. Hammond first got involved in this process last year. Mr. Peterson was trying to work through setback issues. He had an option from Union Pacific Railroad to relocate the property from another location where he had a temporary lease from Southern Pacific. Peterson tried to work through those setback requirements but was unable to do so. The City was pressing ahead at that point with a nuisance abatement, and Mr. Peterson was advised to commence abatement of the building. He was, in fact, negotiating in September and October with the individual with whom the City finally contracted to demolish the building. Mr. Peterson was prepared to go ahead. Historically, there were issues coming up about preservation of the building because of its historic nature.

Sometime in the timeframe of September/October of last year, Terry Emmert of Emmert International approached the City. Peterson and Hammond had not solicited Emmert to do so. Emmert approached the City and indicated he had several building lots where he could move the house and preserve it. Peterson and Hammond were contacted by the City as to whether or not they wished to participate in that process and convey interest in the building to Mr. Emmert. In the past Hammond has dealt with Mr. Emmert and his company, and sometimes those involvements were relatively complex. Peterson and Hammond felt it was important for all parties concerned that there be an agreement that set forth precisely the obligations of all the parties. An agreement was entered into on October 31, 2002, with the City and Mr. Emmert conveying Peterson's interest in the building to Mr. Emmert. Mr. Peterson was absolved of any liability or responsibility from the building by both the City of Milwaukie and Mr. Emmert. The City of Milwaukie agreed not to institute any abatement proceedings in relation to the nuisance. Emmert assumed all responsibilities for moving the building from the site. At that point, Peterson and Hammond thought that things were done. Obviously they were not done, and things went on for some time with the City's ultimately being forced to abate the nuisance. Hammond does not argue there was a nuisance and was something that should be abated.

Hammond does not think it is proper to place a lien on Union Pacific property. Its only privity was in relation to Mr. Peterson who had a lease and an option to move the house. Once Mr. Peterson was absolved of any ownership or responsibility for abatement in relation to the house whatsoever, it seemed clear that that relief was passed through to Union Pacific, which has no privity or relationship to Mr. Emmert.

After Mr. Emmert assumed responsibility for the building, he did not, as Mr. Peterson had done, go to Union Pacific and ask for permission to have the building sited there. There has been a long litany of the City's relationship with Mr. Emmert and how everyone got to this point. Hammond does not think it is appropriate to impose the lien on Union Pacific. If the City does that, the concern is that Union Pacific is an innocent party. There are all manner of things that could happen as far as the relationship between Union Pacific and the City of Milwaukie goes. If Union Pacific takes action against Mr. Peterson, he asserts as a result of the contract with the City that there is a contractual bar from the City's imposing a lien that would have liability repercussions on Mr. Peterson. There is an indemnity agreement with Mr. Emmert. If there is another way to deal with the problem, the City Council may wish to seriously consider other options. He has been a city attorney himself for 30 years, and he freely admits this is a very unusual situation because of the contract between the three parties. Usually if there is a nuisance abatement, there is no question a lien is imposed on the property. The owner always has some significant involvement as to why the nuisance was there with derivative responsibility that does not occur in this case. The City has spent money, and it is the responsibility of the City Council to look for a way to become whole. He believes there is a way to do that. He got a copy of the entire record a couple of days ago and subsequently requested a deferral of the action to come up with another avenue. He was not granted that deferral. He has come up with another option, which he hopes the City Council would allow Firestone to consider.

The notice of assessment and placement of the lien was sent only to Union Pacific. However, under the City's ordinance, it could have gone to either the owner, which is Union Pacific, or to the person in charge of the property itself. There is no question from the contract between the City, Emmert, and Peterson that Emmert is in charge of the building and had the sole responsibility for the movement of the building from that location. The resolution imposing the nuisance in January 2003 identified Mr. Emmert and Emmert International as the person in charge of the building. It is replete throughout the correspondence between the City, through Mr. Swanson and other staff members, and Mr. Emmert that he was continually treated as the person in charge and asked to abate the nuisance. One way the deal with this is to defer action this evening on the request for the imposition of the lien, which identifies only Union Pacific, and ask the city recorder to issue another assessment order to Mr. Emmert as the person in charge of the building and propose to assess the amount of the abatement costs against Mr. Emmert and Emmert International. He would then have 10 days to file an objection. The City Council would deal with this at a subsequent hearing. If the City Council goes through that process and determines the assessment should be made against Mr. Emmert and enters it by resolution, Mr. Emmert would have 60 days to challenge that assessment or writ of review in circuit court. If he did not do that, the matter would be factually over, and that assessment would be legally in place. If that were the case, there would be no lien on the property, which is the traditional way of dealing with this type of situation. ORS 221.915 indicates that matters may be docketed in municipal court for enforcement purposes and can include execution and garnishment powers. The Milwaukie Charter indicates the municipal court has original jurisdiction over all actions to recover penalties as defined by the code. It seems to

Hammond the interplay of ORS 221.915 and Charter Section 28 would allow the municipal court to execute on the judgment, which is a quicker way of resolving the issue rather than placing a lien on property that would probably result in a complicated lawsuit. He understands this is a complicated option, but is a clear way to go after the responsible person. This is the only way Hammond sees the City can actually get to that responsible person without placing a lien on an innocent property owner and derivatively bringing in other parties on a complicated lawsuit. This option seems a more direct way to deal with it.

Councilor Loomis asked if Mr. Peterson had to pay anything to lease the property from Union Pacific.

Hammond said the amount was nominal. Union Pacific was looking at the option of selling surplus property to Mr. Peterson. Unfortunately Mr. Peterson had not consulted Hammond before taking the first step. He spent an enormous amount of money on plans, engineers, planners, and attorneys. This has been a nightmare for Peterson as well as for the City.

Councilor Barnes asked if Mr. Peterson informed Union Pacific on October 31, 2002, that he felt he was no longer the property owner.

Hammond said Mr. Peterson did not inform Union Pacific and did not know why. Things were moving quickly at that point. Peterson was under the gun for the abatement and was ready to destroy the building. He was dealing with a railroad company on Omaha, which probably had a lot to do with it.

Jill Schneider, Kilmer, Voorhees & Laurick, 732 NW 19th Avenue, Portland, representing Union Pacific. Union Pacific did not know the property had been sold and, in fact, did not know until June 2003 when all of the abatement stuff became public. Union Pacific was quite surprised because this October 2002 contract relieved the client of any kind of remedy whatsoever. The contract the City apparently negotiated and certainly executed says that any costs for the nuisance are not to be directed to Mr. Peterson. The contract between Union Pacific and Mr. Peterson says he is responsible for the nuisance. What is Union Pacific's role? Perhaps if it had been involved with negotiating the contract, Union Pacific might think the nuisance and abatement a little bit more just. Union Pacific understands the problem with the nuisance and the costs of trying to get rid of the building. She has not been privy to the entire file but understands the City Council is extremely frustrated. Imagine Union Pacific's frustration when it gets legal papers saying it is responsible for a building it does not own and apparently its tenant no longer owns. Union Pacific seems not to be able to do anything about it because of a contract that was executed by the City. Now the City is saying Union Pacific is responsible for something for which it no longer had any way to remedy. It is very frustrating and leads Union Pacific to believe this nuisance abatement assessment should not be properly directed in the form of a lien on Union Pacific's property. It clearly belongs to Mr. Emmert. He is responsible for relieving this nuisance by the contract that the City negotiated and executed. Union Pacific is at the position that it will

consider a slander on title. It is not in Union Pacific's hands; there is no remedy even though it had contractual rights. The contractual rights have been taken from Union Pacific by a contract to which it was not a party and had no input. Union Pacific does not believe this lien is proper.

Councilor Barnes asked if Union Pacific knew of this building being on the property.

Schneider said Union Pacific knew the building was on the property. It was inserted in the contract that the property was not allowed to be a nuisance and that Mr. Peterson would be responsible for any abatement if the property was determined to be a nuisance. It was Mr. Peterson's legal responsibility. The October 2002 contract says, however, it is not his responsibility.

Firestone said the property owner is always responsible for a nuisance whether or not created by some third party and has an obligation to ensure there is no nuisance on the property. The municipal code clearly requires the Council to determine the amount. After that, the code provides procedures for the amount to become a lien. One place where the code does allow some leeway, is that the Council can provide some direction as to when the lien is recorded. Council can provide some time for staff to determine if the matter can be resolved otherwise. He believes it is worth talking to Hammond and Union Pacific as to what could possibly be worked out in this situation. Ultimately, under the code, the owner of the property is responsible, and his initial reading is that is the owner of the real property.

Firestone did disagree that Union Pacific cannot do anything about the situation. It can bring a claim against Mr. Peterson who can turn it over to Emmert International. The City could impose the lien, Union Pacific goes after Mr. Peterson, and Mr. Peterson goes after Emmert International. That way the matter would be resolved with the least amount of City involvement. To clarify, the City did not draft the October 2002 agreement. There was a nuisance proceeding against the property at the time Mr. Peterson had an interest. The City declared the nuisance. Mr. Peterson and Emmert International came up with the plan to transfer the structure to Mr. Emmert. The City, at that time and for as long as possible, was trying to preserve the house, so it agreed to this agreement that basically took Mr. Peterson off in return for getting commitments from Mr. Emmert that the house would be moved. The house was not moved. Firestone agreed with Hammond and Schneider that ultimately Emmert International is responsible and should pay. However, nuisances are matters that arise from a real property, and the owner of the real property is responsible. Hence, the lien is filed against the real property.

Mayor Bernard felt the issue should be negotiate further. He has no problem with the lien price. He would direct counsel and staff to talk to parties to consider options.

Firestone outlined the options if the City were to follow that approach. One is to continue this matter to a future meeting to let all of the issues be resolved. The other

option is to set the amount of the lien and essentially delay implementation to some future date. In either case there would be discussions and negotiations in the interim.

Councilor Barnes asked if the interest can be continued even if the issue were on hold.

Firestone responded the clearest way to do that would be to set the amount at this meeting and state that interest begins to accrue in a certain number of days. The implementation and at least the lien could be on hold.

The counsels for Union Pacific, Peterson, and the City of Milwaukie, agreed 30 days should be sufficient to discuss the issues.

Councilor Loomis was in favor of seeking another option. He agreed the lien was probably not fair to Union Pacific.

Firestone said because the lien amount must be set by resolution, the draft resolution would have to be amended as to the total amount. Section 2 would have to be amended to read, "the amount of the abatement shall not be assessed and shall not be entered as a lien in the City's lien docket until a further meeting on this issue by the City Council."

Councilor Lancaster suggested just holding the decision for the 30-day period.

Councilor Barnes wants the interest to continue on this bill.

Firestone said statutory interest is about 9%. Parties have a certain amount of time to pay, so the interest probably would not be triggered immediately. Typically, the City would give 30 days to pay, but the City Council could say at the next meeting at which this is considered that interest shall start immediately.

It was moved by Mayor Bernard and seconded by Councilor Loomis to continue this matter to September 16, 2003. Motion passed unanimously among the members present.

Milwaukie Downtown Implementation Grant

Community Development/Public Works Director Alice Rouyer said last year the City received an unanticipated \$15,000 grant from the Oregon Downtown Development Association (ODDA) to help with downtown redevelopment. After some meetings with community leaders, it became clear people were interested in determining what to do after the North Main Project. There are plans underway for McLoughlin Boulevard, the riverfront park, as well as several other projects, but the question is sequencing. The ODDA grant of \$15,000 along with a \$5,000 match will help Milwaukie embark on this "next projects" phase. The grant funds must be used by October 31, 2003. The scope of work is designed in a way that there will not be a lot of meetings and process. Staff believes a core group of people can be interviewed and a final report prepared by

October with the help of a small consultant team. Milwaukie already has a good downtown plan, and now all that needs to be done is putting the pieces together.

Councilor Lancaster suggested giving Ed Zumwalt credit for this grant.

Councilor Barnes asked if money from this grant would be spent on consultants.

Rouyer said this type of ODDA grant typically pays for a consultant team to do the work. The grant will pay for the team along with a \$5,000 match from the funds budgeted in the Community Development Administration fund. Project Manager Jeff King will be working directly with the consultant to ensure a good product that relates to the downtown.

Milwaukie Light Rail Working Group

Gessner provided a status report on the Tri-Met light rail working group. In April 2003, the City Council forwarded a recommendation to Metro in support of the Locally Preferred Alternative (LPA) for light rail in Milwaukie which runs along Main Street in the North Industrial area then crosses and follows the Tillamook Branch into downtown Milwaukie. Prior to City Council consideration, the Planning Commission forwarded its recommendations. Two of these had to do with increased public involvement and additional examination of relocation of a park-and-ride and the transit center. Tri-Met heard the message in the resolution passed by the Milwaukie City Council and has been organizing a working group comprised of City staff, neighborhood leaders, and North Industrial business and property owners. He understands the working group will hold its first meeting on September 4.

The City team is composed of Grady Wheeler, Jason Wachs, Paul Shirey, and Gessner who will do the trench work with the group in support of the Council resolution and the Planning Commission's concerns. The project schedule is relatively aggressive. Tri-Met is hoping to come before the Planning Commission and City Council in November or December. It is anticipated North Industrial and neighborhood representatives will have technical and other issues that will have to be addressed. The result of this process is to hopefully come up with a consensus-based outcome for Planning Commission and City Council review to be forwarded to the Metro Council. There is some uncertainty as to how these recommendations are going to fit into the Metro process for finalizing the South Corridor light rail decision. He has 3 dates scheduled over the next several months to update Council on issues and process. He noted City staff, the neighborhoods, and North Industrial interests are equal participants in this process. This is a Tri-Met organized process with a great deal of input from the City.

Michael Fisher, Tri-Met, and **Michelle Gregory**, Soapbox Enterprises, were available to respond to questions from Council.

Mayor Bernard said he is an alternate on the Joint Policy Advisory Committee on Transportation (JPACT) and had an opportunity to vote on the LPA resolution. This

virtually guaranteed money for the Southgate redevelopment project. Million of dollars could be invested in this, but unless the Oregon Department of Transportation (ODOT) is at the table, we will get nothing. He understands the legislature has asked ODOT to be more responsive, and some of the registration money is for projects exactly like this one that provides better access to industrial areas. He hopes ODOT will be engaged in this process to move it forward.

Gregory felt it was safe to say ODOT is at the table. There is a good balance of North Industrial business and property owners as well as neighborhood representatives. The ODOT representative will be Bill Adams who has had experience with both Milwaukie and regional issues.

Councilor Lancaster asked if there were anything that would keep ODOT from being at the table or being cooperative.

Fisher said Tri-Met will do its best to have ODOT at the table. Adams is a planner and a good point person who has connections with the different departments and design teams in Salem and Portland. Robin McArthur-Phillips is involved, and Tri-Met can lean on her if things get difficult. Engaging ODOT will, without a doubt, be a challenge, and this is a very technically complex situation. The Planning Commission's points that were adopted by the City Council provide the guiding light in terms of specific issues along with future conversations with the neighborhoods and North Industrial interests. This level of detail work is normally done later in a light rail project, but this is being done several years in advance of the Final Environmental Impact Statement (FEIS) in order to firm up the location of the bus transit center. The goal is to reach consensus on a long-range plan for light rail, the stations, and the bus transit center and related facilities. Having that consensus, parties can get down to the implementation process of making it happen.

Mayor Bernard understands the transit center is not necessarily tied to light rail; however, it is tied to phase 1 of the I-205 project.

Fisher agreed with that statement in terms of implementation. In the long term, the bus transit center should be where light rail is built.

Councilor Lancaster commented that when dealing with the legislature, which is very distracted and dysfunctional, it would be helpful to know who the City could lean on to help keep the players focused.

Mayor Bernard said the Community Solutions group has been helpful by interceding in certain ODOT projects when communications have faltered.

Ed Zumwalt said Lancaster touched on what he wanted to talk about. Who does the City lean on to keep the process moving? Between April 2001 and April 2003, many neighborhood people worked a lot of hours with Metro and Tri-Met but came out with nothing. When it came right down to it, a few people snapped their fingers, and the

route went elsewhere. This was not right. Neighborhood representatives were still called to participate in meetings when everyone knew it was a done deal. This is very insulting. Who are people kidding that they want neighborhood input? This is just window dressing, a dog and pony show. He urged getting to the heart of the matter. It is Zumwalt's feeling they just want to take care of their obligations for a park-and-ride and a transit center, and then get out of here. The South Corridor would be taken care of by the I-205 alignment. Metropolitan government and transportation go where light rail can politically and financially work such as Vancouver. Here, they may have to go to an election. He urged the City Council to push those at the higher levels to do something for this town.

Other Discussion Items

Mayor Bernard discussed the Johnson Creek Boulevard improvement project. Traffic has been very difficult to manage particularly since so many jurisdictions are involved. He read an e-mail that indicated concrete barriers would be installed on August 20. The police department has been writing a lot of citations. Since a lot of traffic will be diverted to 32nd Avenue during construction, patrols will be increased once school begins. Crime is increasing in the community, as it is everywhere. It has been hot, and people are unemployed. Crime in Milwaukie is up by about 40%, and that is fairly common throughout the region. The Milwaukie police department has had to prioritize calls because of budget constraints. Milwaukie is partnering with other agencies to battle the increased criminal activity throughout the metropolitan area. Chief Kanzler assured him the police department will respond with the same great service residents expect and deserve, but it may take a little extra time on low priority crimes. Mayor Bernard particularly thanked Kanzler for his efforts in building strong partnerships and obtaining law enforcement grants.

Kanzler thanked the City Council for its support. He clarified one comment. The call load has increased about 40% with crime rate going up about 17%, which is comparable to Portland. Many of the problems Milwaukie sees has to do with being so closely aligned to Portland. Milwaukie and Portland work hard to maintain a relationship between its officers to get the biggest bang for their bucks. He is proud of what the department is doing on limited resources. The 9-1-1 transition is not complete, but the department is close to being able to write reports in the patrol vehicles. He hopes full implementation will take place in about 60 days, and this will help tremendously in saving driving time. Kanzler asked residents to be patient when asking for police assistance in cases where life and property are not in immediate danger.

Councilor Lancaster commented he is concerned when he hears these types of statistics. If demand for police services goes up 40%, what does that do to the department? He is concerned resources are being cut too thin in trying to over perform and putting people at risk. He trusts Kanzler's judgment but wanted to express his concern.

Kanzler is hoping that things will slow down as winter comes on and local investigations with federal partners wind down. Resources have been stretched to the maximum. He has the absolute committed support from the men and women doing the job. They are doing a fine job, but they are tired. Still the officers are willing to continue carrying the torch and running the race.

Councilor Lancaster asked if there was anything City Council could do to get the computers up.

Kanzler explained the computers are installed, but some of the report forms are not completed yet.

Councilor Barnes asked for an overview of the 40% increase in calls.

Kanzler said the period is from January to the first of July. There was an immediate spike in the call load after the transition to Lake Oswego Dispatch. It could have been that the tracking technology was not there in the Milwaukie dispatch center. It is not an epidemic issues, and most calls are property related crimes rather than crimes against people. He added there has been about an 80% increase in commercial burglaries. Jails are not operating at capacity, and people are out of work. Generally, in repose to Barnes's question, there is a global rise in activity.

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment to consult with legal counsel on litigation pursuant to ORS 192.660(g).

ADJOURNMENT

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

Mayor Bernard adjourned the meeting at 7:45 p.m.



Pat DuVal, Recorder