CITY OF MILWAUKIE
CITY COUNCIL MEETING
October 7, 2008

## CALL TO ORDER

**Mayor Bernard** called the 2039th meeting of the Milwaukie City Council to order at p.m. in the City Hall Council Chambers.

Present: Mayor Jim Bernard, Council President Joe Loomis and Councilors Deborah Barnes, Greg Chaimov, and Susan Stone.

Staff present: City Manager Mike Swanson and City Attorney Bill Monahan, Assistant Planner Brett Kelver, Community Development and Public Works Director Kenny Asher, Resource and Economic Development Specialist Alex Campbell, and Engineering Director Gary Parkin

## PLEDGE OF ALLEGIANCE

## PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

**Metro Councilor Carlotta Collette** announced upcoming Metro Regional Choices meetings.

**Mayor Bernard** read a proclamation naming the week of October 5 – 11, 2008 as *Fire Prevention Week 2008* in the City of Milwaukie.

**Mayor Bernard** announced that the City of Milwaukie had received a gold award from CCIS for safety and a silver award for wellness promotion.

## CONSENT AGENDA

**Councilor Stone** asked that the minutes of the August 19, 2008, work session be clarified to indicate she arrived at 6:39 p.m. because of work constraints.

**It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the consent agenda with the clarifications to the August 19, 2008, work session as suggested by Councilor Stone.**

**A. City Council Minutes of August 19, 2008 Work Session; and**
**B. City Council Minutes of September 2, 2008 Regular Session**

**Motion passed with Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Bernard voting 'aye." [5:0]**

## AUDIENCE PARTICIPATION

- **Les Poole, Clackamas County**

**Mr. Poole**, head of North Clackamas Property Owners Association, had just a couple of comments. One of them was about the Balfour House. He thought the City did an outstanding job of trying stop that. It was unfortunate that sometimes no matter what your zoning was, higher powers dictated things. Hopefully, you can work with other communities in addressing this issue because public safety was theoretically the number one job of government. The conflict going on there was pretty hard for the neighborhood to swallow. It was certainly not the City's fault. With regard to zoning codes, maybe a few things could be looked at. Right now the economy was pretty sad.

We do not need any more situations such as the one Mr. Parecki had where things got delayed. A question about light rail. Are we going to have the money to go to Park Street or did it look more like we were going to Kellogg Lake, the north side of Kellogg Lake? That was going to be an interesting one for Council because we had 1,000 cars we needed to find a home for. My concern is that we have the fewest impacts there no matter what kind of crossing we see or what happens there if light rail is built across the Lake, Kronberg Park, Kellogg Lake Park were both concerns of mine. By the way, the Friends of North Clackamas Parks is the new name of Friends of North Clackamas Park. The Shawn's have been instrumental in expanding the organization. We are just trying to protect a watershed that offered the best chance for salmon recovery in the entire metro area on the Willamette River. He had a little grayness from back in the days when Dena Swanson suddenly appeared. It talked about from the minutes of November 1, 2005, when Mike Swanson spoke. It said, "The agreement with the District provided that the City retain deeds to all that property and all those parks." It also said, "If the District wished to rename a park it had to secure the approval of the City." That has not happened. The name of the park used back then was Kellogg Lake Park. Mr. Swanson knew the name had not changed and knew through the transit center process that the name had not been altered. Mr. Poole was just concerned that all that land down there that supposedly was deeded as park or should be parks is protected, and we see the least amount of condemnation down there. He was not real comfortable, as you know, none of us are, with what is going on with Kellogg Lake. He went on the record that as we move forward with light rail, he was not the only one watching the situation.

- **Robert Mack, Milwaukie**

**Mr. Mack** spoke in opposition to the Balfour House. He had a very personal experience with houses like this and the DSRB. He was attacked 10 years ago in downtown Portland in an office building from behind in an elevator by a psychopath with a box cutter who slit his throat within ¼-inch of his carotid artery while he was pushing the button to go down. He then cut his face as he blocked it. He was ultimately taken off the streets about three months later. Mr. Mack went through a grand jury hearing, lots of trials and postponements. He was ultimately sentenced to two 20-year consecutive terms in State Psychiatric Hospital in Salem. Of course, you know those are maximum terms; not minimum terms. Every six months he went down to testify at his hearing to be released. About two years ago he received his letter very late. He travels for work and got a letter Sunday night for a Monday morning hearing. Mr. Mack went down there, and a psychiatrist who had never seen this individual, never been with him, reviewed notes, was paid by Telecare, a private facility identical to this house, paid for by them, testified that this individual who suffered from undetermined psychosis would probably not be violent if he continued to take his medications. The PSRB, three psychiatrists, basically said they would let him go and sent him to Woodburn to Telecare. About two or three months later he was cheeking his medication, not taking it, and giving it to another person in that house who ultimately, unfortunately, overdosed on it. They realized what had happened, so this guy was sent back to the hospital. Mr. Mack's experience had been that – and he was told off the record that there were only so many beds in the hospital and these people were going to get out. Here was someone who was highly violent and very dangerous. He was released as sort of a risk or a gamble. Mr. Mack was not comfortable with that in his neighborhood. He knew the City had tried. There was a world of difference between the Federal Fair Housing for people mentally disabled and those convicted of violent crimes essentially for random reasons.

- **Kim Hutchinson, Milwaukie**

**Mr. Hutchinson** lived right across the street from the proposed facility. He applauded the City Council and the City for what they attempted to do. However, he knew the Council had voted to accept the suit. He also wanted to say he did not think the Council had been well served by legal counsel. In some brief research he found out that if one of us purchased the property the situation would not have occurred. There was talk of neighbors purchasing the property. He was sure, he assumed, the City Council got some legal advice before making the offer. He questioned whether the City Council got good legal advice and that type of thing. Secondly, the legal system, you also used a Mr. Harlan Jones. Mr. Jones was not outside counsel. He was a partner in this man's (indicating Mr. Monahan) law firm. He did not know if the City Council got any independent review of the suit of the information it had received. The neighbors were trying to find out what the information was on the lawsuit. They had been pretty much stymied at every turn. We cannot even find out why we cannot find out. Was there a gag order? Has a judge said something? All they ever heard was that we cannot say anything. You cannot even tell us why you cannot say anything. There might be things that neighbors can do, that ordinary people can do that a government entity cannot do. With lack of information we cannot even start doing anything of that nature. What counsel had done was effectively detrimental to the neighborhood. Mr. Hutchinson applauded the Council's heart, but he really did question the deliberations and the process it had gone through. Please at least in the meantime make the information available on this. Make the information available on the lawsuit so we can see if there is any legal recourse that we as ordinary citizens can do that the Council cannot do. He knew that two lived in the same neighborhood, and the two voted to not follow through on the lawsuit. He questioned the decisions. You were trying to protect the City, but at the same time there were other sources of funds to fight this if there were a legal option. It may be difficult, but there were a growing number of people, organizations, chiefs of police who said what was being done here was not the intent of the law. As the fellow just said. This was theoretically following the letter of the law, but there were issues about the intent of the law. Such things can be fought. If you did not have a lawyer or attorneys that give you that type of advice, find others. The City of Milwaukie as John Holladay showed before the County Commissioners had a disproportionate percentage of facilities compared to the rest of the County. By what the City Council had done, particularly in a case where we were just not dealing with mentally ill people, nobody was arguing against that, but against people who had committed violence. When will the City take a stand? Where do you draw the line? If you are not going to draw it at people who had proven themselves to be violent coming into our community, where will you draw the line? Mr. Hutchinson would like to know the details on some of these things. We want to continue. Get some good advice.

**Mayor Bernard** asked if the information would be available if there was a request made.

**Mr. Monahan** said at this time the information he believed was being requested would be covered under the terms of pending litigation in the sense that although the City Council has agreed to a judgment, that judgment was not entered as yet or submitted to the judge. As soon as the pending litigation was over some of those materials would likely be available through a public records request.

**Mayor Bernard** understood the City Council was essentially gagged. The Constitution did not pertain to the Council's right to speak on this matter because of the lawsuit.

**Mr. Monahan** was referring to the information referred to. That was the public record information that would be under the exclusion of the public records law. In terms of the City Council's ability to speak, it was the attorney recommendation that the City Council

be extremely careful in the comments it makes in regards to the lawsuit. Perhaps there should be another opportunity for a conversation with Mr. Jones once the judgment was entered. He can clarify what the City Council can and cannot say. There was quite a bit of discussion at the State level concerning a legislative discussion of this issue. The City Council may want to get involved in those discussions.

**Councilor Barnes** would like the attorney to bring the statutes that say the City Council cannot speak publicly. She had still not received that.

**Mr. Monahan** would speak with Mr. Jones and coordinate with Mr. Swanson.

**Councilor Stone** asked Mr. Monahan when this would likely be entered and filed.

**Mr. Monahan** replied he thought it was going to be done a couple of weeks ago. He inquired of Mr. Jones and got a message from him on Sunday that the final details had been going back and forth between him and the attorney for Columbia Care. He was confident we were down to the very last details. There have not been any major modifications. We were down to language. Mr. Jones felt confident in the Sunday email that it should be done very shortly.

**Councilor Stone** asked if the Council would be briefed in executive session and if so when.

**Mr. Monahan** replied it would be best if Mr. Jones provided the Council with the final language so he could explain it.

**Councilor Loomis** spoke with Mr. Swanson when they went to the Ardenwald Neighborhood Association meeting at the beginning on the white horse. We needed to go back and explain things when able to do that. Council had every intention of doing that. He knew the vote on the situation probably confused the public. At some time Council would be able to tell everything. He did see most of those present testify on television before the Board of County Commissioners and did a great job. He was proud of the way people handled it and the information brought forward. He encouraged people to hang in there.

**Mr. Swanson** responded to Councilor Barnes's question. There was another section of the municipal code 2.04.390 that required that Councilors respect the separation between policy-making and administration by, among other things, (d) honoring the confidentiality of discussions with the city attorney. He believed there was another section that prohibited discussion of what went on in executive sessions, but he had to search the code for that. He imagined he also had to look at the executive session provisions in the public meetings law because he believed there was a section that prohibited the dissemination of what went on in an executive session. There was something in the code. He would also check State statutes.

**Councilor Barnes** said as the City Manager knew, she would never divulge what was said in executive session. The attorney, not the one seated here, made it clear to her on the phone that she had no right to protest, no right to explain, none of us did according to the attorney, have a right to protest, explain what happened, what the Council was doing or not doing on their behalf. That continued to concern her that even though we may be elected officials, this was an issue that all five of us took very seriously. She did not understand, using common sense, why we cannot go to this neighborhood and say whatever we wanted to say. Right now she cannot say that because the City Attorney told her that the Council cannot. There was not anyone on this panel that did not feel the pain of what was going on in our community. Why we were not allowed to express that and work with these people bothered her. She did not intend, and she did not think anyone did, to divulge anything said in executive session. Council did, as their representatives, had a right and obligation to communicate with

these people. She did not understand why the Council could not. That was what she wanted an answer to.

- **Bryon Dorr, Milwaukie**

**Mr. Dorr** spoke on behalf of the Ardenwald Johnson Creek Neighborhood Association regarding the Balfour House. There was a protest on Sunday, September 28. Out of about 50 people who showed up for the protest 49 of them were opposed to this secure residential treatment facility. Only one person was for this facility who did have the opportunity to speak at this protest. The weight on this facility seemed to be greater in opposition. It seemed like it was going out of the City's hands and being more directed toward the State level. In our district that was Rep. Carolyn Tomei. She was kind of challenging for the community to contact. That was the reason why at the protest on Sunday Rep. Linda Flores from the 51st District attended and spoke out for our community. As he also looked at this situation with the Balfour House aside from the Federal Fair Housing Act and the Americans with Disabilities Act one of the things Ardenwald was going through right now was another challenge that most other neighborhoods probably did not have to face. That was the issue with the 24-car parking lot. The reason he believed most of the neighborhood associations or cities did not have codes on that was because no one in their right mind would have a 24-car parking lot in their front yard. This was uncharted waters for most neighborhoods, and Ardenwald was the first with this idea. Ardenwald was no stranger to fights in opposition for excessively large facilities. We also had to face a fight with Wal-Mart before Measure 49 killed that battle. Then we have a potential for another development that was going to be happening at Hillside. That information just came out the other day. It will be on the Ardenwald Johnson Creek agenda next Tuesday, October 14 at 6:30 p.m. at the Ardenwald Elementary School. He applauded the City of Milwaukie for stepping in and standing up for the neighborhood.

- **Dianna Jones, Milwaukie**

**Ms. Jones** had prepared a presentation about a storage container at their home. She had been working with Zach in the engineering department and Brett Kelver the Planning Commissioner and have not had much luck in coming to an agreement as to what she can do with her storage container. Seeing as this was as far as Mohammed can go to the mountain she made these presentations for the Council so they could take their time in looking them over. She would not bother the Council much more this evening as she knew it had much more important issues to resolve. She put about 60 hours into this presentation hoping to answer questions, and she made copies. It was a U-Haul truck which they were told had to be moved, and she had no problem with that. We just wanted to cut the box off the truck and drop it to where it was located and continue using it as a storage container. Only in investigating the property line and where they were as opposed to where the Planning Commissioner thought was their front yard versus the side yard and back yard. She cut off her nose in spite of her face to come to find out most of her yard was the City right-of-way including the retaining wall that the foundation dirt the house was on and runs under the house for bearing wall support. She did a wonderful job of grading under the box and putting it there. Then she came to find out that things had changed. Most of her yard that she thought was hers wasn't. They were renters. It was not a permanent structure. It was just sitting on blocks. Everyone said you cannot do it. She just wanted someone to listen and look and maybe make a waiver.

- **John Holladay, Milwaukie**

**Mr. Holladay** spoke briefly about the Balfour House. He spoke before the County Commission a couple of weeks ago, and what he would tell the Council was just a brief

recap of some of those pertinent things he spoke about. He had a map for Council that was passed out to the County Commissioners as well as circulated to Rep. Tomei. The map was his research into the City's disproportionate share of publicly-subsidized housing. As we know, Milwaukie had about 20,000 residents out of the County's 367,000 or about 5.5% of the County's population. Yet we were home to a very large proportion, we share a very big burden, for the entire County. We were home to 8 out of 25 sexual predators that were being tracked on the State and County website. We were home to 7 out of 21 of the County's Oxford homes. We were home to 2 of the 6 largest public housing facilities in the County. We were home to 2 out of 3 of the County's jails or corrections facilities. Obviously, this was a very big burden. When you started to look at the map, you note that a large number of cities, even cities with equal housing and land values as ours, have almost nothing. Sandy, Canby, Molalla, West Linn – well maybe that was not so cheap. He did not imagine they would have to contend with this issue. He just wanted to put this in the tool kit and in the thoughts about how to go forward with this issue. It really struck him that this was a situation of reverse discrimination. If we thought about the fair housing act for a moment we would realize that this was socially unjust. Pushing all of this into our community. Even when you look inside the boundaries of Milwaukie, you realize how much of it had been pushed toward Ardenwald. He placed that in front of the City Council. He commended the Council for being the only layer of government that had attempted to forestall this. He wanted to put a rather preposterous thought into everyone's mind tonight. He wondered through all of this if the City was really served by the County's governance any longer.

## PUBLIC HEARING

### A. Zoning and Comprehensive Plan Map Amendments Related to the Demolition of Ardenwald School Located at 8950 SE 36th Avenue – File Nos. ZC-08-02 and CPA-08-02 – Ordinance

**Mayor Bernard** called the public hearing on amendments to the City's Zoning Map and Comprehensive Plan to order at 7:39 p.m.

The request was considered by the Planning Commission at its September 9, 2008 public hearing, and the Commission recommended approval of the proposed amendments. This was a de novo hearing. All persons wishing to speak were recognized by the City Council. The testimony would be used by the Council in coming to a decision on the proposal.

**Mr. Monahan** stated the purpose of the hearing was to consider the Milwaukie Planning Commission's recommendation to approve amendments to the City's Zoning Map and Comprehensive Plan with findings to property located at 8950 SE 36th Avenue. The applicable standards were Comprehensive Plan Chapter 2, Plan Review and Amendment Process, and provisions of Milwaukie Municipal Code Title 19 Zoning Ordinance, specifically 19.900 Amendments and 10.1011.4 Major Quasi-judicial review. Mr. Monahan reviewed the order of business. The applicant had the burden of proving that the proposal conformed to all applicable criteria of the City's Comprehensive Plan and Zoning Ordinance. All testimony and evidence was to be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail would preclude an appeal based on that criterion or issue. Failure to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow a response precluded an action for damages in circuit court. Any party with standing could appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing were those who submitted written comments or testified and signed the City Council attendance sign-up sheet.

**Mayor Bernard** reviewed the conduct of the hearing.

**Mr. Monahan** asked if any member of the Council had visited the site. All members of Council had visited the site but did not observe anything of note that was not covered in the staff report relative to this request. Mr. Monahan said if something came to mind during the hearing that the Council members state that so people could challenge if necessary.

**Mr. Monahan** asked if any member of Council wished to announce any ex parte contacts or any actual or potential conflicts of interest.

**Councilor Barnes** was unsure because she was employed by the North Clackamas School District, and she wanted that on the record.

**Mr. Monahan** asked Councilor Barnes if she felt she would like to participate or recuse herself to make sure there was no potential or actual conflict of interest.

**Mayor Bernard** argued for Councilor Barnes's participation. Just because she worked for the School District there was no financial potential or actual benefit she would receive from the demolition of this structure. For the life of him, he could not see how she would benefit.

**Mr. Monahan** asked because it was a personal choice for the individual to make.

**Councilor Barnes** understood that. The community made it clear it was concerned over all of our jobs and how they related to Council decisions. That was brought up on numerous occasions. In this case it impacted her because this was her employer. She would not be making any money off this. She did want it said on the record that she worked for this body. As Council we want to make sure people realize that as we go into this. She wanted it on the record that this was her employer.

**Mr. Monahan** asked if any member of the audience wished to make any challenge to any Council member's impartiality or ability to participate in this decision.

**Mr. Monahan** said the proper disclosures were made and asked if any member of the audience wished to challenge any individual member's impartiality or ability to participate in this decision. There were no challenges from the audience. He asked if there were any objections to the Council's jurisdiction to consider the matter. There were none.

Staff Report

**Mr. Kelver** provided the staff report on the legislative housekeeping measure, changes to the zoning map, and Comprehensive Plan related to the improvement project at Ardenwald Elementary School. In this case, the City was the applicant. It was a motion effectively brought forward by the Planning Commission as an administrative housekeeping measure. These amendments focused on Ardenwald Elementary School which was located in the Ardenwald Neighborhood more or less between SE 32nd, SE 42nd Avenues, on the City's northern boundary. The project currently underway related to a bond measure passed within the past year or so for improvements to a number of schools including Ardenwald Elementary. Essentially what was happening was a brand new school was being constructed behind the existing school. That construction was underway. School was currently in session at the old school, and Mr. Kelver understood at the end of this school year, summer of 2009, the old school would be torn down in order to finish the improvements where the existing school was now. There would be parking areas. A lot of open space would be maintained on the site. Hopefully, if everything came together the School District effort was to have classes in the new school starting next fall.

Right now some changes were being proposed to the City's zoning map. Currently this property was designated at a contributing historic resource on the map. This proposal would essentially remove that designation because the old school was approved for demolition. The second change was to a specific map in the Comprehensive Plan. Currently Ardenwald Elementary School was listed as Property #36, a contributing historic resource. These changes would remove that designation because the building was being demolished. Finally, an appendix to Comprehensive Plan was the Historic Resources property list that listed all the historic properties in the City. The School was Property #36, and these amendments would essentially remove it as an historic resource from the list. There would be a reference on the list to its having been there, but it would be removed from the list.

**Mayor Bernard** asked what a high score was.

**Mr. Kelver** did not have the list with him, but some of the higher scores in the 60-70-80 range. These properties were scored in environment and architecture. The scoring ranged from 0-10 for some categories, and others were 0-7. Some of the higher scores were probably around 70-80. Essentially the decision for the Council was not whether or not the school should be torn down. The Planning Commission went through the process that was necessary to resolve that issue. They did approve on September 9 earlier this year to allow the old school to be demolished. Essentially we were making sure the zoning map and Comprehensive Plan were up to date by reflecting the actual status. Once that building was gone there would not be a historic resource there.

Some of the criteria that had to be looked at in this kind of process was the overarching goal from the State related to the requirement that the City have a Comprehensive Plan and that it be consistent with the zoning map. This was making sure that with this change that was approved that all of the maps lined up. Our Comprehensive Plan established a process for amending it. The City Zoning Code had a process as well for updating the zoning map. Those involved notice requirements, and all those criteria had been met.

The simple recommendation from staff and the Planning Commission was approve the amendments and resolve the housekeeping issue.

There was no correspondence on this matter, and there was no public testimony.

**Mr. Monahan** said Mr. Kelver had a couple of minor modifications to the ordinance and exhibit which he might wish to cover before closing the public hearing.

**Mr. Kelver** said there were two small changes to two of the items in the packet. In the third "whereas" the word demolition was changed to removal. In the findings which were Exhibit A, 4, the second sentence was removed as it was a carryover from the historic resource demolition application that went to the Planning Commission. In the next sentence it was corrected to read notice was sent to property owners within 400 feet of the subject property at least 10 days in advance rather than 20 days which was the requirement for the major quasi-judicial notification requirements. These changes made it more accurate.

Close Public Hearing

**It was moved by Councilor Barnes and seconded by Councilor Stone to close the public testimony portion of the hearing. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone and Loomis and Mayor Bernard voting 'aye.' [5:0]**

**Mayor Bernard** closed the public testimony portion of the hearings at 7:55 p.m.

Council Decision

**It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the Ordinance amending the City Zoning Map, Comprehensive Plan Map #4 with the changes noted by Mr. Kelver and the Historic Resources Property List to remove the contributing historic resource designation from the Ardenwald Elementary School located at 8950 SE 36th Avenue.**

**Councilor Loomis** commented it would be sad to see that school go.

**Councilor Stone** echoed those sentiments. That school had been around for many years and had been a part of her life. Even though she had no children, she was involved in the Neighborhood Association that met there. She had many opportunities to go there for various school activities. A new school simply will not have that old school smell. It was a wonderful school and was very nostalgic and reminiscent of your own childhood. She did talk to the principal about retaining some of the design elements of the front of the school in the new school structure or somehow preserving some of that for historic value. She hoped that could happen. She would be very sad to see it go.

**Motion passed with the following vote: Motion passed with the following vote: Councilors Barnes, Chaimov, Stone and Loomis and Mayor Bernard voting 'aye.' [5:0]**

**Mr. Swanson** read the ordinance two times by title only with the changes to the ordinance and Exhibit A noted by Mr. Kelver.

**The City Recorder polled the Council: Councilors Barnes, Chaimov, Stone and Loomis and Mayor Bernard voting 'aye." Motion passed 5:0.**

**ORDINANCE NO. 1986:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE CITY ZONING MAP, COMPREHENSIVE PLAN MAP #4 (HISTORIC RESOURCES), AND THE HISTORIC RESOURCES PROPERTY LIST (APPENDIX 1 OF THE COMPREHENSIVE PLAN) TO REMOVE THE "CONTRIBUTING" HISTORIC RESOURCE DESIGNATION FROM THE ARDENWALD ELEMENTARY SCHOOL, WHICH IS LOCATED AT 8950 SE 36TH AVENUE (FILE # ZC-08-02 AND CPA-08-02).**

**Mr. Monahan** read the LUBA information.

**Mr. Swanson** referred to the issues addressed in citizen participation. He understood from Mr. Monahan that the judgment was slated to be signed, and he planned to attend the next Ardenwald Neighborhood Association meeting. He felt there were loose ends he could pick up next week for the neighborhood.

## OTHER BUSINESS

### A. Extension of Wastewater Collection System to Dual Interest Area A – Resolution

**Mr. Asher** read his comments into the record. "The action before you tonight is a difficult and significant one, and for my part, I didn't want to forget anything. The decision before you tonight is whether to proceed along adopted City plans and policies to extend sewer service to properties in the neighborhoods we call the Dual Interest Area, which was generally north of King, east of the City limits, and west of Linwood.

The area also includes properties just north of Johnson Creek Boulevard between 55th and 58th. In the staff report, we attempted to answer the latest set of questions posed to us last time by the Council, principally having to do with cost/benefit analyses for both the residents of the Dual Interest Area and the City. He would summarize these in just a few minutes. To begin I'd like to do something I have not done before and that was to address the residents of the Dual Interest Area, many of whom are here this evening, and most of whom that we have heard from have asked that the City not pursue this project. I understand there are strong feelings about the issue and that there is a long history, and I would guess great confusion about why the City would insist on pursuing an unpopular project. I am especially sensitive as I am sure the Council is to charges of government that "doesn't listen," and I've heard it repeated that this is yet another instance of government not listening and have heard the suggestion that this is "more of the same" with the City of Milwaukie, laying more fuel in the fire for people in the Dual Interest Area who are so opposed to a project that would ultimately pull them into the City itself. I believe that many of these residents, especially those who have lived in their homes for many years, and who have seen, read and heard many accounts of local government behaving badly do have a legitimate beef. I do not think their point of view is wrong. In fact, I understand it. I can relate to it and can imagine feeling quite the same myself if I were in their shoes. I do disagree that the issue is about the City's failure to listen. I think that is a cheap shot, and a charge that did not help us get to the real issues. I've been watching Grady Wheeler and Gary Parkin work on this project and I know that you yourselves have participated in this process and have gone to meetings. I can say with 100 percent conviction that the City had been listening. There had been a lot of listening going on. But, as I've said before, listening and agreeing are not the same. You can have the first without the second. For him that's what's going on here. Before I begin the staff presentation, in which I will argue for the very thing that these residents so strongly oppose, I do want to acknowledge the opposition that exists in these neighborhoods, and I want to honor it. It is easy to become polarized over issues like this and to dig in for one side or the other and to forget that really we're just trying to figure out what the best thing is to do here. We may disagree about that, but these residents are our neighbors, and we are theirs. In fact working at our JCB office, I actually walk by their homes a couple of times a week, and I really enjoy these neighborhoods. I think they are wonderful. I say all this to make sure the residents of the Dual Interest Area and residents of the City, do not read indifference or arrogance into the staff recommendation. We do have differing interests, but I want the residents to know that I am holding their interests with great respect. Now to explain why those interests differ in the staff's opinion, and why the staff feels it must advise Council to go against the wishes of the Dual Interest Area residents.

Let me first trace the various reasons we've shared with Council over the past seven months. In March, we reminded Council of the commitment that the City made to the County to provide sewer service to the Dual Interest Area, both in the adopted Urban Growth Management Area Agreement or UGMA from the early 1990's, and again in a correspondence to the County's Development Agency in 2007. We explained that the Council thought the City should be working in tandem with the County, which is pursuing a sewer project in the larger urban growth management area.

In May when we were before you, we provided State statutes and County and City policies, regulations and agreements all calling for the coordinated planning and delivery of urban services and all were supportive of the City following through on its UGMA commitment. Staff supplemented this policy discussion with observations about annexation, sewer expansion and governance in North Clackamas County in a work session PowerPoint. The ideas presented there were that City and County taxpayers in North Clackamas County faced unique challenges because of: high levels of governmental fragmentation here; the size of the County; its vast urban and rural

responsibilities; and the difficulties of democratic representation in a highly fragmented urban environment. We also tried to describe some of the real costs of doing business in this environment for the City of Milwaukie in that environment, citing everything from wasted dollars on never-ending sewer treatment planning to unreliable library funding to the glacial pace and huge cost from trying to amend a contract with one of these service districts. We also presented two academic schools of thought about governance: One vs. many you might recall which some experts argue that having many governmental units that is, single purpose districts leads to higher costs, less environmental protection, and geographic inequalities. Others argue that more units of government provide choice for taxpayers and more innovation.

Last month, we offered more detail on the project itself. We explained it was a natural extension of the City's wastewater collection system because the areas are uphill from the City, and the wastewater from these areas will be flowing through Milwaukie's gravity-fed system regardless of which government provides the service. We explained that the proposed project will not force property owners to annex but would allow property owners to choose when to hook up to the sewer system and then annex to the City. We explained our idea of breaking the project into two phases so people who were more eager for the service could receive it first. Finally, we discussed how not pursuing the project would be an abdication of City responsibilities under Chapter 6 of our Comprehensive Plan, and how the ramifications of not following our own policies could lead to disruptive work plans in the Planning Department and potential challenges from other land use regulators.

Two weeks ago Council requested that we describe the costs and benefits of doing the project, the implications of breaking with our agreement with the County and not following our Comprehensive Plan, and the logic that would press the City into forcing people to annex against their wishes. You will find our responses to these questions in your staff report. In summary: City benefits from doing the project include expanding the rate base for supporting the wastewater utility and rationalizing the City's eastern boundary, which will help improve service delivery. City costs include financial risk to the wastewater fund and to the City's ability to borrow funds, and increased staff time for implementing the project, processing annexations, and serving the new residents. Resident benefits in the Dual Interest Area from the City's doing the project include lower connection costs as compared to the County, delayed hookup if desired, and a higher level of urban services – particularly community services out of JoAnn's shop and public safety. Resident costs are primarily the payment of higher property taxes. You also asked about the policy implications if the City did not follow its own Plan. That was difficult to predict. Obviously such a decision, absent some compelling policy alternative, opens the Council to charges of arbitrariness, which could invite criticism of the Council, especially on future controversial items. The Council would need to review its ability to accommodate growth in the City and may need to increase zoning density to account for a loss of land area into which the City was planning to grow. The decision would also likely lead to a revised UGMA agreement with the County under which it would be nearly impossible to argue for an expansion of Milwaukie services into the growth area. This would leave the County and perhaps Happy Valley in a stronger position to direct the future of the unincorporated area's growth and development. Finally, after all of this policy stuff and cost/benefit stuff, we're left with the very common sense question that Council asked last time: Why should Milwaukie do something that people are just flat-out against even with all that engineering and policy justification? I'll spend the rest of my time addressing this question because – after studying this situation for most of the past year -- I'm convinced this is kernel of the issue and the heart of the matter.

I'll start by saying why I think this is so difficult: It has to do with self-determination, something that we deeply value as Americans, and something that has become very relevant all over the world for many peoples in the early 21st Century. As Americans, we instinctively know and feel when it comes to how we are governed the first rule is consent. Without consent, something indeed is amiss.

But if self-determination is a cherished value, clearly it isn't the only value. Certainly if one of Milwaukie's neighborhoods voted to secede from the City, the City wouldn't stand aside and let that happen in the name of self-determination. Clearly the City must overrule neighborhood opinion occasionally, if it's in the larger interest of the entire City to do so. After all, this is the basis of our social contract under government; we acknowledge that to get certain things of value and because of that we have to forego other things of value.

Is this a case that warrants the City of Milwaukie going against a neighborhood? I believe it is, and the reason has to do with perception. It's painfully clear to me that the residents of the Dual Interest Area have a very negative perception of the City of Milwaukie at least those who had come forward and have testified in this chamber and talked to us at our meetings. My perception of the City of Milwaukie is very different as I know yours is as well. I perceive Milwaukie very positively. The Dual Interest Area residents have been experiencing Milwaukie, many of them, for decades. I only have three years of observation to go on. So here's a good question: whose perception is more accurate – people who are judging this place because of things that happened 10, 15, or 20 years ago under a completely different set of leaders? Or a public official who has a current and clear snapshot view, but who probably under-appreciates events from the past? There's no right answer I don't think – but we can agree that it's a question worth asking and that perceptions can and do change with experience. The strong reaction that the Dual Interest Area residents have against eventually annexing to Milwaukie is, almost entirely I think, about identity and power. The few complaints we've heard about the higher cost of Milwaukie property taxes have been completely drowned out by the loud protests we've heard about not splitting up neighborhoods, not forcing people out of Clackamas County, and basically not honoring people's desire just to be left alone.

The irony here, for me at least, is that one of the hallmarks of cities, one of their defining characteristics, is the pride and sense of community that they foster among their citizens. I've done some research on why people invented cities in the first place, and I've continually run into three reasons: one was the need to efficiently organize and deliver municipal services, two is the need to improve political representation, that is the need to effectively influence change in your life, and third and most anciently, the need to denote special or important geographic places. Milwaukie's history evidences all three of these strands, and it certainly demonstrates how a City can give structure to the community impulse. In a strange sense, because I don't think we ever really stop to consider these things, cities really are special. Citizenship in a city or town is a kind of membership that is not replicated in unincorporated or rural areas even where the same services are being provided. For a case in point, just look at this situation we have here tonight: virtually no one in this urban growth management area had any objections to annexing to the Clackamas County Sewer District. What does that mean for your identity? I would argue probably not very much. But annex to the City of Milwaukie? That's not the same thing. And again, I don't think the feelings that arise out of that are just about the economics of those two different annexation decisions.

The point is that we all have opinions about what it means to belong to a city or the City of Milwaukie, whether we're staff, elected officials, residents, businesses or members of these neighborhoods. My staff and I certainly have strong opinions about this: we believe that this City, Milwaukie, is about listening to people, trying to help them improve

their lives, protect their homes and businesses, and generally make the place more livable for people who are here now and who will be here in the future. My opinion about this project and about the policies adopted by prior councils in support of this project go directly to this mission. The City should do this project because it will improve the City. It will improve the adjacent neighborhoods. It will improve our utilities – our ground water sources that provide our drinking water – our creeks and springs and parks – our property values and, over time, I don't know how long, eventually our relationships with the people who live in these neighborhoods. Because these are Milwaukie impacts, it's perfectly reasonable and understandable that we the City would want to have control over the sewer extension project itself. If it impacts the City of Milwaukie, we always want to do our best to control those impacts.

It may be that the people living in these homes today want nothing to do with this City. We have heard that. Unfortunately, for them and for this Council, this decision shouldn't rest on that fact alone. These good people won't live in their homes forever. Future residents, I think, will want what we all want – easy access to their government; lightning fast response from their police; well-maintained streets; orderly development; parks and other local destinations; and someone who will actually pick up the phone and work on their behalf to solve a problem. That is what we do every day here. With all respect due to our partners at Clackamas County they will never be able to do these things as well as the City of Milwaukie for an area this small and this close to our existing City limits. I understand, from the point of view of the residents, that the County is currently their home and that it's familiar and that it's less expensive than Milwaukie. But I think the City should have a point of view as well. After all, we are in the business of providing municipal services and supporting community. What is it, exactly, we'd be saying were we to break our policies and not extend service into this area?

Would we be saying that the City isn't interested in having more of a role in the future of the unincorporated area to the east? Would we be saying that the City isn't capable of expanding its services? Would we be saying that the County should begin planning on long-term service provision to these residents, or that some other city should begin that planning? Would we be saying that the City of Milwaukie doesn't really care about the pattern of overlapping districts, governments, and authorities in North Clackamas County?

Regardless of how Council votes tonight, the staff does care a lot about all of the issues I just talked about. We understand why we have a Growth Policy and an UGMA agreement and an annexation policy that all compel this project. We understand, and we believe, for the reasons cited tonight and over the past seven months, that this is an important project to support and complete. And, I hasten to add, we do understand that, sadly, we're not wanted in these neighborhoods. Should Council direct us to pursue the project, we can begin working with these residents to try to change perceptions. There may be ways for us to ease the financial burden of annexing to the City. We could potentially make arrangements with the Development Agency regarding the payment of incremental taxes, or we could consider deferring our own property taxes, or dedicating certain revenues for reinvestment especially for these neighborhoods. There may be innovative ways to work together. We will certainly hold up our end of the bargain. Despite all the negativity, we will always commit to bringing the same pride and professionalism that defines this City and this City staff. We will bring that to the Dual Interest Area and see if we can set about changing minds if possible. With that, I invite your discussion and any questions you may have for myself, Gary Parkin, Alex Campbell or Grady Wheeler who were all present and working on the project." Mr. Campbell prepared the appendices to be more specific on the City Council questions the last time about a comparison of costs and specifically comparison of services. He

did not talk about that, but the City Council may want to go into more detail. Staff could elaborate on that or anything else in the staff report.

**Councilor Barnes** said the Council received correspondence from Lee Hogland on Westfork. She was trying to understand the background. How long have we been discussing this whole issue.

**Mr. Asher** said the City first let the County and WES know we intended to sewer this area in June 2007.

**Councilor Barnes** asked that someone explain to her the question and answer handout that was attached and was printed in March 2008. Could you explain to me why these residents were given information from the County to go to WES. If she remembered correctly the County said they were telling people to call us and chat if they had some concerns. This looked to her, and maybe she was wrong, like the County had a propaganda piece they were sending out to people and not having them sent our way. Please explain that to her.

**Mr. Asher** replied he would try to share a couple of facts, and then invite Mr. Swanson or Mr. Wheeler who was heading up the outreach on this. One of the things to understand in that neighborhood there was a WES employee who was really familiar with the sewer project and also the neighborhood itself. What it needed and what the neighbors wanted. He thought that person's involvement may have lent to the confusion because if people were saying to her, as he was sure they were, we don't want to be in the City. We would like to annex to the District. How do we do that? She was probably responding by saying this is how you do that. Here was what annexing to the Service District would entail. He said that with all respect. We did struggle for a long time, which had been discussed with the City Council, with the partners in the County to get more support from the County in affirming the City's kind of right and responsibility to be in here working with these neighborhoods. It took several conversations through 2007 and probably more 2008 into this summer to try to help the County understand the bind that the City was in. You have to understand the issue was the County was never overtly saying to these dual interest areas you can come and annex to the County if you want. They could not because of the agreement. They were kind of standing aside and watching us take our licks without really saying anything and without really supporting the City, without affirming the City and without coming to the City and helping us resolve some of the issues. There was also the history of the urban renewal area being set up by the County, by the same folks helping to do this project. Those relationships were very much intact. He thought they were good and strong relationships. He thought it was a positive thing for the area. Because of all that, folks in the dual interest areas who did not really want any part of the City to begin with had a very convenient place to turn in the WES staff, in the County. It took some work for us to help the County understand what a difficult position that was putting us in for both outreach and building any semblance of consensus around the project.

**Councilor Loomis** commented the only meeting he went to was the one at Lewelling. It was not WES people, but there was a Clackamas County person, Barb Cartmill, there who stood up and helped with the presentation. She was supportive of the City unless he was unaware of what Mr. Asher was referring to.

**Mr. Asher** did not want this to come out with County bashing. Having a professional relationship with Ms. Cartmill she was excellent at what she did. It was a little more subtle than the County overtly not supporting the City. We need here a partner that would affirmatively and strongly say to these people for more than 15 years we have had no plans to sewer your neighborhood, and we are making no plans to sewer your neighborhood because we have an agreement with the City of Milwaukie. No matter how badly you would like for us to be your service provider it is not going to happen as

opposed to saying nothing. By saying nothing he thought it left open the question is the City really going to do this? It was not the County's responsibility to say the City was going to do it. In a subtle way by the County's kind of standing there and waiting to see it created confusion and allowed the kind of thing to happen that Councilor Barnes was referring to. He ascribed no ill will to it. It was a difficult governance issue that he had been referring to all along. There were a lot of overlapping responsibilities. In areas like this one was where it showed up the most flagrantly.

**Mr. Swanson** said looking at the 6-year history probably took into account about 20% of the history because this did go back into the 1980's. This had been a subject of both this area, the dual interest area and the area within which the County was forming the urban renewal area. For many years it was actually a very pitched battle between the County and the City. In the 1980's and 1990's there were implications for a fire district in that area. The sheriff and County Commissioners were involved in the meetings. This has had a much longer history. He would not defend the City during that time. He was in a sense on the other side and counseling city managers at the time what they really needed to do rather than going out and shaking their fists like Nikita Khrushchev we will bury you that they really needed to sell the services of the City and not present the City as some kind of monolithic land grabber when in fact the City at that time had no intention or was it ever really going to make that happen. In a sense when he took this job in 2000 he did it with his eyes open. He knew this would eventually be an issue. The County actually made it an issue by creating the urban renewal agency. Prior to then the responsibilities were outlined in the UGMA but no one had the ability or indicated a real intention to do anything. People would call the City and were told we were looking at it. People called the County and were told the City was not doing anything. Really with the County's entrance into the urban renewal business in that area, it really focused attention on the issue. We had a couple of years of not always being on the same page. Mr. Swanson thought we had understood each other a lot better in the past few months. He talked with Jon Mantay and said when we have these meetings it needed to be clear that area would be served by the City and not just because that 1994 agreement was a whim. There were engineering studies, and designation of areas was largely defined by drainage as opposed to you take this and we will take that. He thought there had been a lot going on the past 20 – 30 years to put us in a not very good light. We also earned some of that. We could have done better jobs in the 1980's and 1990's instead of acting like we were going to go in and stomp all over people because past city managers would say cities were the preferred service provider under State law. There was never any real talking or real listening. He could not think of anything to add to what Mr. Asher said. We were proud of the fact that we do respond, and we are proud of the fact that we do serve. People in the City have seen a big difference in the way the City was handling the business of being a city. He talked with one of the guys in the shop a month ago, and he was very candid. They came on the job at the same time, and Mr. Swanson asked him what he thought when he started. He said they had always been told just to drive around and look out the window. Now we work. Now we get things done. The worker said when he first started he was ready to leave because he was not doing anything. It was a committed staff. We do have a product – not a can of aerosol – have an excellent project. Councilor Chaimov mentioned at the last meeting during the years he was outside the City and now being inside and seeing the difference. There was a great deal of opposition. Mr. Swanson understood where it came from and sympathized. He had seen how it developed over the years. By moving forward he would like the opportunity to show people we were not the way we were in the 1980's. This was a different City that existed to serve the citizens. It was a long history. He did not think it was the people in the County today. He thought prior to 2000 there was a pitched battle between the City and the County. There were battles on certain things but certainly not as a general rule.

It was not the way we do business. That had changed to a great extent. A lot of what we saw today happened in the period between 1980 and 2000 because we were really at each other's throats. We were trying to define winners and losers in government.

**Councilor Loomis** followed up on Mr. Asher's statement about the confusion of the folks who called. He relayed a story about an Ardenwald resident who called him after the recent presentation about the County and its role and that the County needed to support Milwaukie better as far as who was providing this Dual Interest Area A. This resident called and said he did not know about the little battle going on right now. He said, "Hey, Joe, I'm looking at buying a piece of property near Wichita School in the unincorporated area. I called the City of Milwaukie, and they told me they could not help me. I'd have to call the County. Joe, I called the County, and the County told me that was Milwaukie's area. You need to talk to the City of Milwaukie. I called the City, and they told me I needed to talk to them. What's going on, Joe?" To say it was all one entity's confusion was not accurate. This was just a guy who was trying to find out some information. Tonight we will figure out an answer. That was the most important part. When someone called and wanted to get sewered, they needed to get sewered. That was the issue we were talking about tonight.

**Mayor Bernard** said this reminded him of Johnson Creek Boulevard. When he became Mayor for 15-years people had been fighting Johnson Creek Boulevard redevelopment. The City had a $1 million investment. He actually had someone come over his desk in his office to attack him on that item. Now that person would hug him if he walked up to him. People threatened to shoot people if they ever parked a piece of equipment. The biggest problem was they did not believe or trust that Milwaukie would fulfill what it said. A couple of property owners, because of the 1919 and 1939 surveys, were confused about their property lines. These people thought the road was going to go right through their house. The City said no, but trust that we will give it back to you. That was a hard thing for them to believe. Up until the day the City did it they probably did not believe us, but we did give them that property back. Truth was people hated us for building baseball fields. People claimed we never listened to them. It was always the same people. You walk out the room and people say they were not representing all of us. He had the privilege of walking through this area and talking to a lot of people. He owned a piece of property there before becoming Mayor. Because he loved the community he was willing to annex to the City of Milwaukie. He called the City of Milwaukie and said his sewer was failing and asked who to hook up to. They said don't call us, call Clackamas County. He called Clackamas County and said don't call us, call the City of Milwaukie. He could practically see the sewer pipe. He had talk to his neighbor and pay a significant amount of money to connect to the Bell Avenue sewer pipe. At the time he was still interested. The truth was the foundation of who we are was the contracts we have. If we do not follow the contracts we have then why do we create them? We have had this agreement since 1990, and everybody has been confused about it. He agreed with Mr. Swanson. When we started this we had to prove we were worthwhile, and Mayor Bernard felt we had done that. We had the largest decrease in major crimes in the nation. We are paving our roads. Clackamas County was not going to be paving roads for a while. It will be lucky to patch the potholes. We have problems, but Milwaukie will fulfill its agreements. We built a baseball field after 10 years of fighting about where that field was going to go. Finally standing up and doing what was right. He felt Councilor Loomis would agree. That was one of our proudest accomplishments. One of his was Johnson Creek Boulevard. We have discussed sewer for years and wasted hundreds and hundreds of thousands of dollars. He was going to support the City Manager in this IGA because he believed we had a contract, an agreement, and unless we were going to go back and change our Comprehensive Plan which was no easy task and costs a lot of money and we were going to go back and renegotiate all our agreements with everyone we have agreements with because

Milwaukie cannot stand up. He was proud of Milwaukie and honored by the opportunity to serve these people and provide them the kind of service he believed the City of Milwaukie can and will give them in the future. He had been told he may not get their votes. He was not in this to get their votes. He was in this to provide all citizens with outstanding service no matter where they lived. By the way, Milwaukie was in Clackamas County. It was not as if they were going to have to move or change their address. It was probably the same zip code. He had a friend who was shopping for homes, and the price differential from the City of Milwaukie's border and outside the City of Milwaukie border was significant. Milwaukie's border even under current circumstances was higher. People buy them up right away, so there was something going on in the City of Milwaukie. For a long time we had been sitting back on our laurels, and it was time to get the job done. He would be supporting the resolution to execute the IGA.

**Councilor Chaimov** had two topics. One was the County. Throughout this process he found the County to be a willing, thoughtful, and helpful partner. When he needed information they were there to get it for him. He could not be more pleased with at least the way the County participated with him in helping deal with this issue. Second on the question itself. One of the things he learned in the short time on this job, to his surprise, was the number of decisions one had to make based on decisions that were made in the past with which he might not agree. He was not sure he would have supported an agreement that called for delivering services to people who did not want them. The decisions whether we were going to do this were made more than 20 years ago in the UGMA and more than 5 years ago when the City adopted its Comprehensive Plan. Maybe this was one of those instances in which being a lawyer was a hindrance rather than a help. It seemed the question we were being asked today was whether to carry out decisions – policies made more than 20 and more than 5 years ago. He did not see the Council's having the leeway to depart from those previous policies.

**Councilor Loomis** said in the UGMA itself it said, "the dual interest area boundaries may be amended at any time by consent of either party." We were not bound by that. In the Comprehensive Plan itself the objective in annexation is a majority of residents and property owners within the area to be served desire City services and want to be part of the City. A unified system of governance does not preclude provision of certain services by regional special districts. The City will actively participate in the regionalization of service when at minimum service can be delivered more effectively, efficiently in terms of cost, technology, and finance. For him the bottom line was this area needed sewer. What was the best way for that to happen for these folks? The most cost effective way. If these folks had come to the door and said we want to be part of Milwaukie right now, he would say welcome aboard. If annexing them into the City was going to be a cost to the current residents we were going to have to subsidize. We were not going to recover our costs of services that we provide to them. He would make that decision and say come aboard. To him a lot of the pluses that Mr. Asher mentioned that the value of the City would go up would still happen even if they were not in the City by providing the sewer. A lot of those things were going to happen. The long-range was if this was the whole unincorporated area he might be a little more on board with the Town Center and all that was ready to go. What we can do here tonight was to say we have listened, and we want to build a little goodwill. Things have changed here. We want you to come to the City of Milwaukie. Councilor Chaimov made a choice to come to the City of Milwaukie, and he was very happy. He made a great statement about that, but it was his choice. This was not their choice if they decided to get sewered. To him that was the most important thing. The environment and to get these folks. There would not be a more cost effective time for them to be able to do it. One of the recommendations was if there was a way we can do this and we can revisit the UGMA and all that at another time. That did not really have to be

done now. The Comprehensive Plan did not have to be changed from what he saw. He would vote in support of alternative 2.

**Councilor Stone** had three questions. The first had to do with the City and how if we decided to not be the sewer provider for the dual interest area A and annex them. How would that decision not to annex them and provide sewer affect future annexations in that surrounding area in Clackamas County? Would it negatively affect us and our ability to do that?

**Mr. Asher** thought it would but he would ask Mr. Campbell and Mr. Swanson to give short responses. He thought if one were looking at the long-range growth plan for the City. The blue was what we had today, and the green was the urban growth management area. Those were areas the City had made plans for to eventually provide services and become the urban service provider and the City. That tiny little area we were talking about comparatively was the easiest of all of that. Annexations were very difficult. One of the things he said when he made the presentation in May was that land did not mind being annexed, but people do not like it at all. Our governance structure was going to have to change. The cost of providing services was going to have to get so high that governments were left with no choice but to begin to consolidate in ways we have not imagined yet. We can see how hard it was to consolidate just on sewer treatment. His short answer was if the City cannot provide service to Dual Interest Area and thereby effectuate annexation there. From a policy perspective, from a technical perspective and from every other perspective it was hard for him to imagine even making plans for doing anything else.

**Councilor Stone** said but it was not impossible.

**Mr. Asher** replied nothing was impossible.

**Councilor Stone** said her other two questions had to do with the folks that were affected in Dual Interest Area A. From what she had heard as their septic tanks failed they wanted to have sewer. It was just who was going to provide it. The most important things were how much it was going to cost as people were worried it was going to cost more to be part of the City of Milwaukie. If we could guarantee that it was not or the costs were going to be neutral if they went with the County it would go a long way to extending goodwill and harmony and helping them to embrace looking at being annexed into the City of Milwaukie. Also how was it going to impact their day-to-day life? They were in a very rural area right now. She did not know how that would affect them in terms of if they had farm animals. She wanted to know the answer to that.

**Mr. Campbell** replied as far as the cost he did not think the City could guarantee on a lot-by-lot basis. The County has not finalized its cost proportioning method yet. Their personal share of capital cost there was no reason, which he could say with a high degree of confidence, that the City would be higher. They were likely to bid the contract together and construct it all together. The City could probably look at using the same method as the County for apportioning the capital costs. There was one area where there would be significant savings if they went through the City. The urban renewal area committed to paying the equivalent of the CCSD No. 1 system development charge costs commonly called the connection fee. In CCSD No. 1 that was higher than the City of Milwaukie. The urban renewal area would pay that amount of subsidy regardless of the fact that City of Milwaukie SDC was lower. As far as capital costs it was probably about $1,000 cheaper for Milwaukie to provide the construction. They would give that back in paying for City of Milwaukie services back over a period to time through property tax. The City could not guarantee forever that it would be cheaper to be in the City. It was not cheaper being in the City. There were a lot of advantages. There were methods staff could look at to make sure some share of that was spent in that area. As far as the impact to day-to-day life he was not sure.

**Mr. Asher** answered more generally on both of those issues. What it costs for these folks to come into the City and the impact of difference in zoning codes. For us to bring these people into the City we needed to extend ourselves. If it meant his working with Ms. Mangle, Mr. Parkin, Mr. Campbell, Ms. Herrigel, and the entire staff in a way to make this comfortable and respective and demonstrated that was what Milwaukie was all about then that was what he would do. If he had to come to the Council and say we had to amend this code provision so the dual interest area – he could not go too far with that. The spirit of what we were trying to propose here was that we did not want to create hardships for anyone. We actually think there would be fewer hardships over the long-term if this little area were part of the City of Milwaukie. We would go to some ends to make that transition happen harmoniously.

**Mr. Swanson** added life would be simpler if he called Jon Mantay tomorrow and said he wanted to renegotiate the UGMA and he wanted the County to take over Area A. We just want to forget about it. We were 130 strong in terms of staff and taking on another responsibility, and he might add the plan was not to just sort of as a big group deal with this community. What we were going to do was to look at it piece by piece, residence by residence. He firmly believed and was proud after working in local government for 37 years he could not cite another example of the work being as satisfying, the work being as progressive, the work being as fulfilling as what the 129 people had done. He would like the opportunity to try to translate that. He said tonight we were in a pitched battle with the County between 1980 and 2000. He thought, and he was willing to admit, that the City was as much to blame as he believed the County was for sewers not happening there any sooner than now. He believed we were ready to do that. He also believed it was partially because the County stepped up and proposed the urban renewal area. If we got to the point where he believed our efforts to convince were not going to succeed he would be the first to go to the County and negotiate a buyout in a sense. This was not a profit-making venture for the City of Milwaukie. It was a willingness to follow through on its commitment. He felt the City really did have something to offer. Not in the sense of smarter people coming in and dictating to the lowly. We have changed our minds as staff countless times because it listened to people. Life would be simpler if we did not take on this challenge, but he did feel it as the right thing to do to at least try to communicate what has happened over the past 10 years. If it did not work out he would be the first person to admit that. Right now what he was saying was if we cannot get enough people he was not going to commit the City to a program that was going to have to be balanced on the backs of current ratepayers. He was willing to accept the challenge of trying to convince folks that we were ready to do and that. There was something to be gained from being part of this City. He and staff were proud of what all of us had done to make this a pretty functional place to be. Government did work here.

**Councilor Barnes** said this had been a tough issue for her. As a preface she did not want the County people in the back of the room to think she was tearing them apart. She was very concerned when she saw that and did not have a good answer on it yet. The key word was commitment. We made a commitment in writing. For the folks who did not live in the City of Milwaukie yet she hoped they would want their governing body to believe in commitment and to follow through with written commitments and know they could be trusted to serve their best interests. They will say to you they put this in writing and want to work with you and did not want to ignore you because signing an agreement should mean something as people worked with the City. She was proud of the City because for the past six years they worked as a team to improve this City. If you pick up the phone and call one of us you can do that at our house. We are listed. Right now you cannot necessarily pick up the phone and talk to your County Commissioners at home. They were great people, and she loved working with them. You would run into Councilor Barnes in the grocery store and complain about something

faster than you can do that with any of them. Our code enforcement people, once you were in Milwaukie, would be there in a heartbeat to defend your rights at your property. Our City officers she had ridden with on numerous occasions would be at you home quickly and every single time. They did not have to drive in from Estacada to help you. The bottom line for her was this. She was proud enough of her City to say the olive branch was being offered to you by her City right now. She did not want to force them to do something they did not want to do. 40 years ago life was totally different than it was today not only in this City but in this County and every night you can see on the national news in this country. If we do not understand what happened in the past, we come back and do it again. Open your hearts. She was not going to knock down any door nor was any member of staff. At least let us sit down over a cup of coffee and explain why we believe Milwaukie was good. If you were willing to do that there was no one in the City who would not sit down with you. That was all we were asking. She would go along with the proposal to execute the IGA because it was a good first step in making that connection.

**Mr. Swanson** commented on the petition and only saw tonight that Glenda Kennedy had not done this for advocacy purposes. He knew Ms. Kennedy, and she did not do this to make the City look worse. He had known her for years and was probably only responding to a question. She was a good person.

**Mayor Bernard** said when he and Mr. Swanson worked on the annexation to the Fire District they realized after the voters supported it that they had made a mathematical error. They promised the taxpayers it would not cost them a dime to annex to the District, so the City adjusted its tax rate. However, one taxpayer did not appreciate the $120 in taxes, so Mayor Bernard personally paid them. That was why he loved this City. We had promised no tax difference. People should be honored to be part of the City. He was. He was very proud of what the City did on the Fire District annexation. The City did not levy its full taxes because of its promise to the citizens of not doing so without asking.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution authorizing the City Manager to execute an intergovernmental agreement with Clackamas County Service District #1 for the Dual Interest Area "A" wastewater sewer extension project and authorize the City Manager to make final application to the Oregon Department of Environmental Quality for a loan from the Clean Water State Revolving Fund for design and construction of the project. Motion passed with the following vote: Councilors Chaimov and Barnes and Mayor Bernard voting 'aye' and Councilors Loomis and Stone voting 'no.' [3:2]**

**RESOLUTION NO. 81-2008:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 (CCSD #1) FOR THE DUAL INTEREST AREA "A" WASTEWATER SEWER EXTENSION PROJECT; AND AUTHORIZING THE CITY MANAGER TO MAKE FINAL APPLICATION TO THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) FOR A LOAN FROM THE CLEAN WATER STATE REVOLVING FUND (CWSRF) TO FUND DESIGN AND CONSTRUCTION OF THE PROJECT**

**Council Report**

**Councilor Loomis** enjoyed working at the Farmers' Market.

**Councilor Stone** was looking forward to attending the Poetry reading.

**Councilor Barnes** said the Council had been briefed on the situation with the Linwood NDA and felt there was resolution.

**Councilor Chaimov** attended the League of Oregon Cities Conference and recommended those interested look at what the City of Independence had done because some of it could translate here nicely.

**Mayor Bernard** hoped everyone would take the time to visit the site referred to in audience participation as it was definitely not to code. He would not support any variance to allow this because they had simply cut off the back of a truck. He announced the Farmers' Market Pumpkin Carving Contest on October 26

## ADJOURNMENT

**It was moved by Councilor Stone and seconded by Councilor Chaimov to adjourn the meeting. Motion passed with Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Bernard voting 'aye." [5:0]**

**Mayor Bernard** adjourned the regular session at 9:04 p.m.

Pat DuVal

Pat DuVal, Recorder