

## MINUTES

## MILWAUKIE CITY COUNCIL WORK SESSION

December 4, 2007

**Mayor Bernard** called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Mayor Bernard and Councilors Barnes, Loomis, and Stone

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

**Wastewater Issues Update**

**Mike Kuenzi**, Water Environment Services (WES), said the main thing he wanted to accomplish at this meeting was to bring Council up to speed on where they were and talk about the impact to Milwaukie. The Citizens Advisory Committee (CAC) was formed in February 2006, and they submitted their strategic recommendation to the Board of County Commissioners (BCC) in September 2006. There were two recommendations, which were to build a new plant and to close the Kellogg Treatment Plant when economically feasible. That recommendation was considered by the BCC for quite a few weeks, and they asked staff to prepare an implementation plan based on the basic recommendation which the Board accepted in December 2006.

He went through the plan and explained the four different elements: construct new capacity to meet the District's immediate needs for current serious problems; complete the conditional assessment of Kellogg Treatment Plant and those issues would be to look at a 10-year operational plan and what would that investment look like, and if they went forward and looked at a longer time period, how would that investment change. A Steering Committee was created to reinstate the regional dialogue to approach wastewater challenges from the community solutions effort, and the Site Selection looked at possible locations. Construction was slated for spring of this year. They completed the assessments of Kellogg and those short-term investments were in the information handout given to Council. Ten-year and beyond investments were in the rate profiles that were being developed now for the new plant because that was part of the whole equation. They should have those costs out in about 2 weeks. The Site Selection Committee began with approximately 15 sites and recommended 3 different locations to the BCC in November 2006. The community wastewater initial dialogue was completed.

**Mr. Kuenzi** explained the challenges of phase 1 for the immediate work that needed to be done. The Kellogg Treatment Plant was over capacity right now. CCSD1 had been running treatment capacity from Tri-City, which meant that Tri-City would not be able to meet its own growth needs within 3 years. Part of the challenge was how to replace that capacity so that Tri-City was not impacted and still could meet CCSD1 needs. The renewed Kellogg Treatment Plant permit was much more restricted. Another challenge was how to make an investment in Kellogg and still meet the long-term goal of the BCC, which was the decommissioning of the Kellogg Treatment Plant. The Kellogg Treatment Plant was now also a non-conforming use.

The decision criteria in developing a Phase 1 program was: to relieve the current waste load pressure on Kellogg; avoid development restrictions; reduce the potential for stranded investment that would be abandoned 10-15 years in the future; minimize the impact of CCSD1 on Tri-City; and ensure growth pays its own way through SDCs and other assessment districts.

### **Capacity Management Plan**

Phase 1 essentially focused on the Kellogg Treatment Plant, and that focus would be an investment on the critical systems that need to be refurbished to make it last 10 more years. That investment had been slowing down over the last couple years because they were waiting for this outcome. The second piece was to build interim capacity at Tri-City to divert more flow, and to return the capacity and accommodate growth. The last piece was the transfer conveyance systems between the 2 districts. The cost was \$110 million in 2007 dollars. \$60 million would be invested at Tri-City, about \$7 million at Kellogg, and \$44 million in conveyance improvements. Paying for that would essentially come from a combination of savings and borrowing. CCSD1 had about \$20 million slated to begin construction, and they would need the balance probably through some type of a bond program. He would be working with the BCC in the next couple of weeks to figure out how to do that. Essentially Phase 1 would adjust CCSD1 rates from \$26 per month to \$37 per month. The preliminary numbers were showing about an \$11 increase across the entire service district. The system development charges (SDC) associated with that would essentially be about \$2,200 per connection up to \$5,200. A large portion of that program was still the growth component for which SDCs could be charged. If they looked at the intergovernmental agreement (IGA), the overall concept between the 2 districts was that CCSD1 would build that new capacity at Tri-city under a ground lease contract, and CCSD1 will pay rent for that lease. The idea was then to sell back that capacity when it was needed for growth starting about 2015 to 2025. The incentive was to allow Tri-City to buy that back at 2010 construction dollars as opposed to replacement costs. Then how did CCSD1 benefit from that? It preserved the option to decommission the Kellogg Treatment Plant by minimizing that investment. It also provided the potential to reduce the net cost of the capital program and essentially bring \$63 million back into CCSD1 allowing them to pursue the new plant. It lowered the overall net cost of the Phase 1 program. This could be accomplished in a timeframe that avoided development restrictions. The timeline to have it built was 3 years, and if he missed that date then he would ask the BCC for a moratorium.

They looked at Tri-City's capital needs over the next 20-30 years going it alone without CCSD1. He showed how that would impact its rates. Then they did the same rate profile assuming that they buy back the capital investment from CCSD1 at those specific times that were set. It flattened their overall rate curve. He discussed the escalation cost, which showed the rate in 2033 that was equivalent to today's rate when adjusted for inflation and would be about \$25. The reason for showing that was that when talking about \$30-50 in the future it did not make a lot of sense unless you have a relative base to compare it to. It told Tri-City that their rates would level over time if they agreed with this plan.

How did that impact Milwaukie? The BCC asked them to review what options were available to distribute cash fairly across their entire customer base. Their goal was a fair and equitable sharing of the anticipated cost. They also asked once they got through that to modify the existing wholesale contract that CCSD1 had with Milwaukie. He went through the four different options that he presented to the BCC. When you look at a wholesale contract without district membership

it broke down into 3 cases. Right now the existing agreement had Milwaukie picking up a percentage of operations and maintenance (O&M) costs for the Kellogg Treatment Plant. It did not normally have that capital component other than when amendments had been negotiated. So they suggested for case 1 a proportional O&M cost plus a portion of the \$7 million upgrades and a risk premium. The risk premium was because the District was taking the financial risk with the bonds, and Milwaukie was not. Case 2 was similar only it was a portion of O&M plus a portion of \$66.1 million for existing capacity shortages. The \$66.1 million represented the capacity requirements that the District had right now even if they restricted growth. Case 2 did not have a growth component and it also had the same risk premium as in case 1. Case 3 basically shared the total cost of the Phase 1 program against all the customers plus the risk premium. The interesting thing about case 3 was that since customers were sharing the cost each customer would get a portion of the SDC's that were collected because of the contribution to the entire cost of the program. Case 4 was a wholesale IGA with district membership and annexation. That was very similar to case 3 without the risk premium because if you were in the District you had the same financial obligation as the other customers.

The next graph showed the impact to CCSD1. The impact was not that significant to the District primarily because of the size of the customer base. The impact to Milwaukie on case 1 was similar to today in the \$7 range. Case 2 would be in the \$20 range. Case 3 was approximately \$30, and with annexation in the \$23-\$24 range. It was a pretty significant impact to Milwaukie from a wholesale rate standpoint, and the numbers were fairly close to what the District would experience. The BCC agreed to start working toward putting case 2 in place. They did not feel it was fair to saddle the City with a portion share of the growth if it was not part of the District, but they did feel it was an obligation as a customer to participate in some of the shortfalls. In addition, as they went forward they would like to talk about annexation as a possibility because there were a lot of different avenues.

He talked about community dialogue. He went back to the BCC a couple of weeks ago and asked them to suspend the Site Selection Committee until April 1. The reason was that he wanted one more chance to put a community agreement together in a more structured forum. The purpose in the charter was to create an alliance or partnership agreement. There were four different parts: to find what the cost benefit was for each partner interested in going forward, start to develop the equity and cost allocation models and how that would impact a rate formula, talk about governance models, and to ensure quality management and adequate participation in investment and policy decisions. He was going to put some framework of an IGA in place by April with whoever was still at the table at that point in time. He would essentially ask the city managers to work with staff to develop the elements and then feed that up to a group of elected officials. He hoped to get through that in a 4-5 month and have the basic framework put together. If they could not get there by April he would ask the BCC to go forward with the new plant option or give a different direction.

His next steps were to move forward with community dialogue. He needed to refine the impacts of Phase 1 in their modeling from a rate and SDC standpoint. He needed to secure all of the permits and financing by June so they could start by FY 2008 – 2009. A big portion was to put a new contract in place with Milwaukie as well as the IGA with Tri-City.

**Councilor Barnes** wanted to know the timeframe of the election of the representatives on the governance structure.

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**Mr. Kuenzi** said he would meet with the BCC on December 18 to layout the process. He would invite each of the cities to elect its own representative, and he hoped to have the first meeting during the third week of January.

**Mayor Bernard** commented that currently they were looking at a structure with a middleman. It seemed that this would build a lot of structure and everyone was getting a piece of the pie. The rate appeared to be higher than the Clearwater proposal. Did Milwaukie get a portion of the SDC's when it helped pay for previous upgrades at Kellogg?

**Mr. Waugh** said there were no SDC arrangements with the City in the existing agreement.

**Mr. Kuenzi** said at this point the SDC's were purely a District revenue source. It could be argued in a community dialogue that might be part of the equity brought to the table. It was purely contractual and not a District function. He wanted to address Mayor Bernard's other question and explained he was given a very specific charter by the BCC on this, and it was not to go back and look at what was done in the past as a comparison. He was hoping to do that as part of the community dialogue. The reality was they still needed to go through with the immediate program, and we would all share in that.

**Councilor Stone** asked if Phase 1 was compared with Clearwater.

**Mr. Kuenzi** said they were not going to look at Clearwater, but it was one of the options in the community approach. It would look different than Clearwater, but they were going to look at that and do some comparisons. A new plant concept would be expensive, and he did not believe CCSD1 could afford it at this time. They needed to do some comparisons to other alternatives.

**Mr. Waugh** said Clearwater had been some years ago now, and the whole plan would likely be different now in terms of cost and challenges of environmental changes.

### **City Councilor Interview**

**Mr. Swanson** announced Mr. Lancaster had decided to withdraw because of work obligations. Mr. Lancaster had asked that Council not make an appointment solely with the idea that appointee had to run in March.

**Mayor Bernard** provided the background and process.

The first interviewee was Mary King

**Ms. King** said it was an honor to be interviewed for the position because she really enjoyed and was proud of being a former councilor. She read a statement detailing her experience and priorities for Milwaukie.

**Mayor Bernard** asked, "What do you bring to the position that is unique?"

**Ms. King** responded that she brought experience, a love of the City, a real ability to establish bridges between people to bring people together for a common cause. She said she brings a good sense of humor. She works well in a group. She respects the differences in everyone.

**Councilor Barnes** asked, "How will your presence on the City Council positively influence or change the current Council dynamics?"

**Ms. King** said she had worked closely with all of the Councilors in one form or another. She would like very much to give something to the current council so that everyone could all trust each other, which was very important to her. She

would be well read by the time she got to the meetings and she thought they needed to have a workshop on the communication agreement so they were committed to it and they could count on each other.

**Councilor Stone** asked, "The City Council is frequently called upon to decide contentious issues, what and how would you personally contribute to bridging the gaps between community members and/or groups?"

**Ms. King** said she was a good listener. She said her first council meeting was all about light rail and that was a very contentious issue. At that time they were not a cohesive council so they had to work hard for that. She remembered during her first year on council it made her very sad because people would get angry with her and it was hard on her because she wanted to please everyone. Then she learned that you had to really listen, know the facts but you have to be willing to make hard decisions for the betterment of all. The JCB widening project was also difficult and she worked so hard to learn all she could about that and listen to the bicycle people, the walking people and the neighborhood people and again had to make decisions that she didn't like at all. All through that the Council disagreed but then they disagreed behind the doors and worked it out and wasn't afraid to talk to each other.

**Councilor Loomis** asked, "Define the two most critical issues facing the City and describe what you as a City Councilor can or will do to solve them?"

**Ms. King** answered getting light rail in the City in an accepted and safe manor was very important. She would like to see it go through and she would work very hard on the site issue. She felt that education was very important and to talk to people and making them feel part of the decision made it much easier. She said what was going on in our Country was going to affect us and whether we knew it or not the citizens of Milwaukie were not sure they were going to have jobs or if they were going to be safe. It was important that our City Council perhaps assume more of a role in working with the federal governments and letting our citizens know we were doing that so we could make sure we were all safe. The City needed to start working on the global warming issue and provide our citizens with the tools so they could work on it too. She was very much an environmentalist.

Second interviewee was Patty Wisner.

**Ms. Wisner** said she was here because she thought this was an interesting opportunity to experience leadership at the council level. She experienced leadership as a Neighborhood Chair and Vice Chair and commission and committee member. She wanted to learn more about the Council and bring some of her experience to the Council. She had commonalities with council and cared about livability, the library, citizen representation, riverfront and downtown development. She was very concerned about downtown development. She wanted development to be done beautifully that we could be proud of it. We need to be pro-business and help entrepreneurs here in Milwaukie and those who would like to locate her. She was interested in public improvement ordinances and that had been discussed by the DLC and to take another look at it with the DLC, Planning Commission and City Council. She wanted to see a decision made that would bring balance to public improvements that would help small business people re-locate to Milwaukie. She was concerned about transportation, specifically public transportation. There was a lot of regional concern regarding light rail and crime and how that would affect Milwaukie.

**Mayor Bernard** asked, "What do you bring to the position that is unique?"

**Ms. Wisner** replied that she was one of the few people who had lived here a long time and had lived here continuously. She has observed Milwaukie every day for over 50 years so she has had a really accurate view of what had gone on in the City. Knowing that Milwaukie used to be a town that was extremely proud of how busy and thriving it was and how much residents had wanted that to continue and had been very dismayed that it had not continued between the 1970's through the 1990's. Finally, we were thankfully seeing some really good activity happening in Milwaukie and seeing some new vibrancy coming in and that was thanks to a lot of effort from not only City Council but the citizen volunteers who had worked so hard to keep working in that direction. She would like to see that continue, and would encourage that as a City Councilor to see Milwaukie reach those goals and become the City that it should have always have been.

**Councilor Barnes** asked, "How would your presence on the Council positively influence and/or change the current council dynamics?"

**Ms. Wisner** said she though the current council had a lot of diverse views and sometimes there was a lot of back and forth discussion to reach a consensus, and she said they all had a fairly accurate picture of her leadership style and what she stood for. She had 10 years experience on the DLC, and they were a really dynamic group now. There were some pretty diverse opinions among the members and but they deal with each other amicably and in a friendly matter. They didn't always agree with each other and they sometimes all had different opinions over an issue but they were always able to discuss it in a positive way and they always left their meetings in a really positive mood. It was a real pleasant experience and she had enjoyed being on the committee and she especially enjoyed the dynamic interaction, they respected each other's right to their opinion.

**Councilor Stone** asked, "The City Council is frequently called upon to decide contentious issues, what or how will you personally contribute to bridging the gaps that occur between community members and our groups?"

**Ms. Wisner** said what she wanted anyone in Milwaukie to know about her was that this town was in her heart and she was grateful for the town and she wanted others to have that experience. She didn't have allegiances and was not trying to gain points with any political party; she was not trying to gain points with Metro or TriMet. When making a decision she would think how it would affect Milwaukie as a whole and then make a decision. She would be coming in objectively and not with any strings attached to any group. When she listened to citizens that came in she would listen to them and hear what was on their heart and their concerns and she would try to make a decision on any issue, which would keep them safe and thriving in Milwaukie.

**Councilor Loomis** asked, "Define the two most critical issues facing the City and describe what you as a City Councilor can or will do to solve them?"

**Ms. Wisner** replied that over everything was growth, growth pressures and learning to deal with what they can do with that and transportation due to the growth. Her core focus would be to promote solutions and development that would not attract crime and were not known documented crime magnets and to promote development and change, which allowed Milwaukie to flourish and decreased the likelihood of crime in the City.

Third interviewee was Greg Chaimov

**Mr. Chaimov** thanked the Council for their attention and appreciated their consideration in keeping with what he hoped would be his conduct if he could

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earn their confidence. He would be keeping his opening statement brief so that he could spend as much time as possible listening. He said when he campaigned last year going door to door and one of the consistent messages that he heard from the Milwaukie citizens was that they wanted a City government that was characterized by civility and by thoughtfulness. He said he could offer someone that and could work with civility and thoughtfulness. He had spent the bulk of his professional life working in a highly charged partisan atmosphere the entire time as a non-partisan staffer. That work he liked to think had given him some experiences that would be of assistance to Council and to the community.

**Mayor Bernard** asked, "What do you bring to the position that is unique?"

**Mr. Chaimov** said first was a great depth of experience in dealing with serving on a board and other government bodies throughout the county. He served on the County Vector Control District and was twice selected as Chair. He served as the vice-chair of the county historic review board. He served as the vice-chair of the commission that traveled around the county to formulate the ordinance that the citizens of the County recently passed to increase the BCC from three persons to five persons. Those efforts he liked to think had enabled him to develop skills and work collaboratively in government as well as meeting and getting to know people well throughout the County whose positive view of Milwaukie was important for the City's success.

**Councilor Barnes** asked, "How will your presence on the City Council positively influence and/or change the current Council dynamic?"

**Mr. Chaimov** responded that more than anything he hoped to be able to lead by example and by demonstrating the benefits of listening. Despite his profession most people would characterize him as introspective. He spent much more of his time listening than he did talking although he feels it is very important for public officials to make sure when it comes time to talk that talking is done in the most respectful manner and in a way that makes clear to everyone particularly to the people who may not be in favor of a decision on a particular issue. It was important to make it clear to them that their views were heard, valued and if they continue to keep speaking would continue to be valued and when the merits were appropriate they would prevail.

**Councilor Stone** asked, "The City Council is frequently called upon to decide contentious issues, what or how will you personally contribute to bridge the caps between community members and/or groups?"

**Mr. Chaimov** said his hope was that he would be able to get out into the community to meet with all of the neighborhood organizations, which were the backbone of this community, to where he would hear from everyone who had a stake in the process and he is aware of that. For example, people in the Linwood neighborhood may have a different view of issues than his neighborhood in Island Station and making sure that he covered the entire community and make sure he was listening to everyone on the issues. That struck him as the best way to make sure that issues that might on the surface be decisive end up not being.

**Councilor Loomis** asked, "Define the two most critical issues facing this City and describe what you as a City Councilor can or will do to solve them?"

**Mr. Chaimov** said the number one issue facing the City right now was the tendency of the City to divide into camps. There was a perception among a great number of people in the community that they weren't being heard. They may speak but their words seem to bounce off and allowing those people to feel as if

their views matter even if they didn't succeed. They themselves need to feel they are the government and the government is them. That was the most important thing that this City government could do to make sure that whatever decisions the City Council made were those that everyone in the community could support even if it wasn't their preferred result. From a substantive standpoint from how should the City look some years from now a major challenge to the City right now was how to revitalize the downtown core while at the same time maintaining the character, in particular in the Historic Milwaukie Neighborhood. We needed to be cognizant of the fact that our downtown and that neighborhood were right next to each other, and any time that we were encouraging people to come downtown, which we need to do, we need to make sure that as we were making those decisions we were doing so in a way that took into account the needs of the people that were most likely to be affected by those decisions.

Final interviewee Brendan Eisworth

**Mr. Eisworth** introduced himself and said he had lived in Milwaukie for 12 years and had owned property here for 9 years. He has had a rental house for 5 years with about an acre property in the Historic Milwaukie neighborhood. He had worked at the Portland Waldorf School for 2 ½ years. He lived, worked and played in Milwaukie. He saw the heart of Milwaukie every day. He ran the Farmers' Market along with the mayor and he had done that for 9 years. His involvement in the market has been a great source of community involvement and celebration and it had turned into something that was amazing and there were people coming from all over to visit the market. Those people saw Milwaukie in a positive light, which was great and he would like to do more things like that and create things like the Farmers' Market and create a community that could be positive and people could see something that was encouraging to potential business owners and potential families that want to move here. He liked to see things like the Farmer's Market and the Waldorf School that was served by wildlife habitat that was environmentally friendly. He would like to do things to clean up Milwaukie. Milwaukie was a beautiful town with a beautiful waterfront but there were things that need be addressed, one of which was what does Milwaukie look like and sound like to people from the outside? What did they see when they came here and would they be willing to move their family here and invest in a home here when there were options to invest across the river? Would they be willing to move their business here when there were opportunities to invest in other areas that are taking off like in Portland? He would like to look and learn from other areas in Portland that have taken off over the years and how find out how we could encourage private investment in Milwaukie so we could have those same things. He wanted a thriving downtown that was clean and beautiful that people could come to and be happy to raise their families in. He and his wife were raising their 1-year old here in Milwaukie and he decided to stay here with two properties and not sell out when the market was better. He could have flipped his second house and instead chose to stay here and raise his child here.

**Mayor Bernard** asked, "What do you bring to the position that is unique?"

**Mr. Eisworth** said that he lived here. He walked here tonight and he walked and biked in this town every single day. That was how he got to work. He saw the transit center every single day. His duties at the Waldorf School entitle him to walk around the entire school every day and look for anything that could be hazardous to the school children. He sees what Milwaukie looks like. He eats downtown and gets his hair cut downtown. He lived and breathed Milwaukie. He knew public transportation because he grew up using it in Philadelphia. We

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needed to find out how to improve what we have and that is what he would like to help do.

**Councilor Barnes** asked, "How will your presence on the City Council positively influence and/or change the current council dynamics?"

**Mr. Eisworth** said that hopefully he could try to be a unifying force. He hoped that whoever was appointed it would be somebody that could work with everyone on the City Council, as that was needed. We didn't need somebody who came to in with their mind made up on what they wanted to see Milwaukie become. He didn't know what Milwaukie should be become and he can't say that he had the answers of how light rail could happen and what would happen with that. He didn't want anyone on City Council to have his or her mind made up prior to any decision. He wanted them to have open minds to listen to everyone that came to Council no matter who they were. If somebody came to City Council to speak their voice they were coming for a reason not because they didn't have anything better to do. Council should digest what a person had to say and figure out what people were saying. They cared about Milwaukie if they were willing to come here and speak their mind, which was great about Milwaukie. People do care.

**Councilor Stone** asked, "The City Council is frequently called upon to decide contentious issues, what or how would you personally contribute to bridging the gap that occurs between community members and/or groups?"

**Mr. Eisworth** said the main thing was letting people be heard. If they had to speak their voice then we have to let them be heard. If we don't let them be heard and we tried to silence them or cut them off or limit them in any way there would be a lot of angry and frustrated people. Council might not agree but they have to listen. He would be open and honest in any decision that was made. Decisions should be transparent unless there is transparency all along the way somebody was going to say that they were not listened to or heard.

**Councilor Loomis** asked, "Define the two most critical issues facing the City and describe what you as a City Councilor can or will do solve them?"

**Mr. Eisworth** replied number one was to put Milwaukie in a good light. There was a stigma that Milwaukie suffers from and he was just talking to someone today that grew up in West Linn and they still hear from family members that live over there that speak negatively about Milwaukie. What can we do to show people all of the City attributes? People need to think of Milwaukie as a beautiful place. We needed to be honest with ourselves and look at things like the transit center and be forceful with TriMet and say that we needed lights here. The lack of lighting at the transit center is a threat to citizens and his family that lived and walked here every day. We needed to deal with those kinds of issues. Also, the shopping cart ordinance that has been passed, was up to City Council to make sure that was enforced, which cleaned up our streets.

Mayor Bernard called for a recess.

### **Appeal Briefing**

**Ms. Mangle** gave a briefing on an appeal that has been filed with the public hearing on December 18. She was giving some background on the code section that applied and showed the chronology of the review process and explained the grounds for the appeal that the appellant had submitted to the City. She said it was a complicated case and wanted to let them hear about it early, and then she would come back on the December 18. She walked through Attachment 6. It involved a property at the corner of Main and Monroe Streets. Main Monroe

Partners, LLC was the applicant, and Mr. Parecki had been the primary representative. In April 26, 2007 when Mr. Parecki was developing the design for the project he had scheduled a pre-application conference with planning and engineering staff. He primarily he talked about land division. There were two buildings on the site, and he was interested in dividing the two. They explained the land division process and also the design review process, which applied to his project. Public area requirements would likely apply along with other requirements such as SDC's. It was a standard pre-application conference as they had with many potential applicants. Staff did make a point in that meeting of encouraging Mr. Parecki that the public area requirements would apply and to discuss and work that out early. He did not come back in until August 31 when he applied for the building permit. The building permit was for a substantial remodel of the building with interior and exterior changes and the exterior changes were subject to design review as mentioned. They spent the next few weeks reviewing plans for compliance with the City Downtown Design Guidelines, and the proposal passed. It planned to do a really nice job of improving the façade with brick veneer and restoring windows in a way that met the design guidelines. In the process of doing that design review they also reviewed the site and not just the building and found that the frontage of the building did not meet design standards. They also gathered information about the size of the building permit, which was approximately \$250,000 and the value of property. She brought Council's attention to public area requirements section 19.B.2. Once they realized that section did indeed apply they also realized that it would be a pretty hefty requirement for that project. She conferred with the City Attorney to see if he had any guidance on how staff needed to apply that part of the code. He said that it was printed in black and white and that it stated, "it shall comply with the public area requirements plan", but we needed to consider direct proportionality. It was the City's legal responsibility to make sure staff was only requiring actions of any developer that are in rough proportionality to their impacts related to that development. At that point she made a code interpretation because there was nothing about proportionality in the code, so staff drew upon other information which was done occasionally. To ensure improvements were proportional to the impacts she asked Mr. Weigel of the engineering staff to prepare a quantitative proportionality analysis. He looked at the changes in use, square footage, trip generation, and equated impact to linear footage. That was a standard type of analysis. It did show sufficient impacts from the project that the City could require the full improvements. She sent a letter to Mr. Parecki informing him of the public improvements and gave him the opportunity to provide his own proportionality analysis. Offering the applicant the opportunity to provide his own analysis of the impacts was not in the downtown portion of the code but was in other sections. Mr. Parecki requested a meeting. He then sent a letter agreeing to spend up to 10% of the building permit value on public improvements or \$25,000. We also needed to consider exactions proportional to impacts plus a nexus analysis that took into consideration the connection. So planning staff did a nexus analysis and they found there were a lot of benefits. The property would benefit from the type of improvements required such as trees, sidewalks, and lighting. On October 5, 2007 they sent a letter to Mr. Parecki that approved his design plans. Then they sent a second, separate letter that outlined the public improvements. There were three areas of the street frontage. There was the Main Street frontage, Monroe Street frontage, and the intersection. She referenced a table that showed what would be required with full compliance. Staff interpreted the code in two steps. First she considered rough proportionality, and the engineering analysis said due to the impacts they could require all those things. In the second code interpretation she made was that

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when the code said the development “shall comply with public area requirements” that didn’t mean that we should tear out everything and make it perfect. If there were a sidewalk even if it was not wide enough or did not match the scoring pattern exactly, then staff would not make anyone tear out that sidewalk unless it was really deficient. The focus would be on adding things that were missing. So using that logic, which would now be applied to all applicants, they were able to reduce the list of improvements, which were included in the October 5 letter to the applicant outlining all of the requirements for the project. Staff asked that Mr. Parecki send a letter that agreed to those improvements prior to releasing the building permit. The improvements would not be required to be completed prior to the certificate of occupancy and covered future tenants as well. Based on that letter, on October 8 Mr. Parecki submitted an appeal to the Planning Commission. The Planning Commission held the appeal hearing on November 13, and the applicant primarily complained that that staff did not do the proportionality analysis correctly. That would be what the Council hearing on the 18<sup>th</sup> would focus on, and more detail would be provided.

**Mayor Bernard** asked if the basis of the appeal could only address the proportionality analysis.

**Ms. Mangle** said first appeal was broad, and the Planning Commission voted 4:2 to deny the appeal. They had asked for clarification on the appeal that was filed on November 20 to City Council, and they clarified that it was about the proportionality analysis and how it was applied to the project. It stated the staff assessment was not properly done and was not constitutionally valid.

**Councilor Barnes** asked for a total cost estimate for the reduced list of improvements as well as background on Mr. Parecki’s previous project.

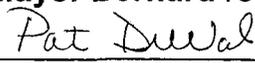
**Ms. Mangle** said a big issue at the Planning Commission hearing was the consistency with which that part of the code section had been applied in general. With his previous application he was not required to do these types of improvements. She believed it was because the McLoughlin Boulevard Enhancement project was under construction at about the same time and that project did end up replacing the sidewalks. They didn’t do any of the other pedestrian amenities and she was not sure what happened. With the Scott Street side on the north of the building there are no requirements for public area because the plan calls for that street to be closed. There were requirements he could have done, and she did not know much about that because she had not started working for the City of Milwaukie at that time. She said there were two times that they found that the code was not applied when it should have been, and those projects were Graham’s Bookstore, and the Archery store project. They were both in 2005 and were \$10,000 building permits that probably would have been required to do \$1,000 level of improvements.

**Councilor Chaimov** said he would to get guidance from counsel before meeting on December 18.

**Mayor Bernard** said to go through Mr. Swanson.

**Councilor Stone** said she also would like the cost of the full list of improvements in addition to the reduced list that Councilor Barnes request for comparison.

**Mayor Bernard** recessed the work session at 7:02 p.m.

  
 Pat DuVal, City Recorder