

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
AUGUST 19, 2008**

**CALL TO ORDER**

**Mayor Bernard** called the 2036<sup>th</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Council President Joe Loomis and Councilors Deborah Barnes, Greg Chaimov, and Susan Stone

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Development and Public Works Director Kenny Asher, Resource and Economic Development Specialist Alex Campbell

**PLEDGE OF ALLEGIANCE****PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****Oregon Zoo 2008 Campaign**

**Metro Councilor Carlotta Collette** discussed the Metro Bond proposal on the November 2008 ballot for the Oregon Zoo. The 50-year old zoo currently has 1.5 million visitors annually, and significant needs were identified in the master planning process.

**Brian Newman**, Oregon Zoo Foundation and former Metro Councilor, discussed the regional treasure, its identified deficiencies, and how those needs would be addressed. The Oregon Zoo is a public institution operated by Metro. In addition to being a great place to spend an afternoon, the Zoo was also a leader in education and endangered species conservation programs. It had the largest condor-breeding program in the world at an undisclosed location in rural Clackamas County, and the hope was to begin releasing condors in Oregon soon. The Zoo had been in its current location for over 50 years, and the aging infrastructure from the 1950's and 60's needed to be brought up to current standards. The proposed bond measure would update and replace old exhibits and facilities, increase access to conservation education, and replace utility systems to reduce water and energy use and lower operating costs. It would provide more humane conditions for the elephants, protect the health of the polar bears, renovate the primate enclosures, dedicate space for conservation education, provide an on-site condor exhibit, replace aging animal hospital and quarantine buildings, and improve water quality by separating sewage from stormwater and harvesting runoff for reuse. The 21-year \$125 million bond would cost approximately \$0.09 per thousand assessed valuation. Accountability requirements would include internal audits, annual independent financial audit, and a citizens oversight committee to monitor spending and recommend project modification if necessary.

**Councilor Stone** asked Mr. Newman if any of the remodeling would minimize animal psychosis. What would be done to make that better?

**Mr. Newman** replied the behavior was documented particularly in large mammals including elephant and polar bears. The new enclosures would be safer, larger, and more natural. The Zoo also hoped to have an offsite location where elephants could get some time away from the public. Although people were generous, it was difficult to

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raise the needed funds without a bond measure. He noted it took five years to raise \$5 million for the new lion exhibit.

## CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Chaimov to approve the consent agenda:

- A. City Council Minutes of June 3, 2008 Work Session
- B. City Council Minutes of July 14, 2008 Special Session
- C. Resolution 74-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Amending Contract #306 097 with David Evans and Associates, Inc. for Landscape Design and Engineering Services for Milwaukie Riverfront Park to Extend the Term to September 2009 and Increase the Compensation to \$500,000
- D. Resolution 75-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the Rehabilitation of the 18<sup>th</sup> Avenue Wastewater Main  
Resolution 76-2008: A Resolution of the City Council of the City of Milwaukie, Authorizing Budget Appropriation for the Purpose of the 18<sup>th</sup> Avenue Rehabilitation Project
- E. Resolution 77-2008: A Resolution of the City Council of the City of Milwaukie, Authorizing Budget Appropriation for the Purpose of Purchasing Valve Maintenance Trailer Equipment

Motion passed unanimously. [5:0]

## AUDIENCE PARTICIPATION

None.

## PUBLIC HEARING

### Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3

Mr. Swanson reported this matter had been taken up at the second meeting of each month since June 2006. He briefly reviewed previous actions and read the proposed amendments:

#### **19.321.3. Unpermitted uses**

The following uses may not be permitted as community service uses and are prohibited in all zones:

- A. Major utility facilities, including wastewater treatment plants and thermal (coal, gas, or oil) power generating plants, other than cogeneration facilities sited with an industrial use. A generator supplying on-site power is not a thermal power generating plant for purposes of this section.

#### **19.321.7 Nonconforming Community Service Uses**

Any use prohibited by Section 19.321.3 that was approved prior to the adoption of Section 19.321.3 may remain in use through December 31, 2015, but may not be enlarged, upgraded, remodeled, or altered in any way, except as needed to abate nuisances declared by the City or as needed to comply with applicable federal or state statutes, regulations or permits. No changes in such nonconforming uses are permitted, except as needed to abate City-declared nuisances or as needed to comply with applicable federal or state statutes, regulations or permits. Violation of this

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subsection shall be prosecuted under Chapter 1.08 and the civil penalty for violation of this section shall be \$10,000 per day of violation. During the period when any such nonconforming use remains in effect after December 31, 2015, the owner of the property and the operator of the use are jointly liable to the City for payment of a nonconforming major utility fee in an amount to be set by resolution of the City Council to recover costs and impacts on the City resulting from the presence of the nonconforming major utility. This section does not apply to a use that has been approved under Section 19.321.2B.

**Mr. Swanson** explained both sections related to the Kellogg Treatment Plant. He recommended continuing the matter and stated he believed they would be important when the District financed system improvements. An underwriter might not be comfortable with those provisions in the municipal code or with their monthly continuance. He recommended continuing the matter to September 16, 2008. If adopted there would need to be some work done to amortize the costs and ensure the penalties were reasonable. He did not recommend adoption at this point but wanted to read the amendments into the record for clarity.

**Mayor Bernard** recommended sending the Clackamas County Commissioners copies of the proposed code amendments.

**It was moved by Councilor Chaimov and seconded by Councilor Loomis to continue the hearing to September 16, 2008. Motion passed with the following vote: Mayor Bernard and Councilors Loomis and Chaimov voting 'aye' and Councilors Barnes and Stone voting 'no.'**

## **OTHER BUSINESS**

### **A. South Downtown Concept – Report on Phase 1 and Contract Approval for Phases 2 and 3 – Resolution**

**Mayor Bernard** recused himself as a property owner in the area.

**Mr. Asher** reported the City began working last spring with the Center for Environmental Structure (CES) to better understand the redevelopment potential for the South Downtown area and validate the *South Downtown Concept Plan* that showed a plaza with light rail station, restored Kellogg Creek, and a pedestrian underpass. CES conducted and compiled information from 34 interviews about what people wanted to see in downtown Milwaukie. He had heard many positive comments about people's perceptions the process. CES provided the City with two key deliverables: a 23-point review of the South Downtown Concept Plan and a 37-page summary of issues and information raised by community members.

**Randy Schmidt**, CES, provided an update on the work and talked about the next phases to reach a new, revised, and embellished concept plan for South Downtown. CES asked 34 members of the community what they loved about Milwaukie, what defined it, and what was important to reproduce, extend, or protect. The information was boiled down and grouped thematically around topics in preparation for the pattern language. He briefly reviewed the 2007 Concept Plan.

Community members' comments tended to fall into themes, and it was probably worthwhile stating that a certain amount of boiling and synthesizing was used as a generative tool. CES and the interviewees went on a walking tour of the downtown, and Mr. Schmidt showed slides of the things people loved and wanted to protect so Milwaukie's character was enhanced and reinforced and not lost. City Hall came up repeatedly as a structure and human organization, and the Sunday Farmers' Market was an emotional anchor with a relationship to City Hall. The waterfront was the jewel

of the City, and opinion was divided on the adequacy of the connection. Some felt it was just not there. Many spoke about beautiful trees and dogwoods in particular. The Masonic Lodge came up many times as something of value along with the Portland Waldorf School as a physical structure and human organization. Many felt the sidewalk widths were adequate, and the trees were a nice aspect. People talked about businesses and spoke favorably about the improvements made under the Downtown Plan. The businesses at the north end of Main Street were valued a great deal. People liked the columnar structure and multi-paned windows at Casa de Tamales and appreciated the intersection improvements at Main and Harrison Streets including the street medallions. A space similar to the Portland Waldorf School might be reproduced at the south end of Main Street in a vest pocket park. The presence of nature and access to water in the downtown was important. People spoke positively of the Lee Kelly Fountain at the Ledding Library. The railroad trestle was attractive and should be protected and enhanced. Mr. Parecki's building came up many times as a desirable renovation in terms of materials and size. The awning at the Brew Pub on Main Street was an attractive sidewalk feature for pedestrians in any kind of weather. People liked the Oregon Department of Transportation (ODOT) building at the north end of town. People suggested the design of the Bend, Oregon, train station be duplicated in a downtown Milwaukie light rail station. Restoration of the Kellogg Lake into a creek was considered a good idea.

CES was also charged with reviewing the 2007 South Downtown Concept Plan. CES found the overall broad concept of a plaza at south end coupled with the light rail station a strong positive. The proposed plaza would be six blocks from the other major focus of downtown Milwaukie: City Hall and the current location of the Sunday Farmers' Market. The two plazas and the intervening six blocks formed a barbell structure generating a new core. Those two poles had the potential to enliven Main Street and form activity nodes with redevelopment creeping in from either end. People felt it was important to save the trees on the site across from City Hall as they were treasureable resources. He recommended protecting the site and leaving it open for the Farmers' Market and other uses of the outdoor space. There was some talk at one point about light rail ending further north, but he felt there was great strength in having it in the South Downtown design. Light rail would bring pedestrian traffic making the plaza and light rail a strong positive. The right triangle of the plaza was inherently problematic in that it did not lend itself to human comfort and satisfaction, and the acute angles reduced use. The geometry, by virtue of the size, shape and relationship to the street, made the site hard to define. It left little opportunity for surrounding buildings to "hug" the plaza, and a symbiotic relationship of buildings and space was vital to successful design of a lively urban plaza. Dogwood Park, the green triangle on the west side of Main Street should be protected as a vital component of the plaza. CES felt the scale and unit of development should be smaller than implied and not block sized. Smaller units of development probably lead to greater success. The tower was a strong positive and gesturally could be a strong anchor if done appropriately. Kellogg Lake improvements were a strong positive with pedestrian access to the extent feasible without disturbing habitat. In the scheme shown, there was a hint of a pedestrian underpass from the Creek to the waterfront. He was not sure about the best way to establish it, but it was a worthy objective to study further. Access from the downtown to the River was an issue in its own right given the barrier of McLoughlin Boulevard and pedestrian safety.

Upcoming work would be to establish pattern language using these community grassroots materials as fuel. CES would diagnose the strengths and weaknesses and identify where human intervention could heal things. It would generate a new concept design that embellished and superceded the 2007 Plan and include and implementation strategy based on present findings. The intent was to continue working with a 9-member citizen group to hammer out the issues, and CES would meet with the property

owners in the South Downtown area. CES often worked with large models and staked sites to generate feedback on what ought to be done. City Council could review the pattern language followed by a public showing. Mr. Schmidt showed an example of a large-scale model from which more polished drawings would be generated.

- **Ed Zumwalt, Milwaukie**

**Mr. Zumwalt** thought the CES document was remarkable. He was concerned about intellectual memory, changes of Council, and what the next part of the City was going to look like. What would keep us in line? It was up to the conscience of our leaders. He was concerned a lot of people had talked about a village concept north of Hwy 224 and this area. He asked if the “barbells” could be stacked end to end in that case. He was looking forward to seeing what CES came up with but was concerned about the future.

- **Greg Seagler, Milwaukie**

**Mr. Seagler** lived in the South Downtown and was sometimes a NIMBY. He loved the City’s location on the River and wanted to enhance what was there. Working with CES had been a positive experience for him, and although initially skeptical, he was pleased with the report. The consultant had a wonderful understanding of how people, buildings, and nature worked together. He appreciated the concern with scale. People said they wanted Milwaukie to keep the human scale and the small town feeling to encourage pedestrian activities and social interactions. CES really seemed to understand. Although he did not know how much it would cost to continue working with this company, he felt some expense was justifiable because the agency strives to operate with a certain amount of transparency and not adhere to its own agenda. There were a lot of community issues recently, and things had not been easy. When he read the report he was struck by how much agreement there was among people who had been far apart on other issues. The focus was on the south end, but it was clear everyone was looking at the bigger picture. Certain things were inevitable, and this was the time to envision how to make the most of everything.

- **Ed Parecki, Milwaukie business owner**

**Mr. Parecki** had been able to speak about the things he liked and how to make Milwaukie better. The exterior of his Main/Monroe Street building on the bar was complete, and his other building was the bell. He would like CES to tie this into the Downtown Plan to determine where the similarities might or might not be. He was glad to see one of his issues, keeping the plaza at City Hall, was prominent along with waterfront access.

- **Dion Shepard, Milwaukie**

**Ms. Shepard** had been looking at the triangle for 9 years, and she was pleased with what CES had come up with. She really like having two plazas because she wanted to save the trees and remove asphalt. She did not advocate for the cookie cutter effect or hodgepodge development and wanted to keep the small town feel. She liked the ideas for Dogwood Park and hoped she could continue working with CES as the project went forward.

**Mr. Asher** appreciated the comments. The action in this agenda item was to authorize the City Manager to execute a contract with CES for planning services for Phases 2 and 3 in the amount of \$120,000. CES had started discussions with TriMet so this work could inform any light rail station design.

**Councilor Barnes** found the comments interesting and was pleased people found a common goal. It benefited the City when people with differing political views worked

together. She like the Bend train station idea and hoped TriMet would consider it. Overall she was very impressed.

**Mr. Schmidt** was surprised by the two strong positives. The comments were incredibly rich and heartfelt, and the level of agreement among those who might have opposing views surprised him.

**Councilor Stone** commented light rail really had no end point whether it went to Park Avenue, Lake Road, or not at all. She asked how the terminus discussions were going.

**Mr. Asher** replied this City Council and other jurisdictions approved the locally preferred alternative with a terminus at Park Avenue and a station at Lake Road. Mr. Schmidt had agreed to fly to Portland in order to have a series of meetings with the TriMet design team. Milwaukie was working on its South Downtown and TriMet should be responsive to Milwaukie. TriMet appreciated speaking with someone that had a sense of what they wanted and had involved its citizens early. CES would have some hand in helping with the station location and design as part of the umbrella agreement.

**Councilor Stone** commented about the photo of the Bend train station and suggested the ODOT building be used as a transit station. The City once had an Amtrak station and could still use one. It was not over until the fat lady sang. Something to consider was the use of stonework mimicking the Bend station on a smaller scale. The waterfront park could have a similar design. She liked the suggestion of tying in this work to the Downtown Plan and looking broadly including the north end. She liked the barbell analogy. She wanted there to be an intimacy between people, buildings, and nature. CES was spot on in having this concept plan address all the human senses. The idea of smaller development and scale of downtown redevelopment was going in a good and positive direction. She liked the idea of models and mapping and felt the same thing should be done with light rail because it would be huge in the Milwaukie downtown. It was important to pay attention to proper scale. She was pleased it was not a cookie cutter plan and included small businesses and a variety of restaurants. She hoped modeling would prevent a major misfit before it occurred. Light rail was the elephant in the kitchen, and it was important to make sure it fit.

**Councilor Chaimov** was pleased this work gave the community a way of moving forward together.

**Councilor Loomis** felt the work had really captured Milwaukie, and he was impressed.

**It was moved by Councilor Barnes and seconded by Councilor Chaimov to adopt the resolution authorizing the city manager to execute a contract with the Center for Environmental Structure for Planning Services for Milwaukie's South Downtown Area Phases 2 and 3.**

**Councilor Loomis** felt this was a project the whole community could get behind, and this work helped set the path. It was interesting that it took an outside visitor to remind us how beautiful Milwaukie was and nice for someone to come in with fresh eyes.

**Motion passed with the following vote: Councilors Barnes, Chaimov, and Stone and Council President Loomis voting 'aye.' Mayor Bernard had recused himself. [4:0]**

**RESOLUTION NO. 78-2008:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE CENTER FOR ENVIRONMENTAL STRUCTURE FOR PLANNING SERVICES FOR MILWAUKIE'S SOUTH DOWNTOWN AREA PHASES 2 AND 3.**

## **B. Logus Road Right-of-way Acquisition Authority – Resolution**

**Mr. Campbell** reported adoption of the proposed resolution would authorize the City Manager to acquire right-of-way to construct Logus Road sidewalk and to use eminent domain if necessary. The design included continuous sidewalk predominantly on the south side of the street and preserved the tree canopy. On-site storm water runoff was captured and treated through the use of “rain gardens” that also provided a buffer between the pedestrians and vehicles. The right-of-way acquisition was ready to begin, and he had a number of appraisals in hand. He discussed the process and noted it was important for the City to make an initial offer that would survive in court if necessary. It would pay 100% of the value of the land that would be used as sidewalk.

**Councilor Stone** understood in reading the report using eminent domain was not anticipated. Could the City Council decide the City Manager did not have that authority? It could easily be put on an agenda for Council to decide. To her it was threatening to take property anyway, and she did not wish to portray that to citizens. The land was sacred, and this was the American dream. She did not wish to approach it as a threat and suggested the matter come back to Council.

**Mr. Campbell** replied getting items on the Council agenda could take three to four weeks, so there could be problems with the construction window. He felt there was value in the City’s being upfront and direct with the property owners. There was some uncertainty with not using eminent domain.

**Mr. Swanson** added no one liked to use eminent domain, but the Council had certain fiduciary responsibilities. It also had certain powers at its disposal, and was a matter of how things were handled. It was a tool that could be used to the benefit of the community as a whole and not used in a heavy-handed manner.

**Mayor Bernard** observed eminent domain was used successfully on the Johnson Creek Boulevard and McLoughlin Boulevard improvements, and the resulting projects satisfied all parties. He felt it was the most honest way to go.

**Mr. Swanson** added in the McLoughlin Boulevard situation eminent domain would have been expensive, so the City pursued outright purchase of the larger property.

**Councilor Stone** asked what would happen if a property had a lien on it.

**Mr. Campbell** replied whether it was a willing seller or eminent domain any payment would go toward the lien and not to the property owner.

**Councilor Stone** thought it would be cleaner to negotiate without using the big gun. That was what she would prefer. The City could pull out the big gun later.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution declaring the need to acquire property on Logus Road for sidewalk and utility right-of-way and approving purchase and/or condemnation of select properties on Logus Road in fulfillment of the Logus Road Improvement Project. Motion passed with the following vote: Mayor Bernard and Councilors Chaimov, Loomis, and Barnes voting ‘aye’ and Councilor Stone voting ‘no.’ [4:1]**

### **RESOLUTION NO. 79-2008:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DECLARING THE NEED TO ACQUIRE PROPERTY ON LOGUS ROAD FOR SIDEWALK AND UTILITY RIGHT-OF-WAY AND APPROVING THE PURCHASE AND/OR CONDEMNATION OF SELECT POPERTIES ON LOGUS ROAD IN FULFILLMENT OF THE LOGUS ROAD IMPROVEMENT PROJECT.**

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**C. Council Report**

**Councilor Stone** enjoyed the Ardenwald Summer Concert and dinner with the Board of County Commissioners.

**Mayor Bernard** announced he could use more volunteers at the concert and Farmers' Market community booth.

**Mr. Swanson** announced immediately following adjournment of the regular session, City Council would meet in executive session pursuant to ORS 192.660(2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

**ADJOURNMENT**

**It was moved by Councilor Stone and seconded by Councilor Barnes to adjourn the meeting. Motion passed unanimously. [5:0]**

**Mayor Bernard** adjourned the regular session at 8:40 p.m.

*Pat DuVal*

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Pat DuVal, Recorder