CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 17, 2006

CALL TO ORDER

Mayor Bernard called the 1974th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes
Joe Loomis
Susan Stone
Carlotta Collette

Staff present:

Mike Swanson, City Manager
Lindsey Nesbitt, Associate Planner
John Pinkstaff, City Attorney

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Mr. Swanson introduced John Pinkstaff who was taking Mr. Firestone's place for the evening.

Annual Audit Report

Tom Glogau, Grove, Swank & Mueller, reviewed the audit report. He referred to page 26 and pointed out five funds that had deficit balances at the end of the year. Oregon statute contemplates that each fund would operate at least on a break-even basis. The library services fund had a very small deficit of less than $5,000 in a fund that ran $1.5 million of expenditures. It was dust on the scales in terms of the general fund, so he was not concerned. The park land purchase fund was relatively small and inactive, so that would be easy to cure by transferring money and was not a problem. The community development and engineering funds both had small negative balances and half of what it was the previous year. Those funds existed by charging other funds for their services, so adjusting those charges could easily cure deficits. This administrative services fund was in a similar situation. Although technically these violated Oregon statutes, it did not indicate a mis-spending of money or an overspending of resources that was not curable. The next section identified five funds where expenditures were in excess of appropriations, which Oregon law prohibits. Again, this was not a concern as transferring appropriation dollars from categories that were not over expended could cure it. As long as the fund as a whole was not over expended, the Council met its contract with the voters, which was to not spend more than budgeted. He and Mr. Taylor had discussed how to keep this from occurring in the future.

He referred to page 9, which was a summary of the enterprise fund. The operating funds had a very small fund balance, and the reserve funds had very large balances.

PUBLIC HEARING

A. Findings and Conditions for Norm Scott Subdivision 8555 SE 28th Avenue, Appeal File AP-05-03

Mr. Swanson explained that the staff person for this item, Mr. Firestone, was ill and requested that the City Council make a motion to continue the hearing to February 7, 2006.

It was moved by Mayor Bernard and seconded by Councilor Stone to continue the public hearing to February 7, 2006. Motion passed unanimously. [5:0]

B. VR-05-03 and request to amend condition of approval for application CSO-05-02

Mayor Bernard called the public hearing to order at 7:18 p.m. The purpose of the hearing was to consider a request to amend the conditions of approval for application CSO-05-02 to allow the increase of spill light at the property line from 0.5-foot candles to 1.0-foot candles and to authorize installation of 70-foot lighting poles at North Clackamas Park.

The applicant had the burden of proving that the application was consistent with the City of Milwaukie's Comprehensive Plan and Zoning Ordinance sections 19.301, residential R-10 zone; 19.321 Community Service Overlay; 19.700 variances, exceptions, and home improvement exceptions; and 19.1011.3 minor quasi-judicial review.

All testimony and evidence was to be directed toward the applicable substantive criteria or other criteria in the plan or land use regulation that one believed would apply to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the City Council an adequate opportunity to respond to each issue would preclude an appeal to the City Council or LUBA based on that issue. Failure to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in circuit court. Mayor Bernard reviewed the conduct of the hearing.

Conflicts of interest and site visits: The Mayor and all Councilors had visited the site. There were no ex parte contacts or actual conflicts of interest declared. There were no challenges to any Council member's impartiality or ability to participate in the decision.

Jurisdictional issues: There were no objections to the Council's jurisdiction to consider the matter.

Staff report: **Associate Planner Lindsey Nesbitt** provided the staff report. Ms. Nesbitt distributed additional correspondence that was submitted after the packet was prepared. The applicant, North Clackamas Parks and Recreation District (NCPRD), was seeking City Council approval for a variance to exceed the maximum height of the community service overlay (CSO) zone and an amendment to a condition of approval from the previous CSO application that was approved August 2005. The original CSO application was appealed to the City Council, and since it was the final decision maker on the previous, it was brought before the City Council rather than the Planning Commission.

that with a 50-foot pole, the light would shine differently. When a ballplayer looked up to catch a fly ball the light was directed into their eyes and created temporary blindness. With a 70-foot tall pole, the light would be directed downward and would not shine into the players' eyes. There was a diagram in the site plan showing that. Staff believed those were the unusual conditions. The applicant was required to demonstrate there were no feasible alternatives. In the narrative, the applicant provided four alternatives. One was to provide no lighting. The second was to provide 50-foot poles. The third was to plant additional vegetation along the property line. The applicant would explain the feasibility of each alternative. Staff believed the applicant demonstrated that the 70-foot lighting pole was the minimum necessary to provide adequate, safe lighting for ball players. Staff believed the applicant had demonstrated that the new lights would be better than the existing floodlights with better light control to reduce spill light on adjacent property. The new poles were only 6-feet taller than the existing poles. The applicant would plant vegetation along the property line to help reduce the impacts of light onto adjacent property. Staff recommended approval of the variance application and approval of the amendment to the CSO.

Mayor Bernard understood the variance was requested only on the ballfields and not the parking lot.

Ms. Nesbitt replied that was correct; it was only for the baseball field lighting.

Correspondence:

There was no additional correspondence other than that provided by Ms. Nesbitt earlier in the meeting.

Applicant Presentation

Charlie Ciecko, NCPRD, introduced Senior Planner Michelle Healey and Chris Fout with Sparling Electrical Engineers, and Mark Hadley of W&H Pacific responsible for the design and engineering of this project.

As Ms. Nesbitt indicated the purpose for NCPRD's coming before the City Council was to request several modifications to the August 16, 2005 approval. The first item was a request for a variance on the lighting pole height, and the second was a modification of one of the conditions of approval related to spill light. The Council approved this concept plan on August 16, 2005. Among the major changes to the modified plan were a reduction in parking, elimination of a full-sized soccer field at the west end of the park along with the lighting that had been proposed for that facility. There were enhancements to the walking trail and other elements of the environment, the addition of another restroom, and a small picnic area near the entrance of the park. Condition of approval #5 stated that field light poles would be limited to 50-feet or that the District would come before the City Council and request either a variance or a zone text amendment. After considering the options, the District elected to request the variance that would allow the poles to be mounted on 70-foot metal poles. Taller poles would minimize potential problems with player safety. The lower light poles would have the light shine directly into the players' eyes. They would also minimize the impact of the effectiveness of the shields on the lights. The taller poles minimized spill light into adjacent non-target areas. He referred to staff report page 5.B.4 and the diagram that showed the impact on the angle of the light. The 70-foot poles showed a 55-degree

and the distance from the south property line was approximately 20-feet. That line indicated where the 0.5-foot candle standard was achieved. To the north of that line, the readings were higher than 0.5-foot candle. To the south of that line, they were equal to or less than the 0.5-foot candle. As Ms. Nesbitt indicated in her presentation, the impact of the existing line of trees was not taken into account by the plan. The applicant felt that if this plan had taken that line of trees into account, then there would be a significant reduction of any spill light into that area, and the District could probably meet the standard. The area in question was quite small and measured less than 0.1-acres. It was in an area currently designated flood plain and/or wetland, so the likelihood of that area ever being developed and subsequently having residential uses impacted by spill light in that area was remote. The applicant proposed an amendment to the existing condition that would say that the photometric plan shall demonstrate no more than 1.0-foot candle south of the existing property line measured behind the tree line. If the tree line were taken into account, the applicant was confident it could meet the condition as it was currently written. The land was undeveloped and the closest residence was 487-feet south and west to this particular area. The one structure located to the south on the plan was an outbuilding and not a habitable structure.

Mayor Bernard asked the meaning of a 1.0-foot candle. He lives 19 blocks from Milwaukie High School and can see the field lights, but he understood the 1-foot candle had to do with what was seen from the ground.

Mr. Fouts, Sparling, 400 SW 5th Avenue, Portland. He explained a foot-candle referred to the amount of light delivered in one square foot. For example, in a room such as an office or council chamber, one tried to deliver 40- to 50-foot candles for the tasks taking place in that room. Outdoor lighting, depending on the activity, could be less. If one stood under a typical residential street lighting system luminaire with a light meter one could measure approximately 4.0-foot candles. Between the luminaries there was substantially less light and would measure about 0.2- to 0.5-foot candles. One could look at that and have an idea of the amount of light delivered in these instances and how that might relate to a larger quantity of light.

Testimony in support

- **John Denny, Kids First of North Clackamas, 11233 SE 27th Avenue.**

Mr. Denny spoke on behalf of the youth groups in the area and expressed excitement with the project. He stressed the importance of having lights to double the use both for practices and games. He discussed the safety and height of light poles. When this project was going forward he spoke with the athletic director of Gladstone High School and told him there might be light poles available. He was excited about that, but those involved with field lighting told him the poles were not high enough for use on the varsity ballfield. Mr. Denny assumed it was a safety issue, and the poles needed to be higher. He urged the City Council to approve the variance so the area could have safe fields that could be used twice a day.

- **Tim Salyers, Milwaukie Youth Mustang Basketball, 16480 SE Sterling Circle, Clackamas County.**

Mr. Salyers like the idea of lights in the park because it doubled the use. It would increase the opportunities for tournaments, evening games, and gave them a niche in

lights off at 11:30 p.m. He was concerned at some time that the hours of lighting might be fudged.

Councilor Loomis would almost guarantee that parents and children would not stay at the park past 10:00 p.m.

Mr. Shook was not that worried about the kids, but he understood the some older groups might use the fields and ask for extended hours.

Mayor Bernard understood there was specific reference to the lights being off at 10:00 p.m., so in order to exceed the time limit, the District would have to go through another variance application.

Ms. Nesbitt replied the code did not limit the time, but the previous approvals and the applicant's narrative indicated specific times approved through the CSO. The applicant could agree to a condition limiting the hours the lights could be turned on. In the future, the applicant would have to come back to the City Council for approval.

Councilor Loomis commented in his experience in coaching youth sports. In Lake Oswego for example people were scrambling to find their equipment when the lights went off at 10:00 p.m.

Ms. Nesbitt understood the ballfield lights were on a timer and would go off at 10:00 p.m., and the parking lot lighting would be on until 10:30 p.m.

- **Susan Shawn, 13655 SE Briarfield Court, Oak Grove.**

Ms. Shawn had one major concern and one comment she wanted the City Council to consider. Her major concern had to do with what she called wetlands #5 at the top of the ballfield. There were a number of light poles in the area, and the light might cause harm to the plants and wildlife in the area. It was poorly protected at this time. The buffers were supposed to be 50-feet. She wondered if there was some way the Council could add another condition that might read, "The light spill, either direct or indirect, into that water quality resource area shall be studied after installation by biology experts, and if found the be harmful, the Parks District shall either adjust the offending lights, or remove them if necessary." She suggested that there be some way to build in a remedial action – just in case.

She recently heard Sheriff Craig Roberts talk about plans to house sex offenders in a motel off McLoughlin Boulevard across from the Bomber Restaurant. Some of them were predatory child sex offenders. She understood the County was trying to house up to 30 people in the motel. The Sheriff's office did not have enough money to pay for a full-time supervisor for that facility to assure community safety and prevent the offenders' returning to jail. She thought an option would be to deny the variance request and suggest to the County that it use that $181,000 for the lights for the immediate community safety need or a similar community development project that the Sheriff might identify. She agreed with Mr. Shook that the coaches did at one time acknowledge they did not need the lights for youth tournament play. The original $3 million for the ballfields was the decision made by the County Commissioners on June 22, 2004 without a community-wide discussion and without taking into account other pressing County needs. She realized it was a stretch and that the City Council would

that included maintenance, and they would have to be maintained. They could not be put up and forgotten. She did not understand the philosophy that this would double the playing hours because it would not. The children were quite young. When they were in the meeting for the Planning Commission last fall, Kids First brought a lot of kids to demonstrate to the Planning Commission the number of children who would be impacted by the use of these fields. Anyone sitting in that room would have noticed that all of the children started going home about 7:00 p.m., and they were all gone by 7:30 p.m. If they cannot attend a meeting on a school night past 7:30 p.m. because they had to go home and go to bed for school the next day, then how could they attend baseball practices in May on school nights when they would need lights from 8:00 p.m. to 10:00 p.m.? They set the example that the kids needed to be at home and in bed by 7:30 p.m. That did not hold with the philosophy that they could hold practices on these fields until 10:00 p.m. at night. What they demonstrated and what they said were opposites. In the summer time when there was no school, it was feasible that the parents might let their kids stay at the park until 10:00 p.m. if there were lights. She had two grandsons, and by 10:00 p.m. at night they needed to be at home. They did not need to be out on a playground. She did not believe the 8:00 p.m. to 10:00 p.m. time span was viable. Not for children of that age as demonstrated by the fact that parents took their kids home.

She asked if there had been any environmental impact study done on what would happen to the four-legged inhabitants of the park when these lights went in and especially in the wetland area? She understood that before something like this was done that there would have to be an environmental impact study.

Mr. Ciecko replied there was an analysis but not an EIS in the federal government sense.

Ms. Koch questioned the need to spend all this money to put the lights in. There was no money to maintain them. In her experience with children of this age she did not see parents allowing their children to stay up this late to practice in the spring and fall. They might in the summer. A lot of money was being used for a purpose that was not there.

- **Pat O'Donnell, 13318 SE Kuehn Road, Clackamas County.**

Mr. O'Donnell commented on the lights in the Park. When they were negotiating the changes for the Park so that everyone would agree, the lights were set aside. He understood youth sports would not need the lights and that there would not be enough money by the time the District got through with everything else. He was a neighbor of the Park, and if they lit it up it would be like looking at a prison yard with little prisoners who should be at home in bed. When they started this, they were not talking about lights. He understood they did not need the lights until he got notice of this meeting.

Rebuttal

Ms. Nesbitt addressed the testimony in opposition. She brought the two notices of decision that were issued for this application. The first was the Planning Commission decision, and the second was the amendments and the decision of the City Council. She addressed the lighting and water quality resource area. That issue came up in the public hearing before the Planning Commission. The application was subject to water quality resource review. They talked about lighting and impacts to the water quality resources. The Code stated that where practicable type, sizes, and intensity of the light

large towers or buildings. There was no existing body of evidence or studies that related to curfewed lighting systems as they related to athletic fields.

Councilor Collette followed up on Mr. Shawn's comment about the wetland area and if the District would be willing to look at planting additional foliage near wetlands #3 to address additional spill light after the vegetation was removed.

Mr. Ciecko understood that the landscape plan called for enhanced vegetation along the south boundary where there were voids that were not owing to the gates that provided access to adjoining private properties. The answer to Councilor Collette's question was "yes."

It was moved by Councilor Barnes and seconded by Councilor Collette to close the public hearing. Motion passed unanimously. [5:0]

Mayor Bernard closed the public hearing at 8:30 p.m.

Mayor Bernard recommended adding a condition of approval that the lights be turned off at 10:00 p.m.

Ms. Nesbitt said it was stated in the applicant's narrative but not specifically listed in the conditions of approval. If the applicant accepted that condition, then it could be added. She noted the lighting for the ballfields would be shut off at 10:00 p.m. and the parking lot would be shut off at 11:00 p.m.

Mayor Bernard wanted to add the condition of approval that the ballfield lights would be shut off at 10:00 p.m. for the fields.

It was moved by Mayor Bernard and seconded by Councilor Loomis to approve the request to modify the adopted condition of approval that increased the amount of spill light at the property line from 0.5-foot candles to 1.0-foot candles and approve the variance request authorizing installation of 70-foot tall lighting poles and add the condition that the ballfield lights be automatically shut off at 10:00 p.m.

Councilor Loomis stated this was a discussion of a variance and that the lights were already part of the plan. It made it safer for the players, and there was less spillage on the neighborhood.

Councilor Collette saw this as a relatively small decision in that the poles were now 64-feet and the request was for 70-foot poles. It sounded as if there was some mix of opinion but that there was growing support for the compromise plan. She coordinated summer concerts and understood how difficult it was to pack up gear at the end of an event. She felt ballfield lighting was important.

Councilor Barnes noted the nearest house to these lights was 480-feet. Kids do play baseball in the summer and late spring and early fall after 8:00 p.m. at night. She would rather they were playing ball than breaking into houses.

Councilor Stone would vote in support of the variance to make the poles higher because they would cause less spill light and be safer for the players. She commended the District and Friends group for working together on the process. The August proposal was good, and judging by how well they worked together she felt if there needed to be vegetation planted and more buffers added to mitigate the spill light in the