

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION
October 17, 2006

Mayor Bernard called the work session to order at 5:39 p.m. in the City Hall Conference Room.

Council Present: Councilors Barnes, Collette, Loomis, and Stone.

Staff Present: City Manager Mike Swanson, Planning Director Katie Mangle, and Community Development/ Public Works Director Kenny Asher.

Advisory Board Interview

The Council interviewed Tom Traver for a position an at-large position on the Public Safety Advisory Committee.

Transportation System Plan Update

Ms. Mangle reported that the City received a \$128,000 grant from the Oregon Department of Transportation (ODOT) to update the Transportation System Plan (TSP). The previous Plan was adopted in 1997, so it was out of date in terms of the data and the project lists. Everyone in Milwaukie talked about his or her concerns with traffic. The update will be about a 9-month process during which the community and staff would work with a consultant to identify opportunities to work on existing issues. The Plan was key to getting grants and funding based on community-identified priorities. From the staff point of view, the important piece was the public involvement process included in the consultant's scope of work. She anticipated having an agreement ready in November for Council consideration. There was no local match related to this grant other than staff time.

Councilor Stone commented when the Plan was done in 1997, she was on the Bike/Pedestrian Working Group. Would there be similar citizen committees involved?

Ms. Mangle said the Plan right now was to have a number of different forums including small open houses, working groups, and some workshops. There were some issues such as street design that might incorporate pedestrian environment into the existing street system. Some of the workshops and working groups will include bike and pedestrian systems; downtown parking; street design; street network; and transit and freight. Those would focus on the modes, and people would have opportunities to consider those issues in their neighborhoods in what would be called community briefings.

Councilor Stone asked when the TSP would be completed.

Ms. Mangle said the contractual obligation for the grant was to complete it by the end of ODOT's fiscal year next summer. Most of the work would be done by June 2007 after which it will come to the City Council for adoption.

Councilor Collette asked if traffic calming would be part of the street design.

Ms. Mangle replied traffic calming was an issue and the solutions would likely be either through street design or traffic management. Issues such as traffic

calming and cut through traffic would be discussed in community briefings when neighborhood issues are discussed.

Mayor Bernard asked how much staff time would be involved.

Ms. Mangle would be the project manager; Ms. Ragel would be in charge of public involvement, and the new engineering director will be very involved. She had not calculated the amount of staff time at this point.

City Manager Matters

Mr. Swanson discussed several issues that had come up after the agenda packet was prepared. He reported that North Main Village was coming together quickly, and Tom Kemper had invited the Council to tour the units on Thursday at 5 p.m. The Council members agreed they would like to do so and would meet in Mr. Swanson's office.

The second matter had to do with requests from two Council members to bring up the issue of the height provisions within the Texaco/City Hall parking lot joint intergovernmental agreement (IGA) between the City and Metro.

Councilor Loomis was embarrassed that he did not know the IGA as well as he should have, and the height was brought up to him as an issue and the best effort language. His understanding that best effort would be staff time in researching to achieve that. Personally he was not interested in changing the code. To go to four stories, the ones behind that would go to five, and then six and seven. He would rather start low. He did not want to see staff time involved if it was a moot point – or committee time.

Councilor Collette thought the current design guidelines was four or five stories if there was residential and commercial.

Mr. Firestone recalled the height limit was 45-feet.

Councilor Collette sensed that Metro was willing to be flexible and to let the committee define the building height. She did not know if it was worth trying to revisit the IGA. Perhaps the Council should direct staff to let the committee do its job before it worried about pushing for different standards. She would be fine with that approach if possible.

Mr. Firestone explained that "best efforts" implied that staff would make an effort consistent with its legal obligations. Metro understands that staff cannot do contrary to Council direction. Metro also recognized that best efforts did not commit the Council. It was language that was typically used to recognize that Council could make a different decision. Staff would work on it up to the point it was consistent with the City's responsibilities. If Council told staff not to work on it until it got the committee recommendation, then that action was still consistent with best effort. Best efforts did not require staff to go contrary to the Council direction.

Mr. Swanson added height was one of many issues the committee would work with before sending a recommendation to the Council. If there was a suggestion to change the 45-foot requirement, then a code change would go to the Planning Commission with final decision by the City Council. One option was to give direction at this time, and another was to let the committee do its thing. The Planning Commission could also say it did not wish to implement a change.

Councilor Collette suggested letting the committee do its work without staff's working on code changes. If the committee recommended something like 60-feet, then the staff process would start. She sensed the committee already had a good idea of what the community wanted.

Councilor Stone thought Councilor Loomis was trying to get at was that it involved a code change. He was saying should we involve staff time to do that if it was not something the Council really wanted to see.

Councilor Loomis did not want to see the committee waste its time either. He was solid on that. The next best thing was for the committee to make its recommendation. Personally he could not see anything unless the design included parking.

Councilor Stone thought Councilor Loomis made a good point about building higher in the back to be in scale. Was North Main at 45-feet in terms of the current regulations?

Mr. Firestone believed North Main was 45-feet high.

Councilor Stone had concerns about the IGA in terms of having the City – the way it was worded in terms that the City would look at amending the code. It implied a command from Metro which was pretty strong language. The City will exert its best efforts. She wished it were worded differently in the contract. She was concerned about the height. She has heard lots of things in the community.

Councilor Barnes agreed and thought the best bet was to make it clear about what the Council had in mind. She thought the message had gotten to the committee members. Instead of trying to re-do the IGA, she thought the Council could say publicly that it did not want to change the code. She did not wish to see anything above three or four stories, and she had never said she wanted anything above that.

Councilor Stone pointed out e-mails from two members of the committee saying five stories was fine. Five stories did not seem out of scale.

Councilor Loomis did not want folks to expend a lot of effort because that had happened before. He was comfortable with that.

Councilor Collette asked if staff was to basically stand down and stick to the design guidelines.

Mayor Bernard felt the City had great experiences with its committees. The Planning Commission and the committee would forward a recommendation to the Council that had the option in the end. If the committee said five stories worked because that was what was financially feasible, the Council should look at it. If the committee did not say that, then the Council would not look at it. He did not think staff should work on anything until the committee completed its task. People were appointed because they were very aware of community feelings about building height. He was also a strong proponent of a contract, and all members of Council shared in the decision on that IGA. Everyone had the responsibility to read it and understand it. He believed that issue had been discussed.

Councilor Stone said there were only three Council members present when the IGA was adopted.

Mayor Bernard said the IGA had not changed, and Councilor Stone voted in favor of signing it. At some point a lot of people started telling Council they did not like the IGA. A contract was a contract. He knew how Metro felt, and he did not get the impression at all that the City would be forced into taking something it did not want. Metro did Milwaukie a big favor by buying the land and investing the money. He felt the committee should at least have an opportunity to look at it. He felt the committee understood how the Council and community felt. If they could put a two-block, two-story project in he would support it 100%, but no one had even looked. He got an e-mail saying how disgusted the person was with the design, but there was not even a proposal yet. He thought the committee should be given the chance to look at it. Maybe the committee should provide an interim report.

Councilor Collette added that it occurred to her that a five-story building did not have to be over the entire block. The fifth story could be a smaller structure like a rooftop restaurant with outdoor seating. She suggested letting the community do its thing to come up with a good design. There were incredible buildings in Vancouver, B.C with five stories. There were ways to accomplish it without a building's being oppressively tall because there was no sense of the fifth story from the ground.

Councilor Stone did not think a big city like Vancouver could be compared with Milwaukie. One needed to think about scale. It was like decorating your house. One would not get an oversized piece of Costco furniture for a small room.

Councilor Collette said the building she had used as an example was in a residential neighborhood. It was all in the design.

Councilor Stone agreed design was key, but she also agreed with Councilor Loomis that the Council did not want to obscure a view. The Council needed to look beyond five years. It needed to look at what the City would look like in 50 years. If one built tall at the river's edge then it would get even taller as one went back. There were design guidelines in place for a reason. They were there to have a proper scale downtown. She agreed with Councilor Loomis in terms of she did not want to see staff time used if it was not necessary and if it was something the Council wanted to stick with in terms of design guidelines. They were put there for a reason.

Mr. Swanson spoke on behalf of the committee process which was what concerned him at this point. The committee was given a charge and moving on that charge he knew there were oftentimes things he ended up doing that did not count for anything because they did not happen for some reason or they were rejected. At least the work had resulted in a healthy discussion about the issue. The Council as the final arbiter did not lose its right to say no regardless of what the committee or Planning Commission did. The Council was firmly in the driver's seat. The committee may say it should not change from what it was now. They may say 'yes' and the Council could say 'no' at that point. The Council could submit it to the Planning Commission. There were a number of places where the Council could make the final decision. As long as it contributed to a discussion he did not mind doing something that was not implemented as long as the final result was that it was used to foster some kind of community discussion. One did not lose anything by moving forward and letting the committee have its time and after that the Planning Commission. If the committee wanted to see staff work done on greater heights then that could be done. If it did not happen at least the information was out there as part of the discussion. He was

concerned about the committee process. This was a strong committee, and he did not wish to pull anything back from them right now.

Mayor Bernard said in the downtown plan and in everything the City did it was looking for a certain outcome – vibrancy in the downtown and livability. More people in the downtown would support more businesses. The ultimate goal was a vibrant community, so he felt it was important for the committee to do its work to figure out how to get there. When the downtown plan was done there were tunnels under McLoughlin Boulevard and bridges and bringing the water in. The City in the end said it was not possible although it might have been a wonderful idea. Limiting the committee at this point he felt would be an error. Everyone wanted the same thing in the end which was vibrancy. There was no harm in looking.

Councilor Barnes commented Mr. Asher was in charge of this whole thing, and this was a commonsense thing to do. Mr. Asher was listening to these comments and he would likely relay those to the committee. She did not see anyone the Council had appointed to the committee as not caring what the Council said. They had the opportunity to look at things knowing that the Council had concerns about height. The committee knows the process.

Councilor Stone commented on when the IGA came out and reiterated what Councilor Loomis said. At the September 20 meeting where the IGA was approved there were three Council members present – Mayor Bernard, Councilor Collette, and herself. She knew the final copy was dated two days before the meeting, so the Council got that copy at the meeting as she recalled. That did not jump out at her maybe because she had not perused it closely enough. She wished she had because it would have raised an issue for her. She knew Councilor Barnes and Councilor Loomis were not there and if they had an issue with that and if they would have voted the same way or not. She felt that was something that should have been looked at closer and also the language of the City's exerting its best efforts to change the design scale. She did not feel good about that decision.

Councilor Loomis took personal responsibility for that and did not blame that on anyone but himself.

Councilor Collette said the IGA was discussed at two meetings, and those sections had not changed. Council had the agreement for almost a month before it was signed.

Councilor Stone said the Council gave Mr. Swanson the authority to negotiate the agreement.

Councilor Collette said Council approved it. It seemed as if Councilor Stone was having a different discussion than just the best efforts of staff. She understood Councilor Stone was having a bad feeling about what she did regarding the agreement.

Councilor Stone was concerned about the height requirement and all that.

Councilor Collette believed everyone interviewed for the committee loved Milwaukie and what it was although they wanted to see it improved. Ms. Coleman had talked about going downtown and buying something at a soda fountain and made people reflect upon what they loved about the City that used to be here. The City cannot have the old Milwaukie back because it was gone, but she believed the committee members were committed to having a better new

Milwaukie that would reflect what people liked about the old Milwaukie. She was comfortable with the committee to be creative and to do the right thing for the City. If it did not and somehow Mr. Asher and the whole committee went sideways and recommend six stories, then the Council could say it did not like it. She hoped to go forward as a team and support the committee and the staff. People worked hard on the design guidelines and helped protect the City and the things people loved. The agreement was signed, and there were things the Council might change about it if they could. But it was done, and it was not that bad. Ultimately, the agreement gave the entities the ability to put something on that block. She thought there was pretty good direction from Council.

Mr. Swanson said this agreement was characterized a week ago as being one-sided, and he agreed with that. He did not agree about which party was on the short end of the stick. He negotiated the agreement. He has listened for weeks about this agreement being mischaracterized, being misconstrued, about provisions of it being ignored to make points. He did not sit down with Metro and negotiate this agreement in order to create a disadvantage for Milwaukie. He was upset because he saw an agreement that provided for a great deal of flexibility. What was the default provision? It required that Metro notify the City and 30 days to cure. What if it was not cured? What would be a reasonable penalty given everything that had gone on for the City to pay? To him a reasonable penalty was that the City had to buy the property and reimburse Metro. But rather the penalty was that the City had to give Metro back its 5%. Metro was out \$750,000, \$30,000 in demolition costs and tank removal, \$30,000 in studies, and up to another \$100,000 in soil removal. The City put some asphalt on it to make it a parking lot. That was the money the City was out. It was not his intention when he was asked to do something to do it to the disadvantage of the City, and he was sick and tired of having that suggested.

Mayor Bernard believed the agreement was heavily weighted toward Milwaukie, and he was proud to sign it. The City had the use of a parking lot until the project was started, and the Farmers' Market can use the site through the 2007 season.

Discuss Citizens Advisory Council (CAC) Recommendation

Mr. Swanson anticipated at the special meeting he would introduce the history and he would provide a recommendation at that time. Mr. Knapp, CAC Chair would speak on behalf of the CAC and deliver the recommendation. He suggested the Council open up the session for public testimony.

Councilor Collette asked if it was appropriate to ask questions of Mr. Knapp at this time. She understood the CAC recommendation was to keep Kellogg operating and then divert some flow to Tri-City and build a new plant.

Mr. Knapp thought there was a misconception of the recommendation. One bullet was that the Kellogg Treatment Plant had to be kept alive to keep capacity going, and there was a slowdown of staff's working on the new diversionary pipe. The third issue had to do with when Kellogg closed. There had to be capacity until a new plant was built as soon as possible. He discussed the feasibility of a membrane treatment plant to address environmental concerns and provide level 4 irrigation water. As soon as a plant went on line the valve to the Kellogg Treatment Plant would be shut, and it would go away. The Plant does need to stay on line until it was replaced. The full intent of the recommendation was that Kellogg would go away as soon as a new plant was operating. It was not a matter of if but of when. The level 4 stage outflow into a river was not an issue.

He would have to check the regulations regarding putting water back into the creek. The canals in San Antonio, for example, were level 4 used water.

Mr. Firestone added that there were more stringent regulations for underground discharge.

Mr. Knapp said the Kellogg Treatment Plant processes 10 mgd. Rose Villa was looking for another source for irrigation water as could the Manor.

Mr. Firestone asked if there was a time period during which the new plant would provide capacity for everything in the District.

Mr. Knapp said that would be brought forward at the special meeting to launch this project. The Sunrise membrane plant took about 18 months to build, and there was already an intake for 25 mgd, but wastewater was a little different.

Mayor Bernard commented both Tri-City and Oak Lodge were having financial problems. What opportunities were there for those entities to participate? Damascus and Happy Valley also had concerns. Initially Clearwater was intended to be a regional solution to solve everyone's difficulties. How did everyone partner to solve the problems?

Mr. Knapp originally got involved with the CAC because no one would talk about the game plan and still will not talk about the regional and financial purpose of what was being done. He tried to engage Oregon City, West Linn, and Gladstone in a regional conversation, but it seemed like the powers to be did not want that to happen. The powers that be would be the County administrator. He went to Oak Lodge six months ago to ask it to participate in a group discussion with Milwaukie and the CAC. Last Tuesday night Oak Lodge indicated it wanted to do so. They were looking at \$50 to \$70 million to build a plant in Oak Lodge. He asked Ron Brown, engineer from CH2MHill, to find out if there was an advantage to piggybacking on building the treatment plant. He was told it would be a very good time to do it because they were in the middle of their master planning and were considering membrane filtration. It costs a little more to construct but would save money over the long term. The problem with Clearwater was that CCSD1 was debt free and had all the cash from development, but Milwaukie and the District would not have any participation by going down to Tri-City. The IGAs for Milwaukie were horribly written, and he was appalled by the limited representation.

Mayor Bernard thought there was a great opportunity to get Damascus and Happy Valley involved in the conversation. It seemed as if the Board of County Commissioners (BCC) was looking for someone to save them.

Mr. Knapp replied that Damascus had said many times that it did not want to be involved in the process, and they decided to stay out of the study.

Mayor Bernard commented it would cost \$25 million just to get a trunk line to Damascus. He felt the only option was for Damascus to have a seat at the table.

Mr. Knapp said some thought the CAC was set up for failure, but he believed a solution could be found.

Councilor Collette asked if there was a possibility of broadening the District to be a region wide service.

Mr. Knapp replied the Kellogg Treatment Plant was originally built for 100,000 people and included Happy Valley. That mark has not been reached. He asked

Commissioner Sowa and WES staff to what degree it should be planned. He was told the area that Kellogg Treatment Plant now served. The CAC could not plan for Tri-City because of the charge.

Mr. Swanson commented when they started looking at Clearwater it was a logical answer to a question of how to regionalization. The CAC charge was restricted to the District, so it was narrowly written.

Mr. Firestone added the CAC was for CCSD1 and not for any other district or the County as a whole. The BCC did restrict the scope.

Councilor Collette understood that in order to look more broadly than some other sort of structure would have to be formed.

Mr. Knapp replied when one looked at drainage basins gravity worked all the time, and pumping costs a lot of money. It did not make sense to gravity feed and then pump six miles uphill. The costs would be more scrutinized during the design phase. At that point the CAC said it did not really matter if the amounts were within \$10 - \$20 million of each other. The CAC looked at membrane filtration and dry solid option that would initially cost more but would save money in the long run. This was an engineer's estimate that would come down to earth during design.

Mayor Bernard asked if Kellogg Treatment Plant, Tri-City, and Oak Lodge were at capacity.

Mr. Knapp said during the study the CAC found out that \$5 million in capital improvements were not done at Kellogg Treatment Plant. As a result the Plant was at capacity because Clackamas County continued to hook up houses without another digester or clarifier. That did not show good leadership to him. Building house after house without adding digesters did not show good leadership. Good leadership would have come to Milwaukie and others to discuss the capacity problem, but the County did not. Tri-City was reaching capacity but did have some reserve, and the ratepayers were paying \$500,000 annually to process sewage through the diversion agreement. One of the recommendations was to continue to do that until a new plant was built. It was understood that Tri-City needed more capacity. He had started to attend the Tri-City advisory group where it was stated that reserve was running out, and there needed to be a rate increase or something because Tri-City could not live on CCSD1 any more. Oregon City was growing and service needs should be considered. CCSD1 would bring its money to Tri-City with no representation. He did not feel that was a good option. No one was coming to the CAC with an IGA or was sitting down and talking with the group. They expected the CAC to go along with it. He would provide documentation at the special meeting that he felt would open everyone's eyes. Oregon City wants to develop The Cover, and it would cost several million to beautify the Tri-City Plant.

Councilor Loomis asked how the CAC was formed and why he felt bamboozled.

Mr. Knapp replied CCSD1 was formed in 1967 and was supposed to have an advisory group. For the past 20 years, CCSD1 had been working in a vacuum. There was no advisory group. Milwaukie was not represented, and the District ratepayers were not represented. People were being represented by the Water Environment Services (WES) director. Decisions were being made behind closed doors, so the ratepayers were naturally concerned. That was why he got

involved with Clearwater because no one would answer any questions. He was never able to spend five minutes with any of those people who were in charge, and they hung up on him when he called. Jay Bacon told him Oak Lodge won the vote, so stay out of WES business. He told Bacon his sewer went to Kellogg, but he said he could not talk to Mr. Knapp and pointed to the air. He called again and asked what could be done because ratepayers felt they should have representation. The County violated first amendment freedom of speech, served the group with a summons, sued people personally, and went to court. They thought it was an administrative rule and not a legislative rule. The petitioners got enough signatures to qualify for an election. This was a negotiated deal to form the CAC, and Mr. Knapp was told he would have to get back in the box after the recommendation was made. That was why he was before the City Council. He thought it was time to cooperate and look at this as a joint business deal with affected parties to make some common sense out of this. It was an opportunity and vision to carry this for the next 50 to 100 years. The County never expected the CAC and Milwaukie to talk about advantages. It was Happy Valley as well. The discussion needed to take place and be positive to determine what this could do for all parties. He hoped Milwaukie would gain some kind of representation and encouraged everyone to be positive in finding a solution. Milwaukie wanted its waterfront, and he wanted to do something better.

Mayor Bernard asked what the plant would look like at that estimate. Did it look like the plants in the Seattle area?

Mr. Knapp replied the one in Seattle looked like an office building. Membrane filtration in a Costco-sized warehouse would never be seen again – no one would know it was there. There could be a waterfall in front with reused water. Dollars can be discussed. Siting might be part of the recommendation. There were many things that could be done. We always fight, but let's find a solution to bring it together.

Mr. Swanson learned some time ago that one did not enter a process for the purpose of rubberstamping something that was believed in the beginning. He was always interested in seeing if people changed by going through a process. If he went back to January 2006, Mr. Knapp said it would all take place at the Kellogg Treatment Plant and things would not be done differently. He hated his guts when he filed the petition. He could not talk with Mr. Hofeld for months because all he was interested in was cost. When the CAC made its decision the recommendation was also based on non-cost issues and questioned their assumptions.

Mr. Knapp started out by wanting to look at all of the IGAs for the past 15 years to find out what all of them said. Finally he wanted the plant operators in a room to help him understand what the plant was really doing. He could never get to the staff, and he was on a need-to-know basis. The CAC was not given all of the information it should have had. He was disgusted and put out that ratepayers did not get all the information they asked for. They went as far submitting a public records request to WES. That was why he tried to run the most open meetings possible to get everything out on the table, but he was criticized for that. As a result the powers that be tried to stop the CAC because it was going too far and getting too many answers. Mr. Schoenheit asked for flow charts for the plant, but they were not provided until Mr. Knapp took stronger action. There were issues with the ammonia limit. The barriers needed to come down so decisions could be based on good information. There were still no clear answers on Tri-City, and

he would provide documentation at the special City Council meeting. Oregon City and West Linn were both facing financial issues, so it was a given ratepayers would be paying the bill.

Mayor Bernard observed that everyone had the same problem, and the solution needed to benefit all. If that meant Milwaukie had to be the lead, then it would. Tri-City needed to find a solution and adding Milwaukie to save the ship was a good idea for them. It might have been for Milwaukie. Damascus also needed to be at the table. The BCC will determine the next steps, but he felt another 9-month CAC process should be avoided if possible.

Mr. Knapp commented regionalization was great, but the outfalls have been established. The CAC was put in a shoebox. It was looking for its partners to come together and get this launched. Milwaukie was a 40% user, and he felt the City needed representation.

Mr. Swanson had provided Mr. Lang's comments with his memo.

Councilor Stone was interested in finding a solution that was economically feasible and environmentally sound. She wanted to see the truth come out. It was abominable that process was cycled by the people in charge and the ratepayers were ultimately having to eat in the end was just wrong. She just wanted to see the truth come out.

Mayor Bernard adjourned the work session at 6:56 p.m.

Pat DuVal

Pat DuVal, Recorder