

# REGULAR SESSION

# AGENDA

## MILWAUKIE CITY COUNCIL MAY 6, 2008

MILWAUKIE CITY HALL  
10722 SE Main Street

2029<sup>th</sup> MEETING

### REGULAR SESSION – 7:00 p.m.

- |  | Page # |
|--|--------|
| <b>I. CALL TO ORDER</b>  |        |
| Pledge of Allegiance   |        |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>  |        |
| <b>A. Recognize Councilor Susan Stone for Service as Council President</b>   |        |
| <b>B. Proclamation -- Building Safety Week May 5 – 11, 2008</b>  | 2      |
| <b>C. Proclamation – Safety Break May 14, 2008</b>   | 3      |
| <b>D. Southgate Park-and-Ride Update (Kenny Asher / Katie Mangle / Gary Parkin)</b>  | 4      |
| <b>E. Schools and Light Rail (Grady Wheeler)</b>   | 12     |
| <b>3. CONSENT AGENDA</b> <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the “Consent” portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i>  |        |
| <b>A. City Council Minutes</b>   | 17     |
| 1. December 18, 2007 Regular Session   |        |
| 2. February 19, 2008 Work Session  |        |
| 3. March 4, 2008 Work Session  |        |
| 4. March 4, 2008 Regular Session   |        |
| 5. March 18, 2008 Work Session   |        |
| <b>B. Resolution Reappointing Mike Miller to the Budget Committee</b>  | 63     |
| <b>C. Resolution Appointing Christie Schaeffer to the Park and Recreation Board</b>  | 64     |
| <b>D. Resolution Approving a Bid Award for Washington Street Paving – Street Surface Maintenance Program</b>   | 65     |
| <b>4. AUDIENCE PARTICIPATION</b> <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder.</i> |        |

*Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

- 5. PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

**None Scheduled.**

- 6. OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

- |           |   |           |
|-----------|---|-----------|
| <b>A.</b> | <b>Well 8 Rehabilitation – Phase 2 – Resolution (Gary Parkin)</b>                                   | <b>71</b> |
| <b>B.</b> | <b>Ordinance Amending Milwaukie Municipal Code 2.17<br/>Milwaukie Arts Committee (Bill Monahan)</b> | <b>93</b> |
| <b>C.</b> | <b>Council Reports</b>  |           |

- 7. INFORMATION**

- |           |  |            |
|-----------|--|------------|
| <b>A.</b> | <b>Center/Community Advisory Board Minutes of March 14,<br/>2008</b> | <b>98</b>  |
| <b>B.</b> | <b>Park and Recreation Board Minutes of February 28, 2008</b>        | <b>103</b> |

- 8. ADJOURNMENT**

**Public Information**

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660(2).
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

2.

PROCLAMATIONS,  
COMMENDATIONS,  
SPECIAL REPORTS,  
AND AWARDS



# Proclamation

## Building Safety Week 2008 May 5–11

*Whereas, through our continuing efforts to address critical safety issues in the built environment that affect our citizens, regardless of age or occupation, both in everyday life and in times of natural disaster, we are confident that our structures are safe and sound; and,*

*Whereas, vigilant guardians—building safety and fire prevention officials, architects, engineers, builders and others in the construction industry—work year-round to ensure the safe construction of buildings; and,*

*Whereas, these dedicated members of the International Code Council develop and implement the highest-quality codes to protect Americans in the buildings where we live, learn, work and play; and,*

*Whereas, the International Codes, the most widely adopted building safety and fire prevention codes in the nation, are used by most U.S. cities, counties and states; these modern building safety codes also include safeguards to protect the public from natural disasters such as hurricanes, snowstorms, tornadoes, wildland fires and earthquakes; and,*

*Whereas, Building Safety Week, sponsored by the International Code Council, reminds the public about the critical role of our communities' largely unknown guardians of public safety—our local code officials—who help prevent countless fires and accidents; and,*

*Whereas, the theme, "Building Safety: Where You Live, Work and Play," encourages all Americans to raise awareness of the importance of building safety; green and sustainable building; pool, spa and hot tub safety; and new technologies in the construction industry; it presents appropriate steps everyone can take to ensure that the places where we live, learn, work and play are safe, and that countless lives have been saved due to the implementation of safety codes by local and state agencies; and,*

*Whereas, this year, as we observe Building Safety Week, we ask everyone to consider projects to improve building safety at home and in the community, and to acknowledge the essential service provided to all of us by local and state building departments and federal agencies in protecting lives and property;*

*Now, therefore, it is hereby proclaimed that May 5 through May 11, 2008, is Building Safety Week in \_\_\_\_\_ (jurisdiction). Accordingly, our citizens are encouraged to join communities across America to participate in Building Safety Week activities.*

*Signed and sealed, this \_\_\_\_\_ day of \_\_\_\_\_, in the year Two Thousand and Eight.*

## PROCLAMATION

### Safety Break for City of Milwaukie

**WHEREAS**, workplace injuries and deaths take a profound toll on The City Milwaukie's employees and working families; and

**WHEREAS**, the City's safety attitude has aided in making progress in reducing worker deaths and injuries in the 35 years since the passage of the Oregon Safe Employment Act in 1973; and

**WHEREAS**, the City benefits from a safe workplaces; enabled by its employees and managers collaborating to reduce the human suffering and financial burdens that stem from workplace injuries and deaths; and

**WHEREAS:** all City Facilities will join together in an effort to further heighten awareness of the benefits of working more safely on May 14, 2008,

**NOW, THEREFORE, I, James Bernard, Mayor of the City of Milwaukie, hereby proclaim May 14, 2008 to be**

### Safety Break for Milwaukie

and encourage all citizens to join in this observance.

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James Bernard, Mayor

ATTEST:

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Pat DuVal, City Recorder



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**

**From: Kenneth Asher, Community Development and Public Works Director  
Katie Mangle, Planning Director  
Gary Parkin, Engineering Director**

**Subject: TriMet's Southgate Park and Ride Project Update**

**Date: April 25, 2008 for May 6, 2008 Regular Session**

**Action Requested**

None. This is a briefing to update Council on TriMet's recent decision to cancel the Southgate Park and Ride project.

**History of Prior Actions and Discussions**

**May 2006** - City Council denied an appeal of the Planning Commission's approval of the TriMet Southgate Park and Ride, upholding the Commission's decision. The Oregon Land Use Board of Appeals (LUBA) upheld this decision.

**Dec 2006 – April 2007** – Several work session discussions about dissolving the Milwaukie Transit Center, resulting in TriMet's agreement to develop plans for moving the bus layover function of the Transit Center to the Southgate site. The City and TriMet understood this would require additional coordination, funding, bus operation modifications, and a new land use application to modify the approval granted for the Park and Ride in 2006.

**Background**

City staff has learned that TriMet no longer intends to construct the project known as the Southgate Park and Ride, for which regional funds were allocated in the early 2000's and for which the City granted a Community Service Use permit in 2006. It appears the bus layover option at Southgate is also no longer viable for TriMet.

The greater Milwaukie community has anticipated construction of this facility since the City granted its approval. The community has viewed this project as one that would address several longstanding problems such as the lack of park and ride facilities and the resulting use of city streets and parking lots in downtown and the north industrial area by commuters who take the bus to downtown Portland.

The park and ride project, first brought to the City's attention five years ago, has been challenged by issues related to TriMet's real estate acquisition, the land use application process, and project staff turnover at TriMet. The Milwaukie Planning and Engineering Departments prepared the memorandum in Attachment 1 to outline the planning and review history of the TriMet Southgate Park and Ride project, and to explain the City's perspective on the many delays the project has experienced.

The bus layover project is not summarized in the attached memo, however staff will be prepared to discuss that project and its history at the Council meeting on May 6.

Dave Unsworth from TriMet will be in attendance at the meeting as well, to provide TriMet's perspective. Mr. Unsworth has inherited this project from Phil Selinger, who retired from TriMet in mid-April.

**Concurrence**

None.

**Fiscal Impact**

None.

**Work Load Impacts**

None.

**Alternatives**

None.

**Attachments**

1. Planning and Review History of TriMet's Southgate Park and Ride Project, 9600 SE Main Street

# ATTACHMENT 1

City of Milwaukee

## Interoffice Memorandum

To: Kenny Asher, Community Development and Public Works Director

From: Katie Mangle, Planning Director   
Gary Parkin, Engineering Director 

CC: Susan Shanks, Senior Planner  
Zach Weigel, Civil Engineer

Date: April 14, 2008

Re: Planning and Review History of TriMet's Southgate Park and Ride Project,  
9600 SE Main Street

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You have asked the Planning and Engineering Departments for the planning and review history of the TriMet/Southgate Park and Ride project, and an explanation for the many delays the project has experienced. We understand from you that TriMet killed the project in March 2008. We also understand that TriMet no longer intends to construct a bus layover facility at Southgate either, although this memo does not cover the history of the bus layover proposal.

The park and ride project, first brought to the City's attention five years ago, has been challenged by issues related to TriMet's real estate acquisition, the land use application process, and project staff turnover at TriMet. Although the ultimate use of the Southgate site remains uncertain under current light rail planning scenarios, we do not understand the light rail project to be the cause of TriMet's decision to abandon the project. In fact, as recently as this past January, TriMet's project team was working with Milwaukee staff to secure a building permit for the facility.

Based on available records and staff notes, what follows is the Planning and Engineering staffs understanding about this matter.

The attached timeline contains detailed dates and information.

### **Initial Application: August 2003**

The City held a preapplication conference for TriMet in the summer of 2003, at which time City staff described Milwaukee's basic requirements for permitting land use and construction of the new surface lot park-and-ride facility. Topics discussed included the

Community Service Overlay (CSO) review process, landscaping and stormwater standards, and the need for a traffic study.

### **First Delay: Property Interest Dispute**

The first delay occurred at the very outset of the initial land use application phase. Shortly after TriMet submitted the first CSO application in September 2003, the City received a letter from legal representatives of the STX corporation, challenging TriMet's right to submit a land use application given STX's access rights to the property via recorded easement. Planning staff deemed TriMet's application complete in November 2003, however TriMet withdrew the application in December 2003, apparently due to the property rights dispute with the STX Corporation.

Nearly two years later, in September 2005, TriMet submitted a new application for the same project.

### **Second Delay: Land Use Approval**

The second delay occurred during the land use approval and appeal process in 2006. City staff worked with TriMet staff to prepare for a hearing on the CSO application, which took place during two meetings of the Planning Commission in January and February 2006. The Commission approved the application after taking extensive public comment. The Commission's approval of the application was appealed to City Council. City Council heard the appeal at two public hearings in April and May 2006, and City Council denied the appeal, upholding the Commission's approval of the project. This decision was appealed to LUBA, a review process that took eight months but which resulted in affirmation of the City's approval of the project in December 2006.

### **Third Delay: Building Permit Approval: Landscaping**

The third delay occurred during TriMet's preparation of building permit plans, which were checked by our staffs for compliance with the City's conditions of approval. In June 2007, TriMet submitted a set of plans for building permit review. However TriMet withdrew this application a week later when staff discovered that TriMet had failed to incorporate required landscaping elements. TriMet explained that this oversight was due to staff turnover at TriMet on the project. TriMet worked with its consultant to revise the plans and re-applied for a building permit five months later, in November 2007.

### **Fourth Delay: Building Permit Approval: Stormwater**

Finally, it appears that TriMet's failure to adequately plan for stormwater management on the project site delayed progress as well. This issue remains unresolved.

In December 2007, during the City's review of TriMet's building permit application, Engineering staff commented to TriMet that the project's stormwater design had not been adequately developed. The 2003 pre-application notes confirm that the City

outlined basic stormwater management requirements for the site, stating that on-site water quality improvements would be required. Current practice is to request a stormwater report during the land use approval phase to identify site needs and requirements, however this was not an explicit request made of TriMet on this project, and TriMet provided no such report. As a result, the City could not conduct a detailed evaluation of the stormwater management design until TriMet submitted drawings for the building permit.

In January 2008, City and project staff met to discuss the stormwater requirements. One month earlier, Engineering staff had mistakenly stated that on-site stormwater detention would be required. At the meeting between City and project staff, however, Engineering staff clarified that the project need only provide water quality facilities (not detention), and that several approaches to meeting this requirement would be acceptable to the City. Engineering staff discussed alternative approaches with project staff, but to date has not heard back from TriMet or its consultant on this issue.

The building permit remains on hold.

### **Impacts of Delays to Project Budget**

The project's schedule and design delays have directly affected TriMet's funding for the project. Based on conversations with Phil Selinger, we learned that some of the funds allocated to the project were spent on legal fees necessary to successfully defend the project at LUBA, and that other project funds were re-allocated in TriMet's budget due to the delay imposed by the lengthy appeal process. In addition, we were told that TriMet's project cost estimate increased from \$1.3 million in 2005 to \$3 million in 2008 because of escalating construction costs, additions to the project scope (enhanced lighting, installation of CCTV) and stormwater improvements that TriMet failed to budget in the original proposal.

### **Conclusion**

The Southgate Park and Ride project has been repeatedly delayed due to: legal struggles under which TriMet attained the property and attendant development rights and land use approvals; TriMet's failure to efficiently resolve project requirements like landscaping, stormwater treatment, and safety/security features like lighting and CCTV; and the funding gap that inevitably arises for lagging projects that face rising costs. The City did not help matters by providing some erroneous information about on-site stormwater detention in December 2007, but in every other regard, we believe the City's 5-year history of planning and review on the project has been responsive.

### **Attachment:**

1. Project Timeline and City Staff Notes

## **Attachment 1: Southgate Park and Ride - Project Timeline and City Staff Notes**

### **Land Use Permit Phase**

- **8/14/03 – Pre-application conference held.** TriMet submitted a list of questions, one of which was that the City “verify that no water quality/ detention systems are required.”
  - 8/18/03 – City/TriMet conference call, characterized as an “extension of pre-application conference.” Primary topic was traffic study requirements.
  - 9/5/03 – Pre-application meeting notes distributed. Pertinent highlights include: “On-site water quality improvements are required to reduce pollution discharge to Johnson Creek. No detention system will be required because impervious surface won’t be increased.”
- **9/29/03 – First Southgate Park and Ride application submitted (CSO-03-05).**
  - 11/21/03 – Deemed complete.
  - 11/25/03 – First public hearing scheduled, but continued due to “City staff limitations.”
  - 12/9/03 – Application withdrawn. Appears to be due to property owner authorization dispute with STX.
- **9/22/05 - Second Southgate Park and Ride application submitted (CSO-05-04).**
  - 11/30/05 – Application re-submitted/revise.

**Staff notes regarding storm water requirements:** According to TriMet’s application, the project would improve storm water runoff conditions by reducing the amount of impervious area and increasing landscaping. For a land use application of this scope, current staff normally requests the submission of a preliminary storm water report during the land use permitting phase. The report gives Engineering Staff an idea of how the applicant is planning to handle storm water runoff from the site. The City did not require a preliminary storm water report for this project.
  - 1/10/06 – First Planning Commission hearing on the application.
  - 2/14/06 – Second Planning Commission hearing on the application. Notice of Decision (approval) mailed 2/15/06.
  - Decision appealed to City Council.
- **City Council first hearing of appeal (AP-06-01)**
  - 4/18/06 – First council hearing.
  - 5/16/06 – Second council hearing. Council denied the appeal and adopted final conditions of approval for the application.
  - 5/17/06 – Notice of Decision to deny the appeal mailed.

Staff notes regarding storm water requirements: The final conditions of approval of the project do not specify any storm water runoff improvements for the proposed development. Storm water improvements are a design standard and are usually reviewed at the time of building permit application. Engineering staff has consistently required a storm water management plan with submission of a building permit for all permits involving a change or replacement in impervious area, excluding single-family residential buildings. This requirement was in effect prior to adoption of the City of Milwaukie Public Works Standards. It was the Engineering department's practice to ask applicants to design the storm water system to the requirements of WES or the City of Portland. The City of Milwaukie adopted Storm Water Design and Construction Standards as part of the Public Works Standards on May 15, 2007.

○ **Appealed to LUBA**

- 11/30/06 – The City and TriMet each filed response briefs and argued at the hearing.
- 12/12/06 – LUBA affirmed City Council's decision.

**Building Permit Phase**

- 6/12/07: Planning, Engineering and Building staff met with TriMet at their request to have a pre-submission discussion about their pending application submittal. At this meeting, staff did a preliminary review of their submittal to check if any key documents were missing.
- 6/13/07: TriMet submitted the building permit application for the Southgate Park and Ride.
- 6/20/07: TriMet withdrew the building permit when staff at both agencies recognized that the plans did not incorporate elements, such as site landscaping, that Council added to the conditions of approval.
- 11/29/07: TriMet re-submitted the building permit application for the Southgate Park and Ride.
  - 12/12/07: Planning staff approved this building permit submission.
  - 12/12/07: Zach Weigel, in coordination with George MacGregor, storm water engineer, provided Engineering comments to TriMet. The comments required TriMet to provide a storm water report in accordance with Section 2 – Stormwater Design Standards of the Public Works Standards. Specifically, the storm water report was to include storm detention facilities designed for the 25-year storm event with pre-development conditions taken as "Lewis & Clark" conditions. Also, water quality facilities were to be designed and constructed to the requirements of the City of Portland Stormwater Management Manual.

- 1/08: Zach Weigel spoke with Kristin Burrus of TriMet to discuss the stormwater improvement requirements. She stated that her interpretation of the Stormwater Design Standards was different than that required in the plan review letter. The Engineering department determined that she was correct. Storm detention facilities are not required to be designed with "Lewis & Clark" pre-development conditions. Also, the proposed development was decreasing the amount of impervious area on the site. As a result, additional detention of storm water runoff was not required. However, design and construction of the water quality facilities in accordance with City of Portland Stormwater Management Manual was still required.
- 1/25/08: George MacGregor and Zach Weigel met with a representative of OTAK and Kristin Burrus of TriMet to discuss water quality options for the Southgate Park & Ride site. Zach recalls stating that TriMet would need to meet the water quality requirements of the Portland Stormwater Management Manual for all the areas of new impervious area, including areas replacing existing impervious area. Initially, George and Zach suggested that they use swales in the landscaping areas to treat the storm water runoff. The representative of OTAK stated that TriMet did not want to re-grade the site to redirect runoff to planter and swale areas. George recommended that they look at using pervious pavement in the parking stall area. This option would effectively treat the storm water without requiring re-grading of the site. OTAK thought that would be a good solution. They were going to look at the pervious pavement option and some other ideas that would meet the Portland Manual requirements and get back to us. Zach never heard back from OTAK or TriMet regarding the results of their findings.



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager  
Kenny Asher, Director of Community Development and Public Works

**From:** Grady Wheeler, Information Coordinator

**Subject:** Light Rail and Schools

**Date:** April 23, 2008 for May 6 Regular Session Meeting

**Action Requested**

None. Staff would like to provide Council with an opportunity to have a conversation with representatives from schools in our Downtown area who have expressed concerns about how a Portland to Milwaukie Light Rail Project might affect their future environment and operations. Several schools located in close proximity to the existing Interstate MAX line have also been invited to share their experiences and provide their perspectives on how light rail has impacted their schools.

**Background**

Metro is expected to publish the SDEIS for Portland to Milwaukie Light Rail in May. The publishing of this document triggers a series of events that will bring a decision regarding a Locally Preferred Alignment before City Council sometime in July. One of the primary issues that has been raised during the City's outreach leading up to this decision has been creating a safe and secure light rail system here in Milwaukie, especially in light of the fact that three school's would be located near a future alignment – The Portland Waldorf School, St. John's Catholic School and Milwaukie High School.

As city staff and council begin deliberating on the best alignment for Milwaukie, staff thought it was important Council hear the concerns and experiences directly from representatives of schools that would be, and have been, affected by light rail.

To provide a sense of each school's distinct environment, a brief description of each school we've invited to be part of this discussion is provided below.

### **The Portland Waldorf School**

Located at 2300 SE Harrison St. The proposed alignment would be immediately adjacent to the east side of the school's campus.

Portland Waldorf School's teaching techniques are holistic and experiential, appealing to all the different ways children learn. The curriculum is fashioned to meet all aspects of children's developmental levels: mental, physical, emotional and spiritual. The Waldorf School is a K-12 school with an enrollment of about 365 students.

### **St. John the Baptist Catholic School**

Located at 10956 SE 25th Ave., the west side of its campus is adjacent to the proposed alignment.

Mission: St. John the Baptist Catholic School is a family oriented faith community which is committed to fostering the spiritual, academic, physical, social, and moral abilities of our students who then actively demonstrate their learning in service to others.

St. John's is a K-8 school with an enrollment of 194 students.

### **Milwaukie High School**

Located at 11300 S.E. 23rd Ave., Milwaukie High's east side of campus is about a half of a block away from the proposed alignment.

Milwaukie High has an enrollment of 1,136 students.

### **Trillium Charter School**

Located at 5420 N. Interstate Ave., immediately adjacent to an Interstate MAX light rail station.

Mission: Trillium Charter School is a democratically structured environment that fosters students' natural curiosity, creativity, and self-awareness. Students learn to take

initiative and assume responsibility for their own learning, which supports constructive interaction with the local, regional, and global community.

The Trillium Charter School has an enrollment of about 300 students, and is a K-12 school.

### **Ockley-Green Middle School**

Located at 6031 N. Montana Ave., the west side of Ockley-Green's campus borders Interstate MAX.

Ockley Green is a K-8 Magnet School with a focus on the arts, sciences and technology. The core program is enhanced through Extended Day activities, which are provided by community partners through the SUN Community School Extended Day Program. The Ockley Green core program includes instruction in language arts, mathematics, science, social studies and physical education along with specialized instruction in the arts (visual art), instrumental and vocal music, dance, media arts, and digital design.

Ockley Green's enrollment is 389 students.

### **De La Salle North Catholic High School**

Located at 7654 N Delaware Ave., approximately four blocks from Interstate MAX.

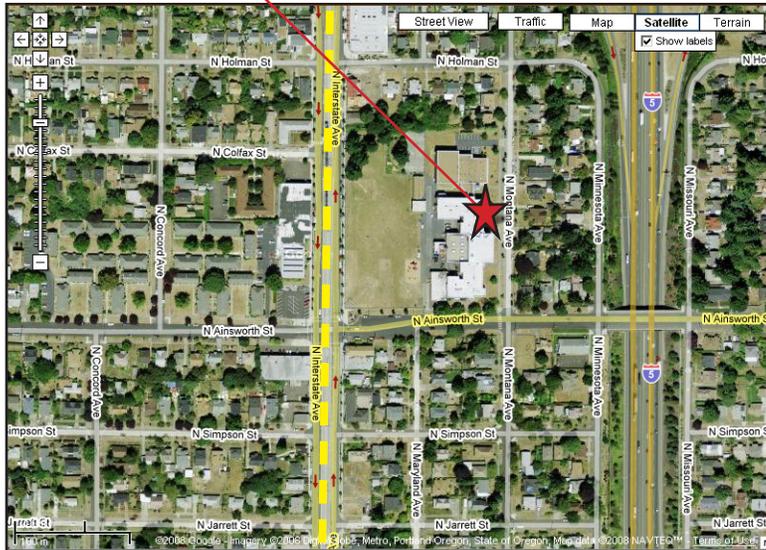
De La Salle High, grades 9 through 12, employs a unique program, the Corporate Internship Program (CIP), that provides ethnically diverse youth opportunities to succeed through small classes, high expectations, personal attention, and a prolonged school day and a 10 1/2 month school year.

The CIP couples the support of sponsoring corporations and non-profit organizations with each student who is obligated to work one full day each week to offset the cost of his/her education and to experience a real-world workplace environment. Through their employment, students earn 70% of the cost of their education.

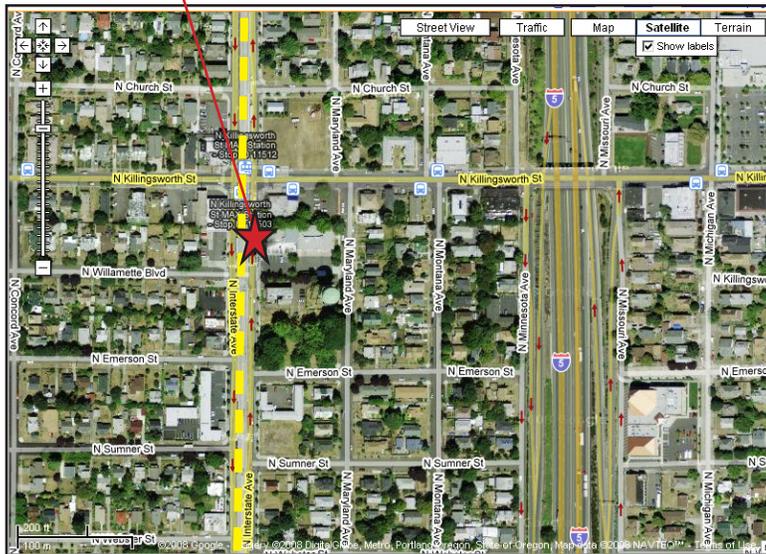
The school has an enrollment of about 250 students.

Schools near Interstate MAX

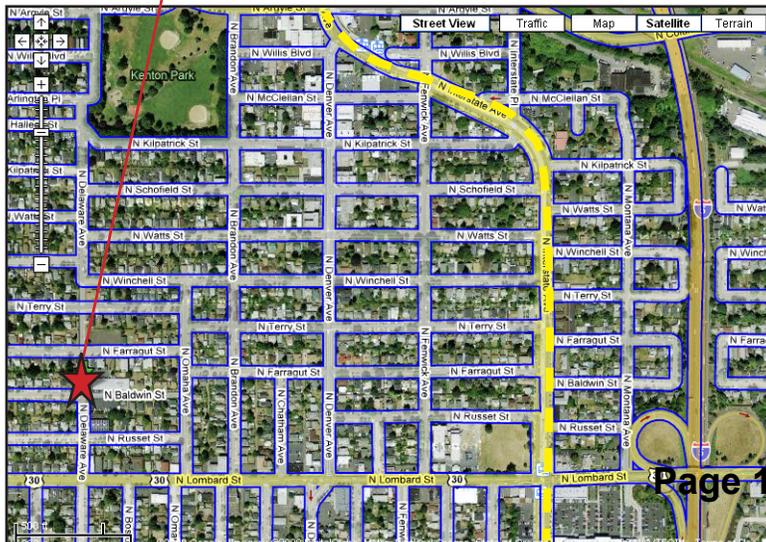
Ockley Green Middle School



Trillium Charter School

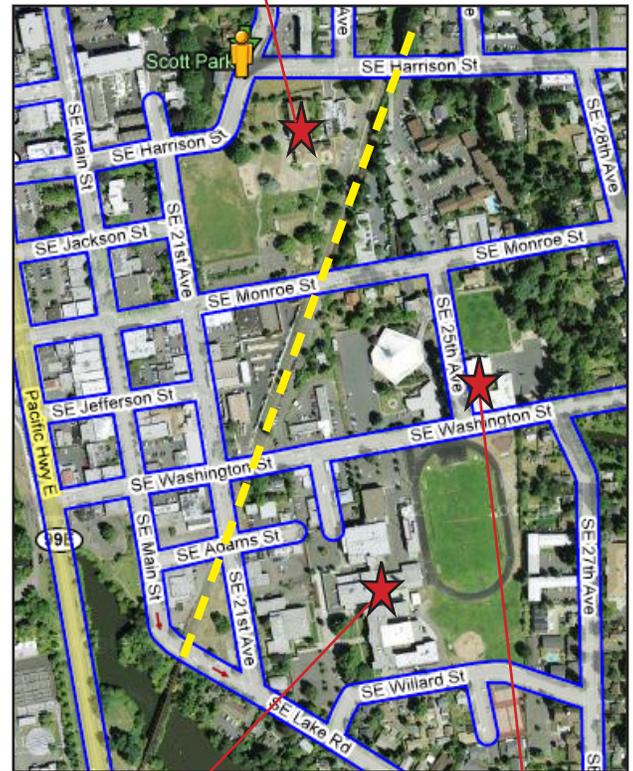


De La Salle North Catholic High School



Milwaukie Schools near proposed alignment

Portland Waldorf School



Milwaukie High School

St. John the Baptist Catholic School

3.  
CONSENT AGENDA

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
December 18, 2007**

**CALL TO ORDER**

**Mayor Bernard** called the 2020<sup>th</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor James Bernard and Councilors Deborah Barnes, Greg Chaimov, Joe Loomis, and Susan Stone

Staff present: Operations Supervisor Mike Clark, Engineering Director Gary Parkin, Associate Engineer Brenda Schleining, Resource and Economic Development Specialist Alex Campbell, Planning Director Katie Mangle

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**A. Recognize Carlotta Collette for Her Service to the Community as a City Councilor**

**Mayor Bernard** and Council recognized Carlotta Collette for her service to the community as a City Councilor from January 4, 2005 to November 6, 2007.

**B. Update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement Study**

**Mr. Asher** introduced Ms. Wieghart, Metro Project Manager. They were about to enter a new phase of the project.

**Ms. Wieghart** said they were in the middle of a technical analysis on impacts and benefits for traffic, land use, property, economic development, ridership, air quality and all of those kinds of issues. They will work with jurisdictions and the Federal Transit Authority and publish a draft in April. From the public involvement standpoint they had a safety and security task force, which began in September, and they were wrapping up the recommendations. The Citizen Advisory Committee was meeting monthly and the stationary planning focused initially on the City of Portland with open houses looking at stations from Clinton to Tacoma. In October they went to the public to ask for their vision for the station area. There were two open houses held in November to cover what was heard and to get additional input. Recommendations will go into another phase and could lead to recommendations for additional project elements. It was difficult because of cost constraints and they looked for ways to implement key ideas such as pedestrian and bike access, connections to potential developments and ideas for activity centers around the stations. They will do a similar process with Milwaukie in February. It would be more substantive in that they would be looking at station location options, Harrison, Monroe, Washington, Lake Road, and Bluebird. They will have some information related to ridership and cost to help make the decisions with recommendation for the Milwaukie City Council in March or April.

**Councilor Barnes** asked for a summary of the previous night's meeting.

**Mr. Asher** replied about 20 people not including staff made up task force members with representatives from Portland Waldorf School (PWS) and St. Johns. They had similar

**CITY COUNCIL REGULAR SESSION – DECEMBER 18, 2007**

**DRAFT MINUTES**

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concerns station by station. Possible locations that felt more remote raised concerns and that were not near traffic raised concerns about the level of activity. There were concerns about interaction with traffic and pedestrians. There was safety concerns about recent reports, paying fares, and ability to protect people and property from unruly element. Did not hear a lot of new safety and security concerns. It was interesting that the next decision for the Council prior to Locally Preferred Alternative (LPA) adoption was station location, which would need a community conversation. They heard at least one person recommend none because all were near schools. They intentionally were pushing it back on the calendar until safety and security had a chance to do its thing and do in context of all those things including ridership.

### **C. First Annual Update on the Street Surface Maintenance Program**

**Mr. Asher** personally thanked the City and Council who used roads and streets, which had been so poorly maintained over the years. They were pleased that one year ago the City Council voted to enact the SSMP and raise local funds to preserve and maintain paving on Milwaukie's major streets. It was a huge step on the part of the City Council. On behalf of the staff working on the program felt like a strong vote of confidence in future, for the City, and the staff. He heard accountability would be key with reporting back to the City Council. He clarified that the program began on July 1, 2007. It was bittersweet in that Milwaukie had stepped up but couldn't mask the statewide infrastructure crisis. He shared remarks from the governor and the Oregon business plan. Transportation this year was high on the agenda. It provided some context so they were not operating in a vacuum. Staff claimed there was not help so they needed to come up with a solution and if the state or federal came up with a solution they would adjust the program. There was good reason not to be hopeful. He heard the governor remark on sustainability but was worried leaders would ask if they get there on old bridges or aging rail system. He went on to throw out some numbers. The Governor was working on a 2009 legislature package and talked with all major stakeholders to form 3 subcommittees to determine how the package would be structured. He did not believe gas tax increase was the only way to go but everything ought to be on the table. The Business coalition transportation put together a package to increase annual registration fees plus a 2-cent gas tax increase and index gas tax to CPI. There was no political will in Salem to raise those taxes and fees.

He will come back to a work session to talk about how this was impacting City and what we were no longer able to do with our share of the gas tax. There had been a 40% increase since 1995 adjusted for inflation with flat revenues. They had managed over the past several years to find matching funds but were no longer able to do that. TI was having a real impact at home. He frankly would feel remise if he did not tell the whole story. Fund 315 healthy, but fund 320 which took care of everything else was in bad shape. He was obligated to tell the City Council and public not just about transportation infrastructure, but also a Metro report that talked about needs in the region. The bus fleet was older than 15 years. Within 20 years bridges will be 100 years old. Columbia bridges will be \$6 billion, which was more than available over the next 20 years. Major collectors and arterials in Milwaukie will be taken care of. The Milwaukie City Council adopted three tools that went into a lockbox fund to take care of major collectors and arterials in Milwaukie that included gas tax, utility tax, and PGE privilege tax.

**Mr. Clark** reported on the 2 projects completed this summer: 37<sup>th</sup> Avenue from Lake Road to Hwy 224 and 42<sup>nd</sup> Avenue improvements from Johnson Creek Boulevard to Howe that included improved drainage and drivability.

**Mr. Parkin** said there were lessons learned about notification. They did good job with door hangers on main routes, but many on side streets were not aware. They learned they needed to expand the notification area. The length of the project stretched the

inspection resources on 42<sup>nd</sup> Avenue. Another issue had to do with traffic control and they would be more involved in setting a traffic control plan. Two projects yet to do this year were Washington from 99E past high school and up Oak Street to Monroe. Current condition of Oak Street would be ground and overlay. They were coming up with strategies to maintain business operations.

**Mayor Bernard** commented last time they paved over drains. Will that be ground?

**Mr. Parkin** said a big part of the project was grinding down existing asphalt to allow a fresh coat.

**Mayor Bernard** asked if current projects were well done and preserved trees and helped slow traffic.

**Mr. Asher** discussed upcoming projects and what had changed from when project was designed. They realized they were over-budgeted year 1, but under-budgeted for Oak and Washington. They moved Logus Road to year 2, as it was a full-street improvement project with green street treatment sidewalk for FY 2008-2009. Also, they would do King Road in year 2, which was almost \$1 million. Storm crews were out this fall and winter raising the tops of drywells so they would not be paved over. Found many storm mains not connected to catch basins. Part of the reason was the drainage system was broken and they were preparing for new surface. They were also doing deflection testing to understand the condition of the sub-base. They needed to understand how bad it was underneath. He referred to the back of staff report, which was the original model upon which the SSMP was passed. The overall condition of the network in 2004 rated 67 out of 100 which was at the high range of satisfactory but declining. The network was still in a state of decline but they think they can stabilize that free fall in a couple of years and at 10-year life of program raise to 75. There were funds in the program to do an assessment every few years.

The workload impacts of project inspection will continue to be an issue but some funds were built into the program. In terms of project costs and amount of money being collected this year there was approximately a 3% increase. It was still early in the life of the program he did not recommend any modifications.

**Mr. Campbell** said he felt confident with a full year of revenue in next fiscal year it should be \$1 to \$1.1 million. For the current year they used conservative assumptions based on startup. Reasons for difference were they only had ½ year of the privilege tax that was approximately \$150,000 lower. Gas tax at high end of what hoped for in range of \$180,000 to \$190,000. Maintenance fee lower because they lost a month of revenue to equalize the start. They also lost a month of revenue based on accrual. They had a billing error on the commercial side that had to be corrected. They were appropriately conservative for the first year and revenue was close to what was estimated.

**Councilor Barnes** had a lot of concern about hurting local gas station owners. Seemed some prices were still lower than stations outside the City limits. Have you talked with owners to determine if the tax impacted Milwaukie stations?

**Mr. Campbell** said if the prices did not change then that meant they were paying the tax. Question about who ultimately paid the tax. If they kept the same customer base then users were paying the tax.

**Mr. Asher** other kudos to staff - there was some hand wringing over what would do to businesses, so they had an appeal process. The City only received 11 requests for reassessment and all 11 were reassessed. Two properties were determined to have smaller building areas, so staff did follow through. The index goal was to get to 75 and getting to deferred maintenance for all of those streets and falling to point. They were still doing emergency pothole patching. Based on what had been done so far progress

on each goal was satisfactory. They are looking forward to spring projects and the disruption would be well worth it.

**Mayor Bernard** thought it was a great program and other cities were looking at how it was done as a model.

## **CONSENT AGENDA**

- A. City Council Minutes of the October 16, 2007 Work Session.**
- B. City Council Minutes of the October 16, 2007 Regular Session.**
- C. Resolution No. 71-2007; A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Contract and sign a Purchase Order(s) with Hewlett Packard Not to Exceed \$145,000 for the Purchase of Replacement Desktop Computers for the City.**

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

## **AUDIENCE PARTICIPATION**

- **John Otsyula, Milwaukie**

**Mr. Otsyula** had intended to send some comments but was able to attend the meeting. He had the same concerns on the SDEIS after talking with Metro and his attorneys talking with Metro. He wanted the City Council to know some of the things Ms. Wieghart said at the last meeting when he was not present that were not clear regarding the City's responsibility in making recommendations to Metro regarding alternatives. Metro had the final authority. The City made representations for the City and not limited alternatives. While the SDEIS process was still youthful they still had opportunity to present alternatives. There were still alternatives the City could present to Metro on behalf of the people, and he was requesting on behalf of that. If it happens it would save all of us money and especially so we did not have to go to litigation. Voters rejected the final EIS 2 times. In this SDEIS eliminating misrepresented in the sense that Metro jurisdictions will tax Milwaukie to maintain light rail. That was the main reason for the Tillamook Branch. There were high electrical impacts, which might cause such things as leukemia. One more reason to do the right thing and present alternatives so we did not have to go through litigation.

**Councilor Stone** had these minutes in the packet on October 16 when Ms. Wieghart was present. She asked if the City had authority. She responded that was not correct but went on to say local jurisdictions.

**Mr. Otsyula** said it was one thing to misrepresent but worse to cover it up in the process of misrepresentation.

**Mayor Bernard** said he took it to the Metro Council for clarification the South Corridor saw all of the recommendations and the Steering Committee saw all of the alternatives and made the decision.

## **PUBLIC HEARING**

- A. Appeal of Planning Commission Decision to Uphold the Planning Director's Interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2), Public Area Requirements**

**Mayor Bernard** called the public hearing on the appeal of the Planning Commission's denial of AP-07-01 for the property located at 10883 SE Main Street to order at 8:05 p.m.

The hearing was limited to the issues raised in the appellant's notice of appeal. The purpose of the hearing was to consider the appeal of the Milwaukie Planning Commission's denial of AP-07-01 of the Planning Director's interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2) for a proposed project located at 10883 SE Main Street and compliance with certain public area improvement requirements.

**Mr. Monahan** outlined the code authority and the decision-making process. The applicant had the burden of proving that the application complied with all relevant criteria of the Comprehensive Plan and Zoning Ordinance. The appellant had to demonstrate the Planning Commission erred in its decision in the alleged particulars.

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

**Mr. Monahan** asked if there were any site visits, ex-parte contacts, or actual or potential conflicts of interest. Councilor Barnes had not visited, others had walked by the site. Councilor Chaimov attended the Historic Milwaukie Neighborhood Meeting and Mr. Zumwalt shared his views of the proper outcome of the appeal. He walked with Mr. Parecki about the condition of the sidewalks in front of his building. Contacts did influence his decision.

There were no challenges to any Council member's ability to participate in the decision.

**Ms. Mangle** provided the staff report. Started as interpretation as part of code 19.3125.b.2. This was not a hearing to amend the code, which would be a separate hearing. The City did have adopted code and the question was staff application by Main/Monroe Partners. Staff had no problems with the project that was proposed. It met design standards and would be a nice addition to the downtown. There were requirements for all development. She went over what she would speak about. She would start with what the public downtown plan was and the public area requirements that went with that. What was the Director's interpretation. What was the interpretation that was made. How the code interpretation applied to the appellant's project.

The City adopted the plan and public area requirements in 2000 and that included the land use framework, streetscape and code, which tied those together. Those two documents were visioning documents and it was the code that was the law. It was important for the community not to think just about activities but making a comfortable streetscape achieved through development. They had been implementing that part of the code since 2000. She and her predecessors had been implementing this section of the code. She provided a list of downtown public area improvements and showed slides of certain projects. Development requirements should be the same whether public or private funds were involved. Many business owners and developers had been contributing over the years and that had been the practice.

She as planning director interpreted the code according to MMC 19.2002.4. She could either interpret when asked by a developer or initiate it. Her interpretation was subject to appeal. She was not able to change the code. She followed legal guidance and drew upon history to understand the intent. She references other adopted documents including the Comprehensive Plan and fundamentally makes the minimum changes necessary to implement the code as written.

She showed an aerial view of the site at 10883 SE Main Street. She reviewed the project timelines. On April 26, 2007 there was a pre-application conference with the applicant who primarily asked about sub-dividing the property and doing a minor land partition. They gave him information about the design review process that he would

have to go through and the public area requirements likely to be required. August 29 he came in with a building permit. They did design review at the staff level and determined the site was not in compliance with the public area requirements. They also looked at the cost of the building permit, which triggered full compliance with the public area requirements. They informed him of both of those decisions on October 5. On October 8 Mr. Parecki submitted an appeal to the Planning Commission, and on October 23 the Planning Commission denied the appeal. Shortly thereafter he filed an appeal with the City Council.

The code section that applied was MMC 19.312.5, Public Area Requirements. She said that thinking about the bigger picture it was important to think about the whole environment created by development downtown. There were three different types of Public Area Requirements; New buildings, large renovations in which the applicant's property and small projects, either interior or renovation projects. She read the code that applied, "Any renovation, expansion or alteration of an existing building that has a permit value that exceeds 50% of the value of the land and existing improvements as determined by the County Assessor Shall comply with Public Area Requirements. The Building Official shall determine development permit value." When thinking about the Director's interpretation "Shall comply" were the 2 words, which were not clear. Those were the two words they focused on. She interpreted it to mean, in consultation with the City Attorney was that the list of improvements must be proportional to the impacts and the existing elements were not required to be replaced. Those were the two interpretations of the code, which she made and applied in this case. She understood the appellant agreed with the interpretation of the code, but the complaint was how it was applied to the project. The appellant's complaint as written on the appeal application was that the City's proportionality analysis was defective and the City hadn't carried its burden under Dolan. They were arguing that the list of improvements were not proportional to the impacts. The key issue for Council to decide was did staff apply the code properly to the application, and specifically are the required improvements roughly proportional to the projects impacts. When reviewing the application in September there was a series of 4 questions that they had to answer. Was the permit value greater than 50% of RMV, yes. The project did have impacts, yes. Did the project impacts warrant full compliance with the Public Area Requirements, yes. Were public area requirements already met, yes.

She discussed the methodology that was based on 2 resources one was the McClure methodology having to do with public extractions and the ITE manual that set out the different uses and assumptions. The assumptions for this sight were that it was one building on one tax lot with 2 distinct sections 1-story and a 2-story. The ITE manual said that assumptions did include basement and gross floor area and specialty retails he chose for the ground floor. They also used information provided by the applicant on the site plan. She showed a cross section of the site.

The first step in doing the analysis was to look at what was the existing use and the general assumption now is that it was general office building. According to the ITE manual that generated 109-week day vehicle trips and the proposed use would change to use to specialty retail on the basement and fist floor. That proposed use change would generate 277 weekday vehicle trips or an increase of 168 trips. The conclusion was that there was increase in trips. Part of what the proportionality analysis did was translate the increase in trips to linear feet or area of improvements. It translated trips into a physical improvement area. In the process of doing that calculation the impacts justified an improvement area of 7075 square feet, but in fact the City was requiring approximately 1800 square feet of improvements therefore the required improvement are roughly proportional to the impacts of the project.

**Councilor Stone** asked if the impact of the project directly related to the increase of vehicle trips.

**Ms. Mangle** replied that it was. The proportionality analysis was guided by Dolan and Nolan was about the nexus analysis. They also did a qualitative analysis that outlined each improvement. She explained what the plan envisioned for the site and showed concepts that included benches and bike racks. The sidewalk was in good shape, but there was a tree missing and curb did not meet ADA requirements and needed to be replaced. She showed a full list of all the improvements called for in the plan. Once they took out the things that did not need to be replaced the list was reduced, which she showed to Council. When she spoke with Council a few weeks ago at the work session she was asked how much the improvements would cost. The rough order of magnitude cost estimate of the full frontage improvements would have been \$128,000 and the smaller list was \$60,000 and that included conservative design, staging, and contingency. It assumed public contracting requirements.

She said that this code section had an impact on all downtown development and development would contribute to the improvements in the public realm. Along the way they had tried to ease the pain starting at the beginning she had the option of putting this through a Type 2 process, which would have entailed public review, but she opted for the Type 1 process, which has at staff level review. The pre-application meeting was expanded to make sure the discussion included design review and public area requirements. When asked to they considered an alternate valuation methodology. They reduced the public area requirements by considering the existing materials. More recently staff was facilitating a potential Urban Living Infrastructure Grant from Metro to help with future costs.

In summary staff applied the adopted code in a way that was fair to the applicant and true to the community's vision of downtown. The staff finding was the project would have impacts and the City was justified in requiring the improvements and the list of improvements was the right list. She commented that staff did research on what other cities did. The cities researched had different triggers and they do limit it in different ways, but it was very common for cities to require developers to do pedestrian infrastructure improvements as part of a redevelopment project. It was likely that if this project were done in other cities these same improvements would likely be required.

Staff recommended denial of the appeal, support of the planning director's interpretation, and support of the Planning Commission's denial, and that would require the project to construct the improvements that are listed on page 4 of the staff report.

**Councilor Stone** had a question about applying the real market value versus the assessed value to the project. She wrote down that the process to determine that was determined by the County Assessor. Where did it say in the code that we had to use the assessed value versus the real market value?

**Councilor Barnes** noted the reference to Section 19.312.5(B)(2) on page 1 of the staff report, "as determined by the County Assessor."

**Ms. Mangle** said the County generated 2 assessments.

**Councilor Stone** understood the "determined by the County Assessor" section, but why would the County Assessor not use real market value versus assessed value. That was her question. Would that not change the outcome?

**Ms. Mangle** replied there was a real market assessed value which staff was using along with taxable assessed value. Two types of assessments came up from the County, the taxable assessed value which was lower and the real market assessed

value, which was slightly higher. The applicant requested that staff use the appraised value, which was higher.

**Mr. Monahan** explained the City was using the higher County Assessor value.

**Councilor Stone** said in going through the report it looked like the code was revised in 2000.

**Ms. Mangle** said it was written in 2000.

**Councilor Stone** understood that 7 years later this was the first project to trigger this according to a letter she saw here dated September 27. It triggered one section of the municipal code for the first time.

**Ms. Mangle** had written that. It was possible Mr. Parecki's previous project may have triggered it which was the McLoughlin Building, but it was not applied. Staff did not know for sure because they did not have all the facts.

#### Correspondence

None.

**Mayor Bernard** called for a 5-minute recess.

#### Appellant Testimony

**Mr. Parecki** had sat before Council many times usually to shed light on some very important issues. Tonight he sat before Council yet again this time once again on a very important matter. As the Council was aware, he had been trying to renovate the building on the corner of Main and Monroe since April this year. He had been able to re-roof, replace windows, and gut the inside. He had contractors on standby since August waiting to complete the renovation. Upon submitting the plans for a building permit he was essentially told he would not receive a building permit unless he agreed to all the public area improvements as demanded by the planning department. We were here tonight to appeal the decision made by the Planning Commission to uphold the interpretation of the Planning Director in demanding all of the public area improvements be made as part of the project. The determination that all of the public area improvements be made was predicated on proportionality analysis performed by City staff. The staff report that Council received 2 weeks ago clearly stated it was to consider whether or not staff appropriately considered proportionality in reviewing the project's impacts and public area improvements.

Before delving into the proportionality analysis, Mr. Parecki provided a brief history of the building. It was built in 1909 and included on the left side the State Bank of Oregon, and Perry's Drug was housed in the right portion of the building. Ms. Mangle referred to that as the 2-story building. In about 1930 The State Bank expanded the building and took over the entire first floor, built a 1-story building adjacent to it on the west side and housed the State Bank in the first building and Perry's Drug on the west side as well as a post office on the west side. All of these were retail uses. Later on in the 1960's, the State Bank building was sold and bought by the Gay Blade, some of you might remember the Gay Blade, which housed the entire first floor of not only the 2-story building but also the 1-story building on the west side. They did a major remodel, added structural supports and created the Gay Blade. It lasted as the Gay Blade until some time in the mid-1980's when Grant Lindquist purchased the property. When Grant Lindquist purchased the property he created a computer sales store as well as a document storage facility and document services for the public. Again it was a retail use. In April 2007 Main / Monroe Investors held a pre-application conference with planning staff. As a result of this conference Main / Monroe Investors were told that they would have to make public area improvements. There was no mention of a

proportionality analysis being conducted to determine whether or not the project would actually trigger the public area requirements. Staff merely quoted the code and expected Main / Monroe Investors to abide by their findings.

Some of the public area improvements seen in the City and referred to by Ms. Mangle in her presentation included the St. Johns Church, which put about \$35,000 of its own money into public area improvements. St. Johns Church was not offered a proportionality analysis to determine whether or not they were required to make those improvements. The real trigger on proportionality was whether or not there was a change in use. Clearly a church to a church was not a change in use. If the City had performed a proportionality analysis for the Church, it would not have been required to make public area improvements. The North Main Project was one of the few projects that did trigger public area improvements. The North Main project was a new construction; there was nothing on the site before. There was a huge change in use; therefore, public area requirements were imposed on the project. The interesting thing about that project was that approximately \$1 million in public area improvements was provided for by the taxpayers, the people of Milwaukie. A loan was taken out to make these public area improvements on behalf of the North Main Village project. He showed another view of the North Main Project. He showed a slide of the old Graham's Bookstore. It did not trigger public area requirements, but he did not know exactly why. The interesting thing about that project was the fact that Graham's Bookstore was a retail use and was converted to an office use, which was against the City code. There was no office use allowed on the first floor in the Downtown Zone. He showed a slide of Wunderland Theater. They made their public area improvements in the amount of \$5,850. Again it went from a theater to a theater. There was no change in use. There should have been no public area requirements made as an imposition on Wunderland Theater. Key Bank made \$45,000 worth of improvements. It went from a bank to a bank. There should not have been public area requirements imposed on this project as well. The Archery place – there were no public area improvements required or made. Springcreek Coffeehouse, the McLoughlin Building, JL Hair Design, as well as Light Chasers. The Council heard and it was insinuated by the City staff that they should maybe have had some imposed on it. It was clear that property was always retail on the first floor and always office on the second floor. There was no change of use on any of those projects. Yet they kept insinuating that some public area improvements should have been made. JL Hair Design was the only one that actually made some public area improvements, but they probably should not have had to. Advantis Credit Union was a brand new project and should have done and did do all the public area improvements. The \$2.25 million project should have incurred a \$225,000 fee on public area improvements. The only thing one can see is 2 lights and 2 or 3 trees. That did not amount to \$225,000. Casa de Tamales was a unique situation where he was being asked for \$4,000 worth of improvements. It went from retail to retail. The interesting thing about his project was that not only were they asking him to put in \$4,000 worth but to put some of the project funds into other people's properties. The next door neighbor and 2 neighbors beyond because he cannot put \$4,000 worth of improvements in front of his property. Hartwell's was part of the North Main project. They had \$300,000 in improvements. They did not have to do any because they were already done by public funds. He pointed out the Main / Monroe Building as it set today. Some of the improvements had been made to the building. He referenced the 1-story building. The interesting thing about that project was that he never said anything would be done to the 1-story building. The plans he submitted only addressed the fact that he would do something to the 2-story building. His application was for the partition of the lot with the intention of tearing down the 1-story building for later development. In their analysis they included his 1-story building in all of their calculations. As he pointed out in the brief history, the property had always been retail use on the first floor, storage in the

basement, and office on the second floor. They want to use the analysis and show that the property's last use was an office use. It made a big difference in the analysis when one changed the number for the trips generated. Thai Cuisine had no public area improvements required. They did a minor remodel. At Classic Memories he did not remember if there was any remodeling done, but there was no building permit taken out if there was any, so no public area improvements were required. He showed the basement area of the 2-story building and noted the condition of the basement. The City would have one believe there could be specialty retail in that basement and used trip generation as if it was specialty retail. The doorway was less than 6-feet high into a closet. The previous use of the 1-story building was a post office and Perry's Drugstores. He showed a slide of the State Bank as it was in his heyday.

**Mayor Bernard** informed Mr. Parecki he was down to less than 10-minutes.

**Mr. Parecki** translated the proportionality analysis that was handwritten into a spreadsheet. He had the 11.01 trips for the basement, first floor, and second floor. The entire project was used for a general office building as an existing use. He showed for over 76 years it was always retail on the first floor. All he had to do was show the difference between just changing either including the first floor that was 2500 square feet. The proportionality changed dramatically and showed no public area improvements would have been required. When he submitted the application in pre-application stage, there was no proportionality analysis conducted. That was part of his argument. It should have been. He could have seen what would happen if they had used the proper figures. Part of his argument was that there was no analysis conducted so he wouldn't have an idea of the costs.

**Steve Morasch** noted there was a statement signed by the prior property owner submitted as part of the record. This was a beautiful facelift that would not increase trips. Staff analysis indicated a change from office to retail, but it seemed clear the prior use was retail. In comparing retail to retail there were no increases in trips, and it was not a change in use. This project was about making the building look more beautiful. He noted problems in the City's clearinghouse process. He discussed public right-of-way improvements and comparisons to the total impact area. This involved a case in which there was an apples and oranges comparison with McClure. This was a facelift project with no change in use and no increase in trips.

**Mr. Parecki** discussed landscaping requirements. To quote Councilor Loomis from the last session, "just because it was in the code did not make it right. Just because it was in the code did not make it legal." He pointed out the survey completed by the former business owner before this became an issue.

**Councilor Barnes** read Mr. Swanson's e-mail concerning North Main Village regarding the OHCS loan which was applied for by the City and assumed by Main Street Partners. It picked up the loan balance of \$651,000. She asked Mr. Parecki to define renovation.

**Mr. Parecki** said it was taking what looked ugly and making it pretty. He considered this a renovation project.

#### Testimony in Support

- **Brad Carbaugh, Canby**

**Mr. Carbaugh** moved into Mr. Parecki's McLoughlin Building and offered his perceptions of the debate and equity of how different businesses were treated. He was inclined to believe Milwaukie was not necessarily a place where he, as a small business owner, wanted to do business.

- **Nancy Adair, Milwaukie**

**Mayor Bernard** indicated he responded to a question from Ms. Adair

Mr. Parecki's project would help would help bring the Downtown area back to a real downtown instead of a ghost town.

- **Charles Maes, business owner**

**Mr. Maes** said the City required him to make public area improvements without the required proportionality analysis. In addition to the requirements of the construction in front of the Tamale place he was required once again to make public improvements which he did not mind doing. He did not know where it said in the code that he had to make improvements past his property line. He was putting in bike racks and all of the above for something he did not even get to use. If he knew that \$4,000 was going to improve the outside of the building he was at, he was all for it. He would pay it; do not get him wrong he had no problem with that. He wanted the Council to know that he was just there to back Mr. Parecki up because they needed him downtown to make that building and bring more people into the City. He said he had only been open for a month and they have had approximately 3,500 people if not more visit the restaurant in 1 month. The customers come from Gresham, Beaverton, Lake Oswego, Scappoose, and Eugene. The only next little project he would do down the road was to ask people their zip codes. He found nothing better than a nice "Hi" to people that were coming into Milwaukie to be part of the community. There were no stores to keep them here. Once they ate at Hartwell's or Casa de Tamales, they were gone. He urged helping this man out with the improvements he had to make so we can bring more retail downtown. He added he was providing the preacher next door with a nice bench and offered him a gallon of paint to paint the front of his store but he declined.

**Mayor Bernard** suggested talking about some improvements to the code, which might be considered at another time.

Testimony in Opposition

None.

Neutral Testimony

None.

Staff Recommendation

**Mayor Bernard** had a question of staff. Did the code define retail? He did a little history. He knew this building and used to buy all his disco clothes at the Gay Blade. It went away because disco went away. He was the President of the Milwaukie Downtown Development Association (MDDA), and if this person said it was retail then he was very wrong. He actually tried to go in the building, and you had to go in and buzz the door and hope someone came. It was a microfiche company. Unless they were selling microfiche, it was no retail business. It was nothing close to retail although it may have been in the past.

**Ms. Mangle** provided the Milwaukie Municipal Code retail definition. If the Council wanted the ITE definition, she would have to ask Mr. Weigel. Retail trade meant the sale, lease, or rental of new or used products to the general public. Typical uses included but were not limited to grocery stores, specialty stores, drug stores, bookstores, jewelry stores, and video stores.

**Councilor Stone** said she understood that list was "not limited to" those uses. She asked if a restaurant fell under retail.

**Ms. Mangle** replied not under the municipal code. When one used the term specialty retail for the analysis that was not using these definitions. It was using the ITE

definitions, which Mr. Weigel had. In terms of specialty the analysis did include some types of restaurants.

**Councilor Stone** said she understood as the code was being interpreted restaurant and retail were the same.

**Ms. Mangle** replied it did not have anything to do with the code interpretation. There were trip assumptions in the ITE Manual that specialty retail included some kinds of restaurants.

**Councilor Chaimov** asked Ms. Mangle to address the appellant's point that this was really just a retail-to-retail change and a facelift and therefore not appropriate for the kinds of improvements staff said the code required.

**Ms. Mangle** replied the original assumption was that it was office, and Mr. Weigel said that information came from the applicant who told him it was office before. Staff tried to verify that with the Finance Department, but they did not keep business license records historically. Staff did have the business name, which confirmed that information, so that was what staff went with. In regards to the facelift, the project was not just changing the outside of the building but it was significantly remodeling the interior adding an elevator and making other changes in the building. She had failed to point out which spoke to the point that staff was very clear with the applicant that these improvements did not need to be done with the first phase of the project. They were not required to be done until occupancy. It was not just this building permit but all subsequent tenant improvements covered by the list of improvements. That included not just the aesthetic, ADA, and structural improvements but all subsequent tenant improvements, which would be required to have an occupiable space to create the retail, restaurant, and office uses intended by the application. It was the hope to benefit the applicant and tenant with certainty of what the requirements would be throughout the future of the project and allowing them to forestall the improvements and share them with tenants in the future.

**Councilor Chaimov** said if in fact the previous use of the building was retail and not office would that have changed the staff analysis.

**Mr. Weigel** said he was working with the assumption that it was an office use based on conversations he had with applicant early in the process. The only proportionality analysis staff looked at were ones that involved changes in trips. Staff had not looked at any other proportionality analysis that relied on other types of impacts other than trip generation. Staff had not had time to look at that.

**Councilor Stone** said she was curious. We assumed the building use was office, and now there was a change in use triggering this study. She was curious because this building was an older building. How many years was this building used as retail space?

**Ms. Mangle** was not able to speak to that and she asked Mr. Weigel how far back they went when looking at trip generation.

**Councilor Stone** said it did not have to be exact. Was it retail for 70 years or whatever? So it was used for a retail business for longer than it had been used for office if indeed it was an office.

**Mr. Weigel** responded as Ms. Mangle said the City did not have records that went back that far. In these cases staff looked at the last use.

**Councilor Stone** asked if the City was compelled to look at the last use rather than the typical use.

**Mr. Weigel** replied staff looked at the last use, as that was what it knew.

**Councilor Stone** asked if the City was required to look at and base the proportionality study on its last use or its most typical use.

**Mr. Weigel** replied he was not aware of any specific requirements.

**Councilor Stone** understood that it was subjective.

**Ms. Mangle** thought if one considered the intent, which was to track impacts and if those changed impacts to the public infrastructure. Logically, it would be the most recent years and what had changed. For example, the North Main site had been a Safeway store that had a lot of trips generated. A smaller project might have actually decreased the trips. The point was to think about how it was changing. If one looked back to previous uses prior to the most recent, it was not really achieving that goal. That was the reason it was the practice to look at the most recent uses.

**Councilor Stone** said they heard Mr. Maes from Case De Tamales the new restaurant in town say that he had over 3,000 people in the last month. That was pretty significant. Yet his public area improvements were much less. They were disproportionate to the amount of people who were coming.

**Ms. Mangle** replied that Mr. Maes fell into a different category of the code. His project was in the small improvements category. The code said that any of these small improvements had to spend up to 10% of the value of their building permits toward meeting the public improvements. That was what Mr. Maes did as did Cha Cha Cha and some of the other smaller projects as defined by the code and not by staff. She believed staff had worked with Mr. Maes to get the improvements in front of his business, so she would talk to him more. She thought staff had been able to respond to those concerns.

**Mr. Weigel** added to Ms. Mangle's comments about looking at the last use. Similar to transportation SDC's where one always looked at the last use. If one tried to go back and look at what all the previous uses of that building had been it wouldn't work. As the use changed the transportation system as a whole lost those trips that were there. It was the best practice to look at the last use and the impact on the transportation system as a whole.

**Councilor Stone** had one more question about the proportionality analysis. She heard Mr. Parecki state that the square footage in the basement was used for the proportionality analysis. Looking at the slides it was pretty obvious it would not be used as retail. If that was used then why was it used?

**Ms. Mangle** replied that was something the ITE Manual and it directed staff to use the basement square footage. On its front it was not logical. One probably would not put a store there. That space, even though ancillary to the store, could be a storage space or an extra office for the store manager and it was still supporting infrastructure for the retail that allowed more goods to be stored and more capacity with potentially more trips. Fundamentally, it was the ITE Manual that directed staff to include the basement and to include things like hallways and not just limited to the areas most used for retail.

**Councilor Stone** asked if the ITE Manual was a requirement to be used in this proportionality analysis.

**Mr. Weigel** responded the ITE Manual was the best way to determine what the impacts of the development were without doing full-blown traffic study.

#### Applicant Rebuttal

**Mr. Monahan** said the applicant would be allowed 10 minutes for rebuttal.

**Mr. Morasch** wanted to rebut some of the discussion, and there was a lot of discussion, so he was not going to try to rebut all of it. He was just going to pick one point that was made about the smaller projects that might generate way more trips than even a larger project yet smaller projects did not have nearly the burden of these public area requirements because of the way the code was written. In this case the way the code was written it was not really applying very fairly to this project. The code said "assessor's value". If one looked at the "assessors value" it was about half of what the true real market value of the property was. If one used the real market value and compared the cost of these improvements to the real market value, it would be under 50%. Then the code would cap it at 10% of the permit value or about \$22,000. That would be the maximum the City could charge to this project. That demonstrated a fundamental unfairness. The facelift part was about half of the total project cost of \$220,000. About \$110,000 was the facelift, and the elevator was another \$80,000. No matter what the uses were ADA would require an elevator to the second floor if the second floor were being used. Now a majority of the cost was either tied up in an elevator, which would be required even if they were somehow able to put offices on the first floor, which could only be done through a variance as the code required retail on the first floor. The code requires retail on the first floor. If anything was changing, it was the code that was triggering it and not this application. The ADA required the elevator. The facelift was to make the building look nicer. Neither of those things changed the use or added to the square footage. If one took those out, it would be under \$40,000, and it would be a small project. That demonstrated how unfair the code was when it was applied to this particular situation and why Dolan stepped in and said the proportionality analysis had to be done.

**Mr. Parecki** added the City routinely did not do proportionality analysis unless it was challenged. He guessed he was the first one to challenge the City on the analysis part of the project. Everybody else just believed the City and that they had to do these improvements whether or not the proportionality analysis said so. He thought that was a little bit wrong. He wanted to give some of his time to one of the Main / Monroe Investors to say a few words.

**Charles Aaron**, Portland, Milwaukie business owner and partner in 2 different buildings. He asked when the planning staff's proportionality analysis was actually done. He believed the answer would be it was done after it was challenged. There was a digging in of the heels so to speak of the planning department to prove the case. The intransigence of the building department in its analysis, even when it was pointed out they were wrong in cases, they were not admitting to it. They were still trying to prove their case. He did not understand how when you caught people making errors all the way down the line, and they still would not confess that they were wrong. It was happening all over town. If one misapplied the rules in every single case because the burden of proof was on the City or planning department to show there was a proportional change to the building and there was a change in use that triggered the public area improvements. How can you go to a church that was renovated back into a church and say that they were required to do public area improvements? How can you go to a bank that was a bank that renovated its lobby and say you were now responsible for public area improvements? How can you go to a theater and say to a theater you were responsible for public area improvements because the theater was renovated? Mr. Aaron thought it was a little bit silly and a little bit inconsistently applied.

Close Hearing

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to close the public testimony portion of the hearing. Motion passed unanimously [5:0]. Mayor Bernard closed the hearing at 9:39 p.m.**

**Councilor Chaimov** said he did not think it would be so early in his tenure when he would be faced with a vote with which he would be so unhappy. This was a wonderful project that the City ought to encourage. Mr. Parecki was exactly the kind of pioneer that the City ought to be encouraging. He was someone who was willing to put down his own hard-earned money into making our community better. As Councilor Stone pointed out, we have a code that stood in the way of doing what for example Mr. Maes suggested about “trying to help this man out”. He thought the City had the wrong code at the wrong time for this City. If the question before Council was should we be changing the code so the public was picking up the cost of public improvements rather than the developers he would be pleased to vote in favor of that. If the question was whether assuming this was an office to retail change has Ms. Mangle interpreted the code correctly, he thought the answer was “yes.” She was interpreting and applying the code correctly, and that her office had been helpful and not intransigent. Certainly the code had not been applied as consistently as we might like, but at some point you had to start getting things right and move forward consistently. When you have been operating perhaps incorrectly in the past you begin to look inconsistent until you start applying the rules correctly for a long enough period. Unless someone had a different idea, his intention was to move to remand the matter to the Planning Commission to determine the nature of the occupancy immediately prior to the Main / Monroe acquisition of the property. If the determination was that the occupancy immediately prior was an office and not retail, then he thought Director Mangle’s interpretation was correct, and the Council ought to vote to deny the appeal. If in fact, however, this was a retail-to-retail change and he thought the record was cloudy on that point then a different decision might be in order.

**Councilor Stone** thanked Councilor Chaimov for his comments. She agreed with much of what he said. She was not in agreement though with looking to ... She backed up her comments. We all knew this was a valuable project for our City, and we all wanted to see it happen. She thought from what she heard tonight the interpretation was very subjective in some cases on certain points. The last use versus the more typical use over the life of the building she thought was a point that needed to be addressed and taken into account. She thought the more typical use of the building was indeed retail. She was certainly understanding of Mr. Parecki that he wanted to do improvements to the building. She thought he was willing to do some public area improvements that were reasonable. She agreed with Councilor Chaimov that the Council send this back to the Planning Commission to look at those points and also verify if we should interpret the last use versus the more typical or best use, if you will, of this particular building. She thought that was significant to the project.

**Councilor Barnes** agreed it was great that Mr. Parecki found another project in the City to work on. She was sure when all was said and done it would turn out to be a beautiful addition to the downtown. Maybe she missed something, but when she read the code, Council was supposed to make a decision. The code said, “Any renovation, expansion, or alteration of an existing building that had a development permit value that exceeds fifty percent of the value of the land and existing improvements, as determined by the county assessor, shall comply with the public area requirements.” Mr. Parecki said he was renovating and the County Assessor came up with a value that exceeded to 64%. The Council was asked to say whether or not Ms. Mangle made a decision interpreting the code that was right or wrong. It was agreed to by the County Assessor and Mr. Parecki, so she may be misunderstanding or missing something that needed clarification.

**Councilor Stone** said it was confusing to her also. The point was the Council would not even be discussing this if this project had not been triggered by a supposed change of use of the building. If the building was looked at in terms of its last use or however

they wanted to interpret that as being retail-to-retail, then this would not have triggered, if she understood it correctly, the proportionality analysis. That was the question that she and Councilor Chaimov wanted clarified by the Planning Commission in terms of the use of the building.

**Councilor Loomis** would like staff to clear that up right now because his decision hinged on that also.

**Ms. Mangle** replied there were 2 issues that were being melded. The trigger for the code section was the building permit value, not the proportionality analysis and not the change in use. The trigger was the building permit value for all of these different types of projects. The interpretation was that we needed to consider the impacts, which could be things like changes in use. Then the question was if the proportionality analysis was done correctly. The proportionality analysis was not what triggered the improvements and was not what triggered the code section. Staff did not always do this full-written analysis. It was always a consideration in every case whether it was a full-written analysis or not.

**Councilor Loomis** understood if this Council thought it was retail, the last previous use, or the Planning Commission were to determine that then what staff presented would not have changed or what Mr. Parecki's company would have to pay.

**Ms. Mangle** replied that was the staff recommendation.

**Councilor Chaimov** followed up because he was fine up to that point.

**Ms. Mangle** thought she answered it incorrectly. The question was if the determination were that it was retail would the staff recommendation change. The response was staff had not had the time to consider that because it was new information. It was included in the supplemental information that Mr. Parecki submitted the previous Friday. It did not clarify what argument was being made, so staff did not have that information until this meeting. It was new information that was not presented with the initial staff analysis. She could not tell exactly what the recommendation would be.

**Mr. Monahan** added that was not information that was in front of the Planning Commission, so it was information that was new to the City Council. One option was to consider sending it back to the Planning Commission. With the 120-day time constraints, it might be more prudent if the Council felt there was need for further analysis to keep this matter at the City Council level and have the staff do the analysis and bring it back for the next meeting. That way there would be no notice problems and the like.

**Mayor Bernard** addressed the notion of subjective interpretation. He felt the code was pretty straightforward and he did not think there was any subjective interpretation. He thought it was a good idea to hold the matter over to the next City Council meeting. He assured the Council he had been in that property numerous times as the Mayor, as a businessman, and Chair of the MDDA president, and that facility was not a retail facility. His interpretation of a retail facility was where people went in and out and bought things on a daily basis. He had been in that building numerous times, and it was not retail. Absolutely not retail. It never was except in the past. He recently went through a variance application on a building that had been there since 1935. That building was a garage, a storage facility, and someone wanted to sell cars. People had parked cars in there since 1935, so what was the interpretation of that. Every single project we did in Milwaukie changed its use. At some point you cannot look back at the very beginning. His traffic impacts when he sold gasoline were huge compared to what they were now. There was no comparison. If he developed someday, could he say it was a 2-car garage in 1925, so obviously he had no traffic impacts. The key was the ITE Manual. You had to use some standard in order to support it legally. That was the standard

used. He would be happy to remand this to the next City Council meeting for further study on the last use of the project but certainly not the history of the use. He did not believe it was necessary to send the matter back to the Planning Commission. He thought that could be done at the staff level.

**Councilor Loomis** agreed it did not fit Mayor Bernard's definition of retail, but he was not sure it was not retail. His memory of the last operation was they were buying and selling something out of there whether it was walk up. He was a huge fan of what Mr. Parecki was doing in this town. With the North Main project there was a lot of work and executive meetings with a lot of tough choices and decisions and they invested in that property because they felt that was the piece. If we did not invest in our community, how could we ask others to? The City went out on a limb on that one. The goal of the Downtown Plan was "to restore an environment in which people could shop, live, work, and socialize." It was obvious the code had great intentions, but it was hindering the whole purpose. It was hindering private investment. There needed to be a different way to do public improvements. They just had to. He was not a big fan of urban renewal areas, but maybe we could do our own and commit to a situation when a building was improved that as a Council we would take that increased value in property taxes and directly apply it to public improvements. Once that was done, it was done. It did not go on for 10 to 15 years where it was affecting schools, police, and parks. It was just a temporary thing just to help. He thought the City should make the commitment to help private investors and developers who were doing the right thing. The City was asking a lot of them in the design standards. If that being a retail business previously helped even if it was not to the definition of what we all thought of as retail, but the real definition of retail. If it helped move this project along and gave some certainty to Mr. Parecki of what he would pay. He understood Mr. Parecki's concerns about not being able to go into the building until he gave the City so much money.

**Mayor Bernard** understood the interpretation of the change of use was really the cost of what he had to do and not the fact that he had to contribute. What did the change of use have to do with this?

**Ms. Mangle** said the change of use had to do with the proportionality analysis that looked at the changing auto trips generated by the site.

**Mayor Bernard** asked what the difference would be if it was retail-to-retail. If there were no change in traffic, what would the financial impact be? Key Bank did a portion of its public improvements.

**Councilor Stone** said they were not required to. That was the difference.

**Ms. Mangle** explained Key Bank did the improvements in the amount of \$45,000.

**Councilor Barnes** understood Key Bank had a permit value of \$450,000, and its contribution toward compliance was \$45,000.

**Mayor Bernard** said the church also spent a certain amount on its project because they were required to do so.

**Councilor Stone** said that was Mr. Parecki's point. Maybe Ms. Mangle could clarify that they were not required to do that. They were told they had to but the way the code was written they clearly did not have to because there was no change of use.

**Ms. Mangle** said there was no record of a written proportionality analysis. The interpretation they made with this happened August 2007. The code had been in place since 2000 and had been applied by staff at face value until she stepped in and made this change. Most of the current staff was not around during those projects, so she did not know what types of considerations were made.

**Mayor Bernard** understood Key Bank was required to give that amount.

**Ms. Mangle** said the City required that Key Bank make those improvements. She did not know the details of what changed in that building. There could have been changes, expansions, and intensifications.

**Councilor Stone** said this was important for understanding. What Council heard tonight was that Key Bank and the church and the theater were all told they had to do public area improvements. In interpreting the code in fact it was not really required of them. But yet they were told they had to. They did what they were told. If they interpreted the code, the interpretation of the code clearly said they did not have to do that because they were not changing the use. That was what she heard tonight.

**Ms. Mangle** said that was Mr. Parecki's assertion.

**Councilor Stone** asked if that was incorrect.

**Ms. Mangle** did not know because she did not know what the projects entailed and the kinds of intensifications that happened. Until August 2007 staff was not interpreting the code and only applying it at face value, in black and white, as they preferred to do. That was how it was done until the director's interpretation was made this year.

**Councilor Chaimov** moved to continue the hearing to the City Council meeting on January 2, 2008 for more discussion. Councilor Loomis seconded the motion.

**Councilor Stone** asked if the reason for holding this over needed to be specified.

**Mr. Monahan** replied it would be valuable for staff to have direction as to the Council's expectations if there were further analysis to be done to get to a decision point on January 2, 2008.

**Councilor Stone** said she had hoped to make a motion to amend the motion to give staff further direction.

**Councilor Chaimov** thought the Council would like to know what was the occupancy of the building immediately prior to the acquisition by Main / Monroe. If one considered it appropriate what were the uses prior to the acquisition if one wanted to evaluate it over time as opposed to immediately prior. He believed the immediate prior use was what was appropriate not over time. That was an issue that needed to be answered so the Council could ultimately make their decision. If staff determined that it was a retail-to-retail use, was there some other calculation or analysis that led staff to believe that there should be some public improvements made even though it was retail-to-retail?

**Councilor Stone** said basically the Council wanted to see the project get off the ground, and Council needed staff help to do that.

**Motion passed unanimously. [5:0]**

**B. Motion to Consider Continuation of Amendments to the Milwaukee Municipal Code (MMC) Section 19.321.7 and 19.321.3**

**It was moved by Councilor Barnes and seconded by Councilor Chaimov to continue consideration of this matter to the January 15, 2008 regular City Council meeting. Motion passed unanimously. [5:0]**

## **OTHER BUSINESS**

### **A. Code Amendment Related to the Administration of the Collection of the City Motor Vehicle Fuel Tax Chapter 3.40.270 – Ordinance**

**Mr. Campbell** provided the staff report. An error was identified in the previous ordinance related to the collection of motor vehicle fuel taxes. Staff requested approval of the proposed ordinance that would clarify that the City was empowered to contract with any branch of the Oregon State Department of Transportation in order to collect the local fuel tax.

**It was moved by Councilor Barnes and seconded by Councilor Stone for the first and second readings and adoption of the ordinance allowing the City Manager to contract with the Oregon Department of Transportation for collection of the Milwaukie Motor Vehicle Fuel Tax. Motion passed unanimously. [5:0]**

**Mr. Monahan** read the ordinance two times by title only.

**The City Recorder polled the Council: Mayor Bernard and Councilors Chaimov, Barnes, Stone, and Loomis voted ‘aye.’ [5:0]**

#### **ORDINANCE NO. 1976:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ALLOW THE CITY MANAGER TO CONTRACT WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR THE COLLECTION OF THE MILWAUKIE MOTOR VEHICLE FUEL TAX.**

### **B. A Resolution Amending the City’s Public Records Request Policy to Comply with SB 554 and Repealing Resolution 17-1996 – Resolution**

**Mr. Monahan** reported SB 554, adopted by the 2007 Oregon Legislature, created a process that gave more definition to the public as to its rights in making a request for nonexempt public records. There was a requirement under this law that cities adopt a description of how one would go about making a public record request and what the City’s responsibilities were in terms of establishing fees and in terms of responding to such requests. He briefly reviewed the City’s responsibilities. He noted a scrivener’s error in the draft resolution that would be corrected to final execution of the document.

**It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the resolution adopting reasonable measures to ensure the integrity of its records and effectiveness of its office operations and repealing Resolution 17-1996 with the changes as mentioned.**

**Councilor Stone** heard the City Attorney say there could be public records that the agency could determine were exempt from public view. She asked for examples of what those might be.

**Mr. Monahan** replied those could be records such as appraisals of real property during negotiations for the purchase of the property, personnel records, and others, which were described under state statute. It was not that the City got to make that determination. It had to follow the guidance of the Attorney General.

**Councilor Stone** asked if those records were currently available for public inspection.

**Mr. Monahan** replied they were not. The exempt records were not available to the public at this time. This resolution incorporated the new law and repealed a process the City already had in place to deal with public records requests.

**Councilor Stone** understood the resolution was in compliance with how the City was currently conducting business.

**Mr. Monahan** replied it was in compliance with how the City was conducting business and adding more specificity to address SB 554.

**Motion passed unanimously. [5:0]**

**RESOLUTION NO. 72-2007:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING REASONABLE MEASURES TO ENSURE THE INTEGRITY OF ITS RECORDS AND EFFECTIVENESS OF ITS OFFICE OPERATIONS AND REPLEAING RESOLUTION 17-1996.**

**C. Council Reports**

Those reports were made during the work session.

**ADJOURNMENT**

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

**Mayor Bernard** adjourned the regular session at 10:12 p.m.

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Pat DuVal, Recorder

## MINUTES

### MILWAUKIE CITY COUNCIL WORK SESSION

February 19, 2008

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

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

Staff Present: City Manager Mike Swanson, Economic & Resource Development Specialist Alex Campbell, and Library Director Joe Sandfort

#### Enterprise Zone Re-Designation

**Mr. Campbell** explained the history of the Enterprise Zone that expired at the end of the current fiscal year. Staff recommended moving forward with another re-designation of the zone, as it was an important marketing tool for the City. An example was Hoya Optical, a new company on International Way. It did not take advantage of the abatement, but it was one of the marketing elements that attracted them to look at the particular site that they ended up at. There were a number of companies that were initially attracted to properties in Milwaukie by the availability of the Enterprise Zone. Even if, like Hoya, they did not go into the program some still ended up moving their businesses in the City. The next steps for staff will be to consult with all of the overlapping taxing jurisdictions as required by statute.

**Mr. Swanson** said being in an Enterprise Zone is not the same as tax increment financing (TIF). All properties did not get the designation, and people had to apply and qualify. The Zone itself could be extended but not the time limit for the businesses whose time limits were either 3- or 5-years depending on the type of application.

**Mayor Bernard** asked if the Fire District got a portion of the property taxes?

**Mr. Campbell** said the plant and equipment is taxed at the same rate as building and land. The abatement only applied to new investment, whether it is a new building or new equipment fixed and attached to the building.

**Mayor Bernard** said the property taxes on equipment would be very small as compared to the structure.

**Mr. Campbell** said it could be substantial. In the PCC Structurals abatement, which was the biggest investment that had received abatement under our Enterprise Zone, the majority was in equipment. The company bought very substantial and expensive equipment. One of the significant elements of the program was depreciation. A building generally continues to appreciate while equipment depreciates. A piece of equipment could depreciate very quickly and very little of that assessed value might remain by the time it went on to the tax rolls. Staff did some research with the tax assessor's office looking at the type of equipment that PCC Structurals was investing in and they looked at how they value it. It was not up to the company's discretion how they depreciate. The tax assessor's office determined the valuation and looked at both the depreciation and the increase in value to figure increased replacement costs. In

the past year steel was so expensive PCC's equipment actually grew in value because it was made from steel even though it was in use.

**Renate Mengelberg**, Clackamas County Business & Economic Development, added that for very large companies the Department of Revenue was the final authority and had many depreciation schedules based on the industry. If it were a large company they would be looking to them to provide guidance on that particular depreciation schedule. Things like computers and office equipment would not generally be abated under the program unless it was directly tied to the manufacturing process.

**Councilor Barnes** was pleased and what made it big for her was the fact that they have added 25% additional jobs in the City. That was significant as the City would eventually get the taxes. The program made sense because it encouraged economic growth. How this program compared with the region?

**Ms. Mengelberg** replied it definitely helped. There were only 2 enterprise zones in the County including the newly formed Molalla Enterprise Zone that started in July. It really helped attract new businesses and better paying jobs with benefits. Enterprise Zone is designed to attract traded sector jobs, which bring new money back into the economy

**Mr. Campbell** added that the 600 new employees were projected and would represent about 5% increase of the total employment in Milwaukie. A significant amount of PCC Structurals investment had not occurred yet.

**Councilor Chaimov** said one message he got from the staff report was that research on the success of these types of incentive programs was very difficult to carry out. He heard tonight that it had been successful. Even though research generally might be difficult, the program was worth it for the community.

**Mr. Campbell** said one question was the level of certainty. In academic research the standard of proof was set very high, and most academic economists would be very cautious about the question. They typically evaluated the program on a statewide basis. They tended to find that there was not a huge benefit in part because enterprise zones typically shift investment more than making the pie bigger. That went to the question of the benefit to Milwaukie. He thought one could safely say 'yes.' Some investment was being shifted to Milwaukie.

**Mayor Bernard** had personally visited a lot of the companies that moved to Milwaukie. In 2001, the industrial zone was half vacant, but now it was almost full, and a lot of companies had moved from Portland to Milwaukie.

**Councilor Stone** asked if Portland participated in Multnomah County Enterprise Zones?

**Ms. Mengelberg** said it had, but the enterprise zone program in Portland was a bit different than Clackamas County. The County's program had a fairly streamlined and business-friendly approach. The City of Portland only offered 5-year abatements and had a number of requirements that made it less attractive.

**Mr. Campbell** commented there was an overall tax benefit to move from Multnomah County to Clackamas County. That pointed to another thing that made it difficult to make it sure of the relative affects because there were so many different factors that went into a business location decision. He thought some economists got caught up in that and forgot that there were people making these decisions. There was a limited amount of information upon which they were making those decisions on. Something like an enterprise zone was an

important signal to a business that there was a friendly local government that was looking to attract investment and bring them into the community.

**Councilor Stone** said she read in the staff report that over the past 9 years the Enterprise Zone had abated a total of approximately \$53,000. She asked if that was that the total for 9 years?

**Mr. Campbell** said that was correct. Only a quarter of the total taxes that were abated were City of Milwaukie taxes. The biggest abatement was PCC Structural, which had not taken place yet. There were 3-4 companies that would be exempt for their first years this coming tax year. That figure was low for a couple of reasons. Over the next couple of years our average would be more in that range per year. The critical factor that he wished to emphasize was the base line? Would those taxes exist without the program? The program was designed to attract investments, so it was possible that those investments would not have taken place without the program.

**Councilor Stone** said in the case of PCC Structural that probably was not the case in terms of how big of a business they were and their ability to make investments of \$25 million.

**Mr. Campbell** would not say the program changed PCC Structural's ability to make that investment, but it certainly was one of the factors the company looked at when it was considering where to make that investment. They owned facilities on the east coast, the west coast, and France and had the ability to open a new facility somewhere else. He thought due to the defense contract nature of its work the company probably had to be in the US, but it did choose Milwaukie.

**Councilor Stone** asked if she understood correctly and if it was all of the property taxes that were abated or only taxes for the improvements?

**Mr. Campbell** replied it was all property taxes on the improvements. The land was never abated, and a building was never abated unless it was newly constructed for that Enterprise Zone application.

**Councilor Stone** was concerned about the fiscal impact section in the staff report when talking about what the PCC Structural abatement could mean. Was it because it was mostly equipment and you could not figure out what the depreciation would be?

**Mr. Campbell** said it was due to both the depreciation and the pace at which they would be placing that equipment into service. Their timeline had been shifted by changes in the economy and was not happening as quickly as originally anticipated.

**Councilor Stone** said if the abatement was in the neighborhood of \$100,000 of taxes that could be going into our City a year and the figure of \$53,000 of the previous 9 years was going to be more in reality then that amount was \$153,000 per year in tax revenue for the City.

**Mr. Campbell** said that was the high-end estimate. If another PCC Structural deal were to come up today, that was the decision they were facing. All of the investments that had been approved under the program would go forward. There was no legal authority to appeal. The question was if there was another investment of the same scale as PCC Structural would the City want to offer this kind of incentive? The issue came down to whether the company would make the investment absent this program. The City was not giving anything away. It was a net benefit to our tax revenues if they would have made that investment elsewhere absent this program. If they had made the investment in Tennessee,

for example, there wouldn't have been any tax benefit to the City. After the 5-year abatement, the City would get the tax benefit.

**Councilor Barnes** commented the City could possibly get 400 new family wage jobs that it did not previously have.

**Councilor Stone** said and more traffic.

**Councilor Barnes** said in talking with companies one of the questions asked was, how do your employees get to work? On a regular basis they answered that they used public transit. Although money would not be coming into Milwaukie for a few years, it eventually would. \$500,000 was significant.

**Councilor Stone** said that was a problem. The City needed to have a program like this for the small private retail businesses so we could have something that people could invest in.

**Councilor Barnes** commented that retail did not bring in family wage jobs, and a condition of being in an enterprise zone was to pay those kinds of wages.

**Mr. Campbell** said it would have to be a different program because the Enterprise Zone was not targeted to retail. He discussed the Metro program that was helping small Main Street businesses.

**Councilor Stone** said the employees could potentially give back something to Milwaukie if there was retail for them to go eat, shop, and spend their money on.

**Mr. Campbell** just wanted confirmation from Council that staff was headed in the right direction. Staff would come back with a resolution to support the program on March 18.

**Mayor Bernard** asked if they were going to meet with the Fire District to come to some resolution.

**Ms. Mengelberg** said they had met with the Fire District once, and they would discuss it next Tuesday at their Board meeting. They were waiting to see what they had in mind and then they would take that back to the City and County. That decision was not something that would need to be made until after the Enterprise Zone was authorized in June. There is a Zone Management Agreement that could handle those details.

**Mayor Bernard** asked what the extension length was?

**Mr. Campbell** said it was 10 years.

**Mayor Bernard** asked if it could be dissolved if we were to trade it for an urban renewal district.

**Ms. Mengelberg** replied she did not know, but she imagined it would not be a problem. It would need to be requested.

**Mr. Campbell** said the City could do a boundary adjustment at any time.

**Councilor Chaimov** said it looked like the overarching issue was the extent to which the City could and should be abating tax payments to bring business to the community. It would be helpful to have a larger philosophical discussion about the extent that the City wanted to do that and look into available programs so there was a plan.

**Mr. Campbell** added that one of the reasons the Enterprise Zone was particularly useful was because it was a State program. All taxes could be

abated; whereas when the City acted on its own it could only adjust its tax rate. It was powerful this way.

### Library District Measure Resolution

**Mr. Swanson** said the question was whether or not Council wished for him to pursue drafting a resolution for the March 4 agenda. It would consent to both the inclusion of all territory in the City within Clackamas County within the proposed boundaries of the proposed District and authorize the transfer of \$10,000 to the County for an information campaign. The measure was proposed for the November 2008 ballot. It would create a library district on a countywide basis, and the permanent rate would be \$.3974 per thousand. The money collected would first be returned to the City in an amount equal to what that permanent rate would raise with their valuation, and then money is further distributed to cities based on the numbers of unincorporated area residents that the cities would be serving.

**Mr. Swanson** thought they were at the point now where it was time to make a decision as to whether or not we do support the district. His mantra throughout this had been that the district was a good solution to library funding problems. The first levy occurred in 1977 and approximately every 3 years until 1997 the volunteers would go out to raise money and campaign for a new library levy. Due to Measures 49 and 50 those monies were folded into the County general fund. The County had continued to, even though it was not required to, support City libraries. With the loss of federal monies in the amount of \$12.5 million they have had to make some cuts in their budgets and one of those is that they were going to, effective with the following fiscal year, no longer appropriate money for payment to cities or for operation of the county libraries. He had heard the message loud and clear that it was the policy of the County, and they were going to stick with it. His recommendation was that the Council authorize placing the resolution on the next agenda. The resolution would request that the County include the City within the proposed district as a pre-condition, which had to be done in order to be a part of the district that would be on the ballot in November. He talked with Mr. Mantay regarding the \$10,000 and noted Councilor Barnes concerns. He fought the good fight, but in the interest of the libraries the City now should get behind the district and do everything it can to help make it a reality. Requesting inclusion within the district and coming up with the \$10,000 are essential elements in being a partner in making the district happen.

**Councilor Barnes** asked if the proposal had support from the Friends of the Ledding Library as well as the staff and volunteers in the library. Without them on board to help we may have problems.

**Mr. Swanson** had talked to some of them and thought they were aware of the reality. He spoke with M. Kay today, and she was supportive. She understood that people needed to be a part of making this happen. The District would be a great solution if it passed.

**Mr. Sandfort** explained to the Library Board he would follow the lead of the City Council and the City Manager. If City Council decided to support the district that is what staff would do, and the Board agreed to do the same. The Friends contributed \$2,000 as a group to the political action committee (PAC), Keep Our Libraries Open which was doing the advocacy part. There were also individuals of the Friends group that made personal contributions.

**Councilor Stone** had a problem with spending taxpayer dollars to convince taxpayers that they need to tax themselves.

**Mr. Swanson** explained it was an informational campaign and not advocacy.

**Councilor Barnes** said all they can do is give them the facts and asked how much money total was being spent on the informational campaign.

**Mr. Swanson** said the cost was \$170,000. The Friends could endorse and individual Council members may endorse the proposal. There would be information in the voter's pamphlet, but it would not be from the \$170,000.

#### Retreat

Council consensus was for March 8 & 9 for retreat dates.

**Mr. Swanson** said he would be in a trial for the next couple of days. It is over a very unusual situation, a sewer back up. The insurance company provided coverage for all of the negligence claims, but they also alleged an inverse condemnation claim. The insurance does not cover inverse condemnation, but it did have to provide a defense. Employees would appear as witnesses, but there needed to be somebody there with authority if there was the possibility to settle or if there is a question outside of the insurance company's realm.

#### Work Session Format Discussion

**Mr. Swanson** said Councilor Chaimov asked if there was a way to make better use of the work session time. He said often times they seemed like information exchanges without a lot of opportunity to ask questions. There were a number of different ways to do it. One option was to have work sessions on things that are 2-4 weeks out so that staff could start getting some ideas of what questions or concerns were. It seemed too late to talk about agenda items in a work session on the same day as they were up for action at the regular session. He asked for comments on what was and was not working?

**Councilor Chaimov** said in his view discussions during the regular meetings would benefit from more discussions during the work sessions. For example, they were getting a report today on the draft SDEIS from Mr. Asher. It might be beneficial to have Mr. Asher come to the work session to find out in advance what the Council may be thinking and give him some time to organize his thoughts and to focus more on the Council concerns. If it were two weeks out that would give even more time to hone the presentation to the issues that were of concern.

**Councilor Stone** said she liked the idea of not going from having the same issue in a work session on regular session agenda for the same night. In terms of decision-making, she felt Council did not seem to discuss enough. She did not think they had enough open dialogue and sharing of ideas and thought that work sessions should be structured more in a way to encourage that. She said for her there were quite a few times when she thought staff should take an item off of the consent agenda and review their staff report instead of having it be on a consent agenda for blanket passing. Sometimes we had questions about things and sometimes there were too many items on the consent agenda that could have easily been put on a work session agenda or as a staff presentation during the regular session to get clarification.

**Councilor Loomis** said that it would be a great idea to talk about those items on the consent agenda during a work session for public informational purposes. If we were going to televise meetings then we should let them know what is going

on. He did not want to have to pull something off of the consent agenda to find out more information.

**Mayor Bernard** said the Logus Road project was on the consent agenda for tonight, and Council has had numerous meetings over the years on that item.

**Councilor Stone** said she had questions about it, and Mr. Campbell answered them. She would get a lot more benefit out of work sessions if they were both informational and dialogue. Council got a lot of information, but she would like a chance for more discussion.

**Mayor Bernard** said there was so much going on right now work sessions tended to be packed sometimes.

**Councilor Barnes** thought part of the problem was we have such a short amount of time. She liked the idea of talking amongst themselves about the policy issue and to make decisions on where we see things long term. Maybe if Council had a better understanding then it could make better decisions. When she first got on Council they had a separate night for work sessions. As much as she did not want to give up any more nights there had to be a way to expand it and have good discussion instead of feeling rushed. When she has questions about staff reports or consent agenda items she called to make an appointment to meet with staff or emailed them. She had never had a problem with a consent agenda item except recently when a resident wanted an item pulled. That was the only time she had ever asked for something to be pulled from the consent agenda.

**Councilor Loomis** said when an item was on the consent agenda that item information did not get out to the public.

**Councilor Barnes** said the TV person had the ability to add a summary of the item on the TV screen as the viewer was watching. Instead of us explaining it there could be a one or two sentence summary about the item. It usually was not more than one or two items that needed a summary. Most of the consent agenda items are meeting minutes.

**Mayor Bernard** said we could set aside a couple of minutes in a work session before a regular session to explain what is on the consent agenda for that night, and if anyone had any questions at that time they could ask staff to answer them.

**Councilor Stone** said even tonight with the staff report about the Enterprise Zone when you read through all of the information it still isn't clear sometimes. We were used to looking at this stuff. Councilor Loomis brought up a good point to make sure the public knows what they were doing with their money.

**Mr. Swanson** said when he first started he did a second document for each of the council meetings that included a 2-3 sentence summary of what each of the agenda items were. It was a short form of what the agenda items were. He stopped doing that, but he could do that for the consent agenda items. It would still serve the purpose of the consent agenda to save time on routine matters. In terms of time there was the Marshall Rule of ending at 10 p.m. When they had meetings on two nights the work session meetings ran extremely long and then on the regular session nights they had some of the shortest meetings on record. The things dealt with now were meatier, but one of things Council could do is come back afterwards and pick up an item or two.

**Councilor Stone** said at some point long meetings became less productive. She was in favor of keeping the meetings efficient and streamlined.

**Mr. Swanson** said if an issue needed more discussion it was perfectly acceptable to bump the other item into the next meeting if anyone felt more time was needed for discussion.

**Councilor Chaimov** asked if it would be beneficial to discuss regular session items during the work session prior to the meeting?

**Mr. Swanson** said you are in a regularly noticed public meeting and it was a venue where Council could certainly do that. It was nice to follow the work session agenda, but they were not written in stone.

**Councilor Stone** liked the agenda forecaster and asked if there was a way to get more input as to what was coming up in the work sessions.

**Mr. Swanson** said the agenda forecaster was a perfect way to inform staff that you would need to talk about a certain item.

**Councilor Stone** asked how the agenda items were set.

**Mr. Swanson** replied that when staff had something that needed Council action they sent it to Ms. DuVal, and then she puts the packet together and sends it to him for approval. He then reviews it and decides what goes on the consent agenda and regular and occasionally they send staff memos back for clarification. The packet has to be out to Council by the Tuesday before the meeting.

**Councilor Stone** asked if Council had any input on the agenda?

**Mayor Bernard** said the Mayor has input.

**Mr. Swanson** said there were constant issues coming up that required Council input. He and the Mayor typically met on Monday mornings and he clued him in on any issues or big things. He would like to be able to go to lunch and meet with Councilors one on one. That was helpful, and he would try to do that again.

**Mayor Bernard** adjourned the work session at 6:45 p.m.

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Pat DuVal, City Recorder

## MINUTES

### MILWAUKIE CITY COUNCIL WORK SESSION

March 4, 2008

**Council President Stone** called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Council President Stone and Councilors Barnes, Chaimov and Loomis. Mayor Bernard absent.

Staff Present: City Manager Mike Swanson, Engineering Director Gary Parkin, Associate Planner Susan Shanks, Public Information Coordinator Grady Wheeler

#### **Budget Calendar**

**Mr. Swanson** had hoped to have the budget calendar together, but it was not ready. The Budget Committee process would start in mid-April. He handed out an agenda forecaster for Council to review along with the meeting outline and a brief summary of each item.

**Mr. Swanson** announced the hiring of Ignacio Palacios as the City's new finance director.

#### **Retreat**

**Mr. Swanson** distributed the retreat schedule.

#### **Balfour Property**

**Mr. Swanson** provided an update on Columbia Care Services vs. City of Milwaukie.

#### **Wastewater Sewer Extension**

**Mr. Parkin** went over some of the history of the extension of the sewer services to the unincorporated areas adjacent to the City. The area they were looking at right now for the extension of sewer service was in the area designated as Dual Interest Area "A" on the map he provided to Council. It was an area that would be served by extending our sewer system to it. It was a natural drainage basin for the sewer to float through and was covered by an agreement.

**Councilor Barnes** asked for an explanation of the exact area for those people watching the meeting.

**Mr. Parkin** said it was roughly north of King Road and west of Linwood Avenue to the current City limits extending all the way to the northern border on the other side of Johnson Creek Boulevard. This issue was being addressed in the Wastewater Master Plan update, which was currently underway. He had hoped to have a financial plan tonight, but it was not ready. They were looking to come up with some plans for how they would extend financing through the City or what would be required of the citizens. A key element to this extension was that the County had established an urban renewal area called the North Clackamas Revitalization Area. That brought some benefits to the residents. They were providing some subsidies for SDC's and for some lower income property assistance. It was formed to bring that area up to a higher level of livability and economic development. That gave us another reason to look at this again.

Some advantages of serving this area was that joining with the County provided some benefit for cost sharing for larger projects. Mr. Campbell had applied for the state revolving fund for this project and it was accepted and is the first priority out of 22 for this year. That funding source would be available for construction, which up fronts the cost.

**Council President Stone** asked what that meant in dollars?

**Mr. Parkin** said the state revolving fund would fund the construction. They were still working on a cost estimate, but it was in the \$3 million range.

**Ms. Shanks** reviewed the annexation policy. Properties to the south and to the east of the City were unincorporated Clackamas County properties. Those properties were not receiving the same kinds of urban services that City residents were. Some of those areas were within our Urban Growth Management Area (UGMA). An UGMA was Oregon's way of directing where development should happen. It was expected that the City would eventually grow into its UGMA over a long period of time. Annexation was an expected and natural thing to occur. The City's annexation policies were contained in the Comprehensive Plan and support annexations for many reasons but primarily to support the extension of City services to those who did not currently have them. In some cases those City services were desirable and others were necessary. For example if a septic system failed, then people had to connect to a wastewater system.

**Council President Stone** asked if someone's septic failed was there a requirement to hook up if a line was available.

**Mr. Parkin** said the City and County had a similar requirement, which is if you are within 200 feet of a sewer you are supposed to connect immediately. That had not always been enforced. If someone's septic system failed and they were within that distance, the City would require them to connect. What they had seen in this area was failing septic systems and the County not wanting to permit a new septic system and so they were asking the City if we could provide the service. If it was one person and they were in the middle of the area shown on the map it was quite a bit of main to be installed and was not cost effective for one person to receive that service. What the County had been doing was allowing temporary tanks that had to be pumped out on a regular basis until such time that sewer was available. They had been telling people that it would be approximately 3-5 years before sewer would be in that area in the hopes that something happens. There were several of those in place at this time.

**Ms. Shanks** said the City's annexation policies were contained in the Comprehensive Plan, Chapter 6. A summary of what those policies meant was that they were directing the City to provide efficient and fiscally sound urban services to existing residents as well as to residents in the UGMA. Another thing that our policies direct us to do is to coordinate those urban services with other districts and service providers. She mentioned 3 policies pertinent to the extension. First was that the City would require annexation in order to receive or utilize a City service. She said staff felt very strongly about this policy mostly because they had the experience of having to deal with properties that were not in the City but were receiving a City service. Unless it was an island we could not force them to annex and essentially they were getting a service and paying for one service but not paying for other services that come as being part of the City. If they were to incur an SDC charge it would not come to the City it would go to the jurisdiction that they were in, if it was assessed at all. It was not fair that someone received a City service but did not pay for all city services that the

city offered to residents. Another policy had to do with a cost of services. City policies directed staff to require those who are receiving the services to pay for them. In this case she was sure City residents would not want to subsidize what was going on outside of the City. Third, there was a policy that the City services would be extended when the City was assured of recapturing the service investments. In addition to the policies being in the Comprehensive Plan the annexation process itself was spelled out in the Municipal Code. There were a number of ways that properties alone or together could annex. City Council could initiate an annexation as well, but there were certain requirements to do so. It was rare that you could force the issue. There had to be some kind of majority of electors or property owners that agreed to the annexation. They all had to abide by the rules spelled out by the Oregon Revised Statutes, Metro Code and the City Code. All annexations ended up before City Council for some kind of decision, whether it was through an ordinance, land use process or City Council deciding to go to the voters in the territory to be annexed.

**Councilor Loomis** asked how the residents felt about annexing?

**Mr. Wheeler** said that was yet to be seen and talked about project outreach. Clackamas County sent a newsletter last Friday to residents of the North Clackamas Revitalization Area, which included residents of the Dual Interest Area "A". The newsletter provided updates on a number of County initiatives that were focused in the revitalization area including this wastewater service provision effort. They worked directly with the County to provide specific language to residents of Dual Interest Area "A" to explain that because of the agreements Ms. Shanks spoke about and because the infrastructure that would be used and would be constructed by the City the service provider would be the City for that area. Annexation would be a condition of sewer provision. In the City's section of the newsletter staff invited people of the Dual Interest Area to attend an open house that would be set up just for them at Lewelling Elementary on March 20. They were planning to send a follow-up letter to those residents and remind them of the open house and encourage them to call with questions ahead of time. The newsletter also announced 4 other open houses planned for the entire revitalization area. The first one was Thursday, which is an open house providing an overview of the entire sewer services provision project to be held on March 8. Staff was planning to be at each of the meetings mainly to initiate conversations with the residents of the area that specifically live in the Dual Interest Area so they could learn the information that they would have at the March 20 open house. They had a sense of what to provide, but they were looking to learn what the feeling was of that area.

**Council President Stone** asked if he had gotten feedback from anyone?

**Mr. Wheeler** replied that he had not.

**Mr. Parkin** said it had been a while since there was an actual annexation. There were a lot of people that were not in favor of coming into the City. That was before we had the agreement so he did not know how that came about and how it might have changed opinions. They got calls pretty regularly from people in the area about when they would get sewer service. Not everyone had that motivation, but the calls were supportive of the City annexing the area. There were a total of 230 houses in the Dual Interest Area. There were different ways to do an annexation, but it depended on a majority of residents of that area agreeing. Most of the annexation methods were by petition, but it could go to an actual vote and City Council would be the one to initiate that.

**Mr. Swanson** said they did have some meetings a few years ago and the reaction to annexation was mixed. There was a great deal of interest in getting the sewers and a mixed response as to whom the service provider should be.

**Barbara Cartmill**, Clackamas County Development Agency, said the group that Mr. Swanson was referring to was in the northern-most area on the map. She pointed that out because those folks were skittish. They were surrounded by Portland, Milwaukie, and Clackamas County. She was very supportive of the direction that Mr. Parkin was going, which was to see what the residents were feeling. There were a lot of properties that had failing septic systems plus they were close to Johnson Creek. There were some that needed sewers and some that had septic systems that worked fine. One thing she found was that the residents needed a holistic view.

**Mr. Parkin** said notwithstanding the policy that Ms. Shanks explained that new residents should pay for their services they would be examining some ways to possibly subsidize the project. We need to ask at what point do we see ourselves wanting to help this area along and there might be some way to finance part of the interest of the loans or do something for these people to make it easier. It wouldn't be a subsidy that would never get paid back, but it would be paid over a number of years. Those were things that has they start talking to those people and had something to offer to help with financing or providing bond financing would help them to see it as something they could afford.

**Councilor Barnes** asked what the cost was to hook up to sewer?

**Mr. Parkin** said if a property was in the City and needed to connect there was an SDC Charge of approximately \$900 plus connection fees for a total of less than \$2,000. The properties in the Dual Interest "A" area would have to pay between \$10,000-\$15,000 to connect. If people looked long-term there were a lot benefits. They would provide some financial plans that would spell out various options and bring the information back to Council for review. He received a first draft, but it was not ready to distribute. They would be telling those residents what the approximate cost would be and get back to them with more information. The City was entering into an agreement with the County to work on a preliminary design for the whole area. Milwaukie would pay its portion in the next fiscal year's budget.

**Councilor Loomis** said from his perspective it needed to be affordable and equitable to what the County was offering.

**Councilor Barnes** asked Mr. Wheeler if he had the demographics for that area. That information would help to give a good indication of the socioeconomic base in that area.

**Ms. Cartmill** said when the County did the urban renewal district they pulled data from the 2000 census status.

**Kenneth Itel**, Clackamas County Development Agency, thought the median income was around \$42,000 in 2000. The County's median income as of right now was \$67,500. You could probably make an estimate right now within the revitalization area the median income was probably around \$45,000 for a household, which was substantially below the median income for the County as a whole.

**Councilor Barnes** said \$10,000 for a family bringing home \$45,000 was a huge amount of money. In the past a number of public hearings were held, but there were a lot of people that could not or would not go. If there were only 230

households involved, a personal contact from the City made sense. She did not know what exactly the contacts would be like, but it might make the City look like it was taking the initiative to find out how people were feeling.

**Mr. Wheeler** agreed with Councilor Barnes and would incorporate that in the reminder letter going out to the individual properties in that area next week.

**Council President Stone** asked if most of the properties were rentals or owners?

**Mr. IteI** said he didn't know specifically in the Dual Interest Area. The ownership rate in the entire revitalization area was about 60%.

**Ms. Shanks** wanted to point out that she just mentioned some of the policies that were in the Comprehensive Plan, but there were others that supported subsidies for areas to make it palatable for them and to maintain fairness as well. One of the policies that, in the short-term, to offer a subsidy as long as it made sense, resulted in a reasonable return in the future, and did not upset its fiscal health.

**Councilor Barnes** would like Council to have a list of points from those policies.

**Councilor Loomis** asked Mr. Wheeler if he would list the positives of annexing to the City?

**Mr. Wheeler** said they were working on a matrix that showed what City services annexation would bring and also the costs associated with those. He said staff wanted to be very upfront.

**Councilor Loomis** said on the other hand staff should also hit the points of how the City benefits from the annexation.

**Ms. Shanks** said ultimately the City needed to convince a majority of people to sign a petition or to vote if it ended up going to that. The City needed to solicit their signature and consent.

**Councilor Loomis** said it needed to make sense for them. We should have more work session discussions about what Council thought were good reasons to annex.

**Ms. Cartmill** said the Dual Interest Area is in the Urban Renewal District, and the County had a program for hardship assistance through the sewer effort that would be available to the Milwaukie Interest area as well as the Clackamas Area because they were the urban renewal district. The hardship was meant to be just that, single incomes, disabled, age issues etc. Nobody throughout this effort would be in danger of losing his or her home. Those funds would be available and they had worked through the criteria of that yet, but they would be there.

**Council President Stone** asked how much was in that fund?

**Ms. Cartmill** said it was budgeted at \$1 million in the Plan, and it was a 25-year plan. The SDC's were held flat for that area. They would go up on July 1. The citizens in the Dual Interest Area would benefit from that amount. The Milwaukie SDC's are \$900 and the SDC's for the County are \$2200. The \$2200 would still go against the sewer connection cost for those in the dual interest area.

**Council President Stone** said the fiscal impacts to the City and County were yet to be determined. When would there be a better picture of the finance portion?

**Mr. Parkin** said tonight's meeting was to bring information to City Council before going to the public meetings. They were pushed to that by the County's timetable. The Master Plan was not underway exactly when they wanted it to so

they were a little pressed on that. This meeting was informational so Council knew what was going out to the community.

**Council President Stone** adjourned the work session at 6:20 p.m.

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Pat DuVal, City Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
MARCH 4, 2008**

**CALL TO ORDER**

**Council President Stone** called the 2025<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 Susan Stone and Councilors Deborah Barnes, Greg Chaimov, and Joe Loomis. Mayor Bernard excused.

Staff present: City Manager Mike Swanson and Community Development and Public Works Director Kenny Asher

**PLEDGE OF ALLEGIANCE**

**Council President Stone** announced that Mayor Bernard was excused.

**Mr. Swanson** excused the City Attorney pursuant to Resolution 9-2003.

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**CONSENT AGENDA**

- A. **Resolution 16-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Sign an Intergovernmental Agreement with Clackamas County for Transportation Maintenance Services;**
- C. **Resolution 18-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Amending Resolution No. 39-2007 by Establishing a Library Fine Amnesty Week from April 13, 2008 through April 19, 2008 in Recognition of National Library Week; and**
- D. **Resolution 19-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Confirming the City's Desire to be Included within the Boundaries of the Proposed County-wide Library District and Approving the Transfer of \$10,000 to Clackamas County for Use in Disseminating Information about the Proposed Library District.**

**Council President Stone** announced Consent Agenda item B, A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Issue a Check to Union Pacific Railroad for \$80,000 for Concrete Panel Inserts in Conjunction with the Oak Street and 37<sup>th</sup> Avenue Railroad Crossing Project was removed for discussion in other business.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the consent agenda. Motion passed unanimously among the members present. [4:0]**

**AUDIENCE PARTICIPATION**

- **Jeff Klein, Milwaukie**

**Mr. Klein** provided a slide presentation entitled *Hazel's Trip to the Zoo via MAX* in honor of the 3-month anniversary of her birth.

## **PUBLIC HEARING**

None scheduled.

## **OTHER BUSINESS**

### **Council Reports**

**Councilor Chaimov** attended his Island Station Neighborhood monthly meeting and met with the Community Development staff.

**Councilor Barnes** met with the Water Environment Services (WES) community dialogue regarding the future of wastewater treatment in north Clackamas County and attended the Arts Committee kickoff.

**Councilor Loomis** attended the Milwaukie Riverfront Board meeting and the Planning Commission meeting regarding the installation of an all-weather turf field at Milwaukie High School.

### **Discussion of consent agenda item B, authorize Union Pacific payment for work in Railroad right-of-way.**

**Mr. Swanson** said he had been confused by a note in the original file that had also had added the intergovernmental agreement (IGA) which he determined was previously signed.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution authorizing the Union Pacific payment for work in the railroad right-of-way as submitted to the Council. Motion passed unanimously among the members present. [4:0]**

#### **RESOLUTION 17-2008:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO ISSUE A CHECK TO UNION PACIFIC RAILROAD FOR \$80,000 FOR CONCRETE PANEL INSERTS IN CONJUNCTION WITH THE OAK STREET AND 37<sup>TH</sup> AVENUE RAILROAD CROSSING PROJECT**

**Councilor Stone** acknowledged that Milwaukie Engineer George MacGregor had passed away and offered the Council's condolences to his family and friends.

### **ADJOURNMENT**

**It was moved by Councilor Chaimov and seconded by Councilor Loomis to adjourn the meeting. Motion passed unanimously among the members present. [4:0]**

**Council President Stone** adjourned the regular session at 7:20 p.m.

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Pat DuVal, Recorder

**MINUTES**

**MILWAUKIE CITY COUNCIL WORK SESSION**

**March 18, 2008**

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

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

Staff Present: City Manager Mike Swanson, Community Development and Public Works Director Kenny Asher, Community Services Director JoAnn Herrigel, and Information Coordinator Grady Wheeler

**Board and Commission Interviews**

The City Council interviewed applicants for board and commission vacancies including Leslie Schockner, David Aschenbrenner, Andrew Tull, Bob Hatz, Tom Hogan, Ron Rasch and Charles Bird.

**South Downtown Concept Plan – Request for Qualifications**

**Mr. Asher** provided an update on the South Downtown Concept Plan Request for Qualifications (RFQ) for urban design services to test and advance the Plan. An objective of this discussion was to remind everyone where they had been. At the next meeting he hoped to have a contract for approval with a firm to help with the next phase of work. Before he goes through contract negotiations with the firms he would like input from Council to inform that the scope of work would be beneficial. This was a great opportunity for Council to share their thoughts.

**Mr. Asher** said as a review the South Downtown Concept Plan was prompted by extenuating circumstances and his vision for the opportunities that exist at the south end of downtown. They were working on the Kellogg Lake bridge replacement and dam removal. He and the Mayor were able to talk about that in Washington D.C. with our congress people. They got a call from Blumenauer this week and learned they were going to try and include it on their list for appropriations so we have their attention. They want to restore the creek. The design and development was coming along with Riverfront Park. Council would be hearing about some zone changes on that project soon. Ms. Herrigel and the planning dept. have been making great progress and there are some implications at the south end. Robert Kronberg Park was on hold because staff felt it might be able to become part of a larger park system. They want to see Robert Kronberg Park developed as part of something that had more connectivity than what there is today. They were still trying to figure out what to do with the Cash Spot site. Light rail planning had implications at the south end that might include a station. There was a big public meeting scheduled for tomorrow at 6pm to learn more about station locations. They had talked about the need for a future home for the Milwaukie Farmers' Market, and decommissioning the Kellogg

Treatment Plant and continued revitalization on Main Street. All of those things were in progress and for those reasons he engaged on a very small contract with an urban design firm to help staff prepare a concept that centered on the public plaza and began to tie together the parks, Main Street and all of the features including the schools that we want to see tied together there.

**Mr. Asher** said based on the last presentation in November what he heard from this group was that it had promise and he had clear direction to share it with other people. He had done that and had been working on that since November. He managed to get around to the PARB, Riverfront Board, Planning Commission, NDA chairs, and there were some articles in The Pilot. Having done all that he sensed there was a lot of interest and support for the concept of doing something like it for the south end. It was not unanimous and he did not intend to gloss over the voices of dissent. He provided copies of public comment on the plans to date from last November to present. There were some emails from citizens filled with praise, City Council and Planning Commission minutes and joint PARB and Riverfront Board session minutes. Some who were not in support of the project or planning process wanted to be heard. One Planning Commissioner was not necessarily in support of going down this path. The Planning Commission did not vote and did not provide formal direction. In the Planning Commission minutes he saw a lot of discussion of all the elements and people were engaged. There was a sense there was promise but no vote taken. The Historic Milwaukie NDA had a lot of questions about the merits and he was asked to convey a message to Council of why not revisit the entire downtown plan. He did not attend that meeting, but the sense he got from Ms. Herrigel was that Historic Milwaukie NDA did not support the plan and would prefer to see something more comprehensive.

**Mr. Asher** said this was not an arbitrary decision to re-plan a part of the downtown. He did not support a re-plan of the entire downtown. This plan was consistent with the principles of the downtown plan. This concept was trying to anticipate forces that would act on the south end so that when we were successful in any of the endeavors we would have an idea and be able to raise money and have buy-in.

He had solicited qualifications for help in the next phase. The scope of work centered on the questions of validation. One of the things that he heard in the community even from those supportive was whether this plaza was in the right place all the way at the south end. Councilor Stone and others had thought it might be too far south and it might be better to have it more centrally located. He thought the size of the plaza was about 20,000 feet. That raised the point, was it conducive to a public plaza with noise and trains and malingering? He was seeking validation from a consultant if he/she thought it could work as imagined in the drawing. The other kind of validation that we need to get to now is do we have deep buy-in from the community. He wants a process through which Milwaukie could actually more universally embrace a plan. That required another set of skills to bring people into a process that had room for all opinions but was also effective at educating, feeding back, and dialogue. The City received 11

proposals and kind of an A-List. Mr. Asher was comfortable in moving forward in getting it down to 2 or 3, bringing a contract back to the City Council, and moving forward with the process. He wanted to hear if he should continue to move down this path, which he heard from most but not all groups. If Council had an interest in how the next phase of work was conducted he should know that to ensure anything important was in the contract work and took City Council direction into account.

**Mayor Bernard** noted this was close to his property and he was concerned that this study included his property. If it did he would probably not be able to vote. He walked to Oregon City and thought a bridge would be good at Dogwood Park.

**Mr. Asher** said the plan would include Mayor Bernard's property. He did not believe there was an issue of conflict in the Mayor providing input.

**Councilor Barnes** said she still supported the idea. Her key issue was that the Cash Spot was prime property overlooking the river, and she did not want it just to be a parking structure on Main Street. She would like to see parking at or below street level. She liked the idea of a connection to somehow bring art in that area. She viewed that part of town as for the fine arts, music and theatre. She would like the Arts Committee on board and to get their thoughts and ideas.

**Councilor Chaimov** said he would appreciate going along as outlined and more information on making the community better is good. He hoped in the process that the consultants wouldn't be limited to telling Council what would or would not work from their ideas, but will also be free to give ideas for opportunities that they hadn't seen themselves and that particular attention will be paid in the process to the Historic Milwaukie NDA in which it was located.

**Councilor Stone** said she was not wild about what was going on in the south end of town. She was wondering in terms of the consultant how long would it take for them to do the work, and realistically when would recommendations be implemented.

**Mr. Asher** said that he did not put out an RFP but rather an RFQ. He did that because it depended on what the consultant thought and the budget. To know how fast the work could be done they would have to know what the work actually was.

**Mr. Asher** said there was a need to pull in more stakeholders including the Historic NDA. The process should be designed so voices were accommodated. If they were talking about a future home for the farmers market it would be wise to have one of the market vendors. When he thought about that kind of process the timeline stretched out because there were more people to be heard. He saw this as a phased project. If they could get started in April after about 8-12 weeks they could hear back from the consultant and everyone participating if they should continue in this direction based on urban design and what was heard in community. If it were obvious that they should be doing plaza planning but not in the south end he would like to go in that direction.

**Councilor Stone** said she was feeling like this might be a little premature and rushing in to fast. They had talked about reviewing the Downtown Plan in its entirety. It was a good opportunity for everyone to sit down and examine how they want to see this developed. It seemed like the south end hinged on light rail. She is feeling like there is no funding for light rail and she knows that we need to plan and anticipate for the future, but she would like to just put the brakes on and sit back and look at the Downtown Plan. Get some community input. The plaza looked inadequate in terms of size. There was the concern with noise. She envisioned a plaza more central to the City. She thought they needed to re-examine it before delving in. Would you be willing to put the brakes on and look at the Downtown Plan together?

**Mr. Asher** said that was why he was here and will follow the Council's direction. That was not his recommendation.

**Councilor Stone** asked her fellow council members if they would be willing to sit down and do that. They had talked about re-examining the Downtown Plan and getting input. If they need a consultant for something she wanted to be sure they were examining an idea that really did have deep community support. There was not a lot of deep community support. There were both sides of the fence. There were 7 separate citizens, NDA Chairs and the Planning Commission, but she did not see the need to rush doing this in April.

**Councilor Barnes** said she did not see it as rushing by asking questions and getting information. She didn't see us as rushing through on anything concrete. They need to start planning now and at least look at things. One thing that would make it happen for the City was if they had plans ready to go. If they did not bring on a consultant now to at least look things over those are months that go by where it might not happen at all. She would rather have information at their disposal now so that we could move forward. 7 people may have said no but there were 20,000 other people that hadn't been reached yet. It was better to have plans that they could share with those 20,000 additional people. They would have something better to share with them. She wanted something to start with so they could share what they saw as a team, as a vision to share with others and get input.

**Councilor Stone** said she was all for sitting down as a team. She did not see where waiting on making a decision about spending money on a consultant and getting them on board by April was going to harm anything. They had never as a City Council sat down and brainstormed ideas, and she would like to do that.

**Councilor Loomis** said they should look at the Downtown Plan. What he saw here was just exploratory. This was a project they should have buy-in from everyone. They were going to get information from the consultant hired. He was not at the November meeting but he wanted to see the connection to the parks. He did see that Cash Spot area as crucial for parking for Riverfront Park events. This would give us information and tell us what we need in a plaza and Council could use that information in review of Downtown Plan. Councilor Stone was

concerned about not rushing, but he did not see reason for not moving forward. This was just informational.

**Councilor Stone** asked Mr. Asher if she was correct in thinking that the development hinged on light rail.

**Mr. Asher** replied that he did not see it that way. Light Rail had an influence so if light rail came it would have an influence on what happened and if there was a station located there then it would have an influence. If light rail did not come he did not think the concept was invalidated. If light rail was not a part of Milwaukie's future he still thought and it was said as a community that they want a plaza, open space and connectivity. Light rail could make it happen more quickly.

**Councilor Stone** asked about the parking structure. That would not come without light rail.

**Mr. Asher** said the concept did not hinge on the parking structure. The only thing that the concept hinged on was the location of the plaza. If there was a consultant that said triangles were difficult to work with and they determined it had to move then he thought they would need to rethink whether all of those connections and the concept worked. That was pencil and paper work.

**Councilor Stone** said she remembered when Jerry spoke he talked about areas of downtowns that were underutilized. The grounds around city hall were very nice and she envisioned the plaza and parking garage central. She saw parking structures moved back and hidden and not located on prime pieces of property.

**Mr. Asher** said the reason he thought they needed a consultant was because he heard that from the Riverfront Board, neighborhoods and City Council. Everyone had opinions. How do we make any more progress in bringing our opinions together? We need more expertise than any of us had in place making and someone who is was very skilled at facilitating public process. That was why he had hoped they would be able to go forward. They would not all agree at the outset or probably when it was done.

**Mayor Bernard** said one thing they talked about on JPACT was about developed and developing. Things that were visions, developed and that were developing. Developed plans get funding. You have to be ahead of the other groups or they wouldn't talk to us. He said they had the first Farmers' Market meeting and they would be starting a Vendor Advisory Council (VAC). He talked to them about future planning for the market and he was sure there were people interested in doing that. The Cash Spot was in the floodplain so there were limits to what could be done. The Riverfront Board talked about using it for a parking structure for riverfront activities. All of those things needed to be looked at and he was interested in forwarding it.

**Councilor Chaimov** said he thought this work could be a catalyst for looking at the Downtown Plan and would teach everyone. He would like to have that information as soon as possible.

**Councilor Loomis** thought there were parts that everyone could agree on and should stay focused on those. People want to see the parks and the Cash Spot

developed. We might not agree on what is developed there, but he thought that everyone agreed that they want to develop. As Councilor Stone said light rail was getting mixed in and that needed to be put aside. He still liked the design even without light rail.

**Councilor Stone** said light rail was very much in there and we did not know for sure if light rail was coming.

**Councilor Loomis** said he was not passionate either way and he thought it was coming and wanted to utilize funds for the best of the community.

**Mayor Bernard** said when they looked at the Cash Spot property for a future Farmers' Market location the market was in the street so the space was larger than the diamond because there was also street access. A concern from vendors was about shade and trees take a while to grow. It would be nice if they had a plan so they would be able to plant trees in the near future to help provide shade. Some vendors liked natural gas, others electricity, and others shade.

**Mr. Asher** said he would like to get going and report back to Council once there was something to report. In the interim if there were additional thoughts about how they were involving people, who was being involved or who Council worried might be left out etc., please let him know. He would like to be able to put this on the consent agenda when it came up because this was the discussion that he was looking for. If Council would like it to be on the regular agenda for more discussion he would like to know ahead of time so he could be prepared.

### **Metro Commercial Recycling Ordinance**

**Ms. Herrigel** discussed the anticipated adoption by Metro Council of a Business Recycling Requirement Program Ordinance. She wanted to convey that she, Metro Staff, garbage haulers and processors had worked together on the regional level to see if we could get to a 64% goal of recovery by 2009. It was really hard and she wanted to emphasize that they were working on this together. City staff and Metro were working together and saying that we had a problem and we had people asking them to help get to a 64% recovery rate. As she noted, 64% was a state statute. The region as of 2006 was at about 55.5%. They knew that 100,000 tons of recyclables on an annual basis was disposed of by commercial businesses in the region. They believe that in order to achieve the 64% goal they need to take about 80,000 tons of recovered material out of the waste stream on an annual basis. They were trying to come up with a way to do that. One of the ways they thought they could get closer to that goal was a program called Business Recycling Requirements. Metro was proposing that their council would adopt an ordinance in May or June, which would require local governments to take action by setting requirements on commercial businesses. The program would consist of education and technical assistance. There would be requirements on all local commercial businesses to recycle all paper and containers or at least 90% to achieve a 90% recovery level. A compliance or enforcement program would be put in place. Compliance would mean that businesses would provide all of their employees with recycling containers internally and externally, and provide signage and educational materials to all

employees and people in the building and that they would maintain 10% or less recycling in their garbage. The trick would be to check on a regular basis to see if they were achieving that. The schedule for the proposed program would be that Metro would adopt something or discuss it in May-June 2008 and that by January 2009 the cities and local governments would be required to adopt the ordinance on a local level and by July 2009 enforcement of compliance would begin. In July 2010 the program would be evaluated to see if changes were needed. In anticipation, Ms. Herrigel has met with Clackamas County staff to talk to them and Metro about how she could get the information out to the 600-800 business in Milwaukie. They County and Metro have said they would do anything they could to help. One of the issues was when they call a business and tell them they would like to come and talk to them about recycling it was very benign. She was working on getting voluntary compliance. Metro would like to know Council's general reaction to the Metro ordinance, which would then put requirements on local governments. Ms. Herrigel asked for direction from Council on what staff should be doing in addition to what she was planning to do to get ready for the passage of the ordinance.

**Mayor Bernard** asked if we would need to hire additional staff?

**Ms. Herrigel** said there were 2 options from Metro. If the City prefers Metro to conduct the enforcement inspections they were prepared to do that or we would use solid waste staff from the County or our staff to do it.

**Mayor Bernard** said he could use some training, but he also knew it was profitable to recycle because containers were smaller. He asked what were we suppose to do with containers?

**Mike Hoglund**, Metro Director of Solid Waste and Recycling Department

**Mr. Hoglund** said one of the benefits of this program was that there would be a lot of education and phase in through warnings. Metro had 2 FTE to deal with 90,000 businesses around the region so they would go after the larger companies to make sure they were in compliance first. They might not ever get to the smaller business.

**Mayor Bernard** said the chamber would probably want to have a forum.

**Councilor Chaimov** said it was discussed at the public policy meeting. They received a presentation. His response was he did not like Metro telling local governments what to do or not to do. If the City thought it was a good idea to have 90% or 100% recycling requirement that should be our decision, and not Metro imposing it on us. If it were our decision he would be happier seeing more aggressive economic incentives and disincentives before moving to impose requirements. Smart businesses know that it was profitable to recycle. To the extent that the incentives for recycling were improved and the disincentives were increased that would get more businesses to recycle.

**Councilor Barnes** said her first instinct was that she did not want Metro to say to the City this is a have to. She asked how were local businesses were doing on recycling now and if this was something they could do. They need to ask the

businesses if this was something they could work with before any requirements were imposed.

**Councilor Chaimov** pointed out that the representatives of the businesses who heard the proposal were nearly unanimously in favor of it.

**Mr. Swanson** said the number cited was 14% of businesses did not recycle. There were 86% that did some level of recycling.

**Mr. Hogle** said there were 2 numbers they looked at. There was a capture of those who recycle and then the rate of those business that recycle. Part of the problem was that a lot of people recycled a few things. It was trying to get the capture rate up, and also to get the actual recycling rate within those businesses higher.

**Councilor Loomis** what was the biggest hurdle?

**Mr. Hogle** replied they had been trying to do incentives, education and outreach by providing boxes and infrastructure for the business. The biggest hang up right now was that they could not communicate with those businesses and get them to listen. They had hit a plateau in recycling.

**Councilor Stone** had a question about the recovery rate. Metro wants businesses to maintain 10% or less volume of paper and containers in their waste containers?

**Ms. Herrigel** said it would give that particular business a 90% recovery rate.

**Councilor Stone** said we were currently at a 55.5% recovery rate so there was way less than 10% going in?

**Mr. Hogle** said the 55% was the overall waste stream throughout the region.

**Councilor Stone** said in terms of the funds to local jurisdictions how much would Milwaukie get and how would it be used?

**Ms. Herrigel** replied there were 2 ways that she had seen money handed out from Metro to local jurisdictions, through a competitive grant basis or based on population. They worked closely with Clackamas County and they not only got County money, but they also got City money as a pass through to help us implement our program. She had solidified the dedication of 1 FTE to go out and meet with all of the City businesses. That was how she would use the funds. That person would go out to the businesses and hand out recycling information, talk to people and then go out and implement the collection. They would not only put out the collection boxes, but they would interact with the garbage haulers who provided the service. This would be a per capita program.

**Councilor Stone** was a recycling advocate and had been for many years. She thought it was interesting that she had heard from a couple of councilors how they did not like Metro to mandate that businesses should have to do this when they mandate other things like density and light rail. Just had to get that in. She would hope that there would be broad support from businesses to do this. She thought it was a good thing for the environment and she would support it.

**Ms. Herrigel** said the ordinance would go before the Metro Council in May-June and MPAC.

**Councilor Loomis** asked if there costs to the businesses?

**Ms. Herrigel** replied that recycling was included in the garbage rate so as far as recycling costs there would not be any and it is not anticipated that it would cost them.

**Councilor Loomis** asked if they would need more containers?

**Ms. Herrigel** said they would need more containers, but they were not charged for recycling containers.

**Mr. Hogle** said there would be a cost for infrastructure and potentially more trucks on the street that would be spread out over the entire system. That was relatively a few pennies a month on the typical garbage bill. For businesses that didn't recycle and start to recycle, by volume or weight their garbage bill could go down.

**Councilor Loomis** asked about space.

**Ms. Herrigel** said space was an issue for some. She hadn't seen space be that big of an issue in the City. She had seen it more in Portland.

**Mr. Hogle** said they had an exception process for those that did not have the space and they could apply for that, which would be built into the ordinance.

**Mr. Swanson** asked in defense of what Metro was proposing. Was the 64% recovery by 2009; it seemed maybe the quickest way to get there was a mandatory program. That may be part of the motive for coming up with a program mandated by Metro otherwise how would you get to 64% in a year.

**Mr. Hogle** said 64% was calculated in 1990's based on an estimate of how much they could combine from the recycling system and how many markets were out there to use the particular materials. It was actually a little bit lower than 64%, but a couple of percentage points were added for aspirational purposes. We could get to 64% now, but they were revising the plan from 2009 because they did an analysis and they probably would not get there until 2011 or 2012. The system had always been set up that people should have the opportunity to recycle and that we shouldn't force people to recycle. They saw that they would fall short because they had hit a plateau in a number of areas. IT was important to get the construction/demolition debris out and to get more of the food waste out of the garbage and composted.

**Councilor Loomis** asked if the City of Milwaukie and Metro would be required to follow the guidelines.

**Mr. Hogle** replied yes.

### **Online Light Rail Information Resource**

**Mr. Wheeler** introduced and wanted feedback on a new information resource that the City had been working on. Staff hoped people would use it to get a better understanding of the Portland-Milwaukie Light Rail project. He clarified

that this portion of site had not been launched yet. He had been working on it for about 3 weeks and it was nearly ready to go but staff wanted to check in before going live. The basic idea behind the initiative was to create a section of our website where people could go and learn more about Portland-Milwaukie Light Rail. The site would have a basic statement and response format. The intent was to provide factual information and not editorial comment. It was not staff's objective to persuade or convince but to inform. He had been generating a list of questions and comments that had been raised at Council Meetings and at neighborhood meetings in the last couple months and had been researching answers to those questions. He currently had a list of about 25 questions and comments, but the idea was to keep the site updated with new information as questions arise. Staff was finding that there were certain themes and questions that kept coming up. The site would allow them to keep a record of those questions and concerns and also the responses so Council and staff would have a place to direct public. A good example was a discussion that had come up in the last week about density. Staff was preparing a memo explaining how density worked and how the light rail project didn't change Milwaukie's density provisions. Rather than having a report on the information that people might not hear or know how to access on our website we would have a central and easy to find place where we could summarize and post that information. The site would also provide the opportunity for people to submit questions and further clarify responses. He had been working with City staff, Metro and TriMet to get facts and figures, but he wanted to point out that this was a City initiative and the City would control the site. He planned on printing up-to-date versions of the site to set out for handouts for the public at Council meetings and to have at our City facilities. He would also have the section linked to Mike's Friday Memo and in the community services weekly email update. They hope to have this section up by the end of the week and the section would be posted on the home page underneath the projects logo at the top of the other transportation projects. He hoped that City Council and the community would consult that portion of the website as the light rail conversation unfolded.

**Mayor Bernard** adjourned the work session at 6:50 p.m.

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Pat DuVal, City Recorder

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING MIKE MILLER TO THE MILWAUKIE BUDGET COMMITTEE.**

**WHEREAS**, a vacancy exists on the Milwaukie Budget Committee; and

**WHEREAS**, Milwaukie Municipal Code Section 2.14.020 states, the board shall consist of the members of the governing body and an equal number of members appointed from the electors of the municipal corporation.

**WHEREAS**, Mike Miller possesses the necessary qualifications to serve on the Milwaukie Budget Committee.

**Now, therefore, the City of Milwaukie, Oregon resolves as follows:**

SECTION 1: That Mike Miller is reappointed to the Milwaukie Budget Committee.

SECTION 2: That his term of appointment shall commence on May 6, 2008 and shall expire on March 31, 2011.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on May 6, 2008.

\_\_\_\_\_  
Susan Stone, Council President

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING CHRISTIE SCHAEFFER TO THE MILWAUKIE PARK AND RECREATION BOARD.**

**WHEREAS**, a vacancy exists on the Milwaukie Park and Recreation Board; and

**WHEREAS**, Milwaukie Charter Section 26 provides that, "the mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body," and

**WHEREAS**, Christie Schaeffer possesses the necessary qualifications to serve on the Milwaukie Park and Recreation Board.

**Now, therefore, the City of Milwaukie, Oregon resolves as follows:**

SECTION 1: That Christie Schaeffer is appointed to the Milwaukie Park and Recreation Board.

SECTION 2: That her term of appointment shall commence on May 6, 2008 and shall expire on March 31, 2010.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on May 6, 2008.

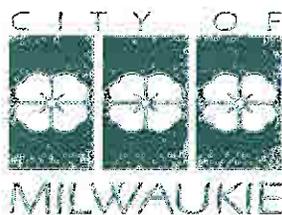
\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager  
Kenneth Asher, Director of Community Development & Public Works  
Gary Parkin, Director of Engineering

**From:** Brenda Schleining, Associate Engineer

**Subject:** Washington Street Paving – Street Surface Maintenance Program (SSMP)

**Date:** April 15, 2008 for the May 6, 2008 Regular Session

**Action Requested**

Authorize the City Manager to sign a contract for paving Washington Street with Morse Bros., Inc. dba Knife River, in the amount of \$270,149 (this amount includes a 10% project contingency).

**History of Prior Actions and Discussions**

**January 2007:** The Street Surface Maintenance Program (SSMP) was developed during 2006 with extensive public outreach and input. The SSMP was formally adopted by the City Council in January 2007 and took effect on July 1, 2007.

**December 2007:** The first Annual Report on the SSMP, December 18, 2007, indicated that paving costs are expected to be higher than estimated for the Oak and Washington Street paving jobs due to traffic control near two major highways – Hwy 99E and Hwy 224. Originally, these two streets were going to be bid out together, but instead they will be bid out separately due to delays with the Union Pacific Railroad on Oak St. Delaying the paving on Oak will assure that the new curb and storm water improvements are in place prior to paving, which will alleviate any cuts in the new asphalt.

**Background**

The SSMP identifies Washington Street (from McLoughlin Blvd. to Hwy 224) as one of the streets for a pavement overlay during the initial year of the program – fiscal year 07/08. This will be the third street paved after 37<sup>th</sup> Ave (from Lake to Wister) and 42<sup>nd</sup> Ave (from Johnson Creek Blvd to Harvey), which were paved last fall.

This project went through a competitive bidding process per Chapter 30 of the City’s Public Contracting Rules. The following table is a summary of all bid amounts and the engineer’s estimate:

	<b>Contractor</b>	<b>Bid Amount</b>
1.	Morse Bros., Inc. dba Knife River	\$245,590
2.	Lakeside Industries	\$246,730
3.	Eagle-Elsner	\$272,325
4.	Kodiak Pacific, Inc.	\$299,927
5.	Hoss Paving, Inc.	\$310,000
6.	Portland Road & Driveway	\$311,795
7.	K.F. Jacobson & Co.	\$315,277
8.	Brix Paving	\$315,417
9.	Roy Houch Construction, Inc.	\$316,190
***	Engineers Estimate	\$260,000

Construction may start as early as May 12, 2008 and must be completed by the end of June 2008. The project duration will be about three weeks, and the starting date will depend on the weather and the contractor’s schedule. The utilities will be adjusted and the contractor will grind away 4-inches of asphalt. Asphalt must be removed to make room for a leveling course and a 2-inch top lift of asphalt. The utilities will be adjusted to the new grade.

The contractor will notify residents and businesses along the project with door hangers. There will be some unavoidable traffic delays and street closures during construction. The City of Milwaukie Street Department installed a project sign in each direction on Washington St several months ago to inform drivers of the upcoming paving. Staff is also coordinating with the affected businesses, schools, utilities, garbage company, tri-met, and post office. The private utilities were also notified on the upcoming 5-year moratorium on Washington.

### **Concurrence**

Engineering staff coordinated with Operations on the scope, limits, and technical requirements for this project.

The Milwaukie Public Works Standards (Adopted May 15, 2007) will be followed to ensure paving mix, quality, placing, and compaction.

The private utility companies are aware of the projects and have indicated they have no conflicts. The five-year utility street cut moratorium will be in effect upon completion of these sections (per the SSMP).

### **Fiscal Impact**

This project is a part of the 2007-08 CIP. The approved SSMP budget includes \$180,000 for paving Washington Street. The recommended bid for \$245,590+ 10% is within the total \$600,000 approved budgeted amount for SSMP projects this budget year.

The original cost estimate for Washington was \$180,000 and the current engineers estimate is \$260,000. In addition to the increased cost for traffic control, petroleum prices have risen by about 30% this past year, which is well above the 4.2% inflation factor used for the SSMP program.

### **Work Load Impacts**

This project is included in the work plans for engineering and operations.

### **Alternatives**

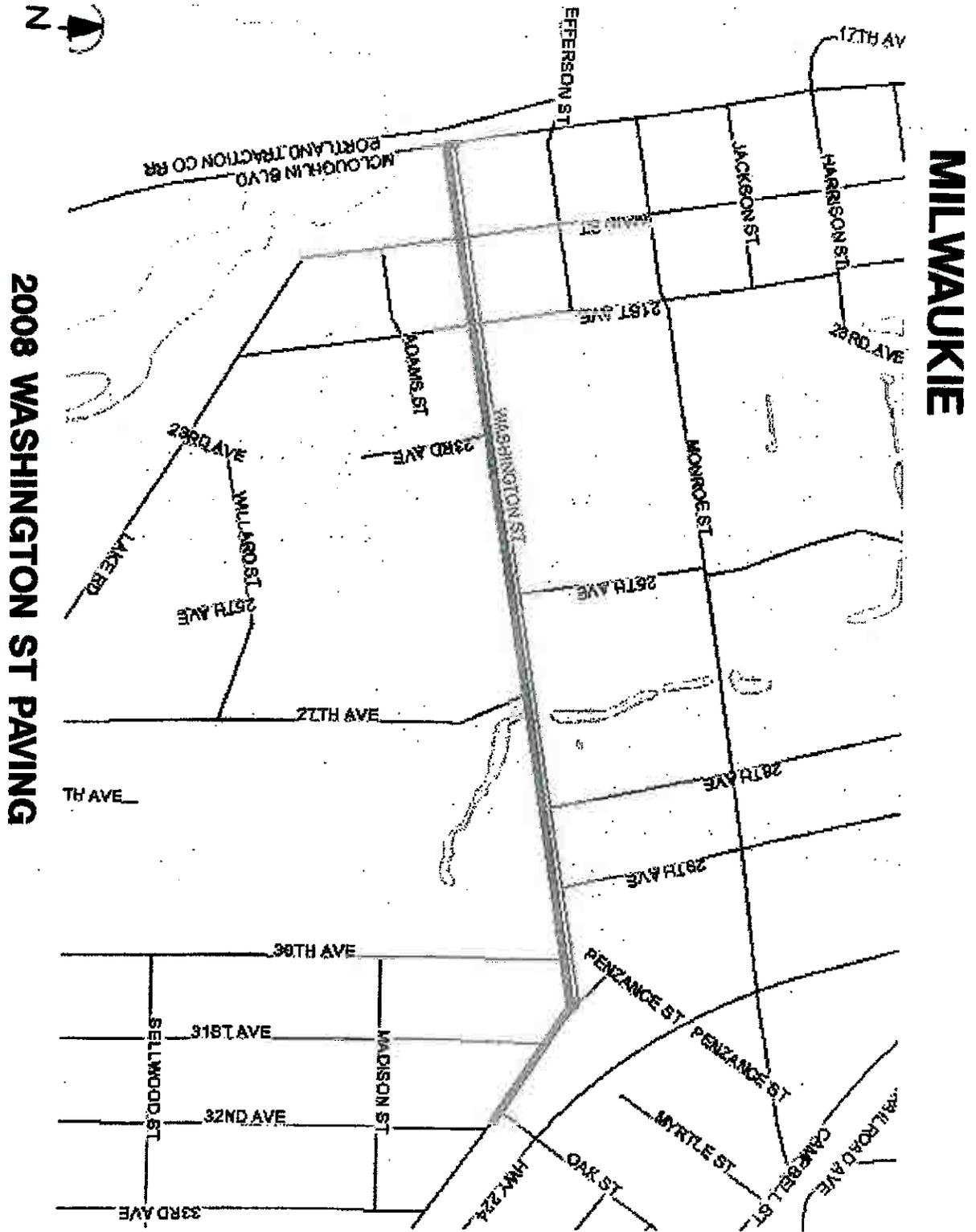
Award contract to the recommended contractor Morse Bros., Inc. dba Knife River.

Reject all bids and defer work - asphalt prices will most likely continue to increase.

### **Attachments**

1. Project Vicinity Map
2. Resolution

ATTACHMENT 1



2008 WASHINGTON ST PAVING

MILWAUKIE

ATTACHMENT 2

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE WASHINGTON ST PAVING (McLoughlin to Hwy 224).**

**WHEREAS**, the Street Surface Maintenance Program was adopted January 2, 2007; and

**WHEREAS**, Washington St. was selected for treatment after analysis of the street system; and

**WHEREAS**, the project was approved for funding in the 2007/2008 budget; and

**WHEREAS**, Morse Bros., Inc. dba Knife River is the lowest responsive bidder;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milwaukie authorizes the City Manager to sign a contract for the paving of Washington St. with Morse Bros., Inc. dba Knife River in the amount of \$270,149.

Introduced and adopted by the City Council on \_\_\_\_\_

This resolution is effective on \_\_\_\_\_

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

6.  
OTHER BUSINESS



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**  
**Kenneth Asher, Community Development and Public Works Director**  
**Gary Parkin, Engineering Director**

**From: Jason Rice, Associate Engineer**

**Subject: Well 8 Rehabilitation -- Phase 2**

**Date: April 14, 2008 for May 6th Regular Session**

**Action Requested**

Authorize the City Manager to sign a contract for the second phase of Well 8 Rehabilitation with DM Excavating Company Inc., in the amount of \$620,000. This amount includes a 20% project contingency.

Staff is also requesting authorization to increase the 2007/08 budget amount for this project by \$155,000.

**History of Prior Actions and Discussions**

**March 20, 2006:** Staff came to council and outlined reasons the City should rehabilitate Well 8 and discontinue an agreement with Clackamas River Water. At the time of this presentation, a cost estimate for the project was \$300,000.

**May 2007:** Murray Smith and Associates was awarded a contract to design the Well 8 Rehabilitation project. The contract was signed for \$89,950 and included engineering services throughout Phase 1 and 2.

**August 2007:** Boart Longyear was awarded a contract to drill the new well (phase 1 of project) and place new casing to prepare for phase 2 (the new pump, line shaft, and well housing).

## **Background**

In 1985, Well No. 8 was constructed to provide 700 gallons per minute (1.0 million gallons per day (MGD)) capacity to the City of Milwaukie water system. Well No. 8 is located off of SE Lake Road near the interchange with Highway 224 (see attachment 1).

A properly functioning Well No. 8 greatly improves the reliability and redundancy of the City's water supply and reduces the need for outside supply through interties.

Beginning in 1998, the capacity of Well No. 8 began to decline rapidly. A study by Pacific Groundwater Group attributed the decline to "bio-fouling" of the well screens. The "bio-fouling" was exacerbated by the presence of highly chlorinated Clackamas River Water (CRW) water in the City of Milwaukie water system. An intertie with the CRW water system is located on SE Harmony Road near the Well No. 8 site.

In April 2005, the Well No. 8 pump caught fire and rendered the well inoperable. The City hired Murray, Smith & Associates (MSA) in December of 2005 to report on the City's options for restoring or increasing the City's water supply. The recommendation from the MSA report was to abandon the inoperable well and drill a new well at the Well No. 8 site. The City Council agreed with report and authorized a solicitation of bids for the design and reconstruction of Well No. 8 at its present site (Resolution #42-2006).

The well drilling contractor, Boart Longyear, has completed drilling and testing the new well. The new well has exceeded expectations for capacity and will be able to provide, once complete, the City with more than 1 MGD, adequately meeting emergency needs.

Bidding for phase 2 of the project (completing the well) was done through a competitive process per Chapter 30 of the City's Public Contracting Rules. The City received three bids by the April 22nd, 2008 2:00 PM bid opening. The following table is a summary of the bids as well as the engineer's estimate.

<b><i>Contractor</i></b>	<b><i>Base Bid</i></b>	<b><i>Bid Alternate</i></b>	<b><i>Total</i></b>
1 DM Excavating Company Inc.	\$328,515	\$257,410	\$585,925
2 Stettler Supply Inc.	\$389,800	\$320,000	\$709,800
3 PCR Inc.	\$406,000	\$348,500	\$754,500
*** Engineers Estimate (MSA)	\$293,000	\$185,000	\$478,000

This bid was composed of two lump sum items. The base bid includes the new pump, line shaft, and well housing modifications to complete the project. The alternate bid item is for a contact chamber. A contact chamber is an oversized pipe that provides time for chlorine to interact with the water pulled from the well. Currently, Oregon Department of

Health regulations do not require a contact chamber for this location, however it may be a requirement in the future and would improve water quality. Even in light of the cost of this project (see fiscal impact section), staff recommends that the contact chamber be installed.

In accordance with Section 30.000 of the Purchasing and Contract Reference Guide 2007, DM Excavating Company Inc. is the lowest responsive and responsible bidder.

**Concurrence**

This project is included in the City's water master plan and Capital Improvement Plan.

Engineering staff coordinated with Public Works Operations on both conceptual and design phases of the project. Both groups agree on the necessity of completing this project.

50% plans were submitted to Planning Staff for a Minor Modification of a Community Service Use. During this process the Planning department placed three conditions on the project that were all met on the plan set that went out for bid March 25<sup>th</sup>, 2008.

The Finance Department concurs that the additional money being requested is available.

**Fiscal Impact**

The following table shows the project cost by fiscal year.

2005/06 -- Site Study		
	Contract	Spent
Murray Smith and Assoc.	\$ 49,720.00	\$ 49,720.00

2006/07 -- Engineering and Design		
	Contract	Spent
Murray Smith and Assoc.	\$ 89,950.00	\$ 11,312.66

2007/08 -- Design and Construction		
	Contract	Spent (planned)
Murray Smith and Assoc.		\$ 68,637.34
Boart Longyear	\$ 262,495.55	\$ 235,158.51
DM Excavating	\$ 620,000.00	\$ 100,000.00
		Total: \$ 403,796 (\$249,200 budgeted)

2008/09 -- Design and Construction		
	Anticipated	Budgeted
Murray Smith and Assoc.	\$ 10,000.00	\$ 20,000.00
DM Excavating	<u>\$ 520,000.00</u>	\$ 520,000.00
	\$ 530,000.00	(needed budget to complete)

Staff is requesting that \$155,000 be transferred to the current budget of \$249,200 for this project to meet the FY 2007/08 funding need of \$403,796 (attachment 2). The water SDC fund (515) (reimbursement portion) is proposed as the funding source. The fund is an appropriate source and has available capital.

The cost overrun for this project (actual cost of \$945,000 compared to initial estimate of \$300,000) is due to the addition of the contact chamber (\$257,410), unforeseen site requirements (such as fencing, and landscaping), as well as additional parts needed to upgrade the existing facilities. Clearly, the initial estimate was inaccurate also.

### **Work Load Impacts**

The workload will be very similar to the first phase. Engineering staff will conduct daily inspections and rely on Murray Smith and Associates for much of the technical details.

### **Alternatives**

- 1) Award contract complete with bid alternate (attachment 3)
- 2) Do not award contract (defer indefinitely)
  - If council wishes not to award contract and remove project from the CIP
- 3) Award Contract without bid alternate
  - Remove bid alternate and construct, if needed, at a later date
- 4) Re-bid project
  - If council approves of the project design but thinks the project should be re-bid for any reason
- 5) Direct Staff to modify project and re-bid
  - If council does not approve of the project was design and/or thinks that re-bidding could reduce cost

Staff recommends awarding contract complete with bid alternate (alternative 1). Well No. 8 is an important part of the City's water system. The project has completed phase 1 successfully, indicating that the new well has a good supply of water. In spite of the project cost escalation, the City is fiscally able to complete the project and bring Well No. 8 back online. Construction costs are unlikely to be lower in the future.

**Attachments**

1. Project Vicinity Map
2. Resolution for Budget Amendment
3. Resolution for Contract to Construct Phase II of Well No. 8

# Well 8 Project Location



ATTACHMENT 2

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
TRANSFERRING APPROPRIATION AUTHORITY.**

**WHEREAS**, the City of Milwaukie has identified the need to rehabilitate Well No. 8 through its 2007/08 Capitol Improvement Plan; and

**WHEREAS**, Construction of Phase I has been completed; and

**WHEREAS**, a formal competitive bidding process following Chapter 30 of the City's Public Contracting Rules was conducted; and

**WHEREAS**, the City of Milwaukie authorizes the City Manager to sign a contract for the construction of Well No. 8 Phase II with DM Excavating, in the amount of \$620,000 (including contingency); and

**WHEREAS**, \$155,000 additional funding is needed in the 2007/08 budget to fund the project;

**NOW, THEREFORE, BE IT RESOLVED** that the transfer of appropriation of \$155,000 from Water SDC (reimbursement) contingency to the Water Capitol and Reserve Fund for the purpose of completing Well No. 8 be authorized.

Introduced and adopted by the City Council on May 6, 2008.

This resolution is effective on May 6, 2008.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

ATTACHMENT 3

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
APPROVING THE AWARD OF CONTRACT FOR THE CONSTRUCTION OF WELL 8  
PHASE II.**

**WHEREAS**, the City of Milwaukie has identified the need to rehabilitate Well No. 8; and

**WHEREAS**, construction of Phase I has been completed; and

**WHEREAS**, a formal competitive bidding process following Chapter 30 of the City's Public Contracting Rules was conducted; and

**WHEREAS**, DM Excavating is the lowest responsive and responsible bidder;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milwaukie authorizes the City Manager to sign a contract for the construction of Well No. 8 Phase 2 with DM Excavating, in the amount of \$585,925 (Exhibit A).

Introduced and adopted by the City Council on May 6, 2008.

This resolution is effective on May 6, 2008.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

# EXHIBIT A



Contract # \_\_\_\_\_

**CITY OF MILWAUKIE, OREGON  
PUBLIC IMPROVEMENT CONTRACT  
WELL NO. 8 RECONSTRUCTION  
PHASE 2  
CIP-07-008**

**THIS CONTRACT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called "City" and

hereinafter called "Contractor", duly authorized to perform such services in Oregon.

### RECITALS

**WHEREAS**, the City requires services which Contractor is capable of providing, under terms and conditions hereinafter described; and

**WHEREAS**, time is of the essence in this contract and all work under this contract shall be completed within the time period stated in the Bid Proposal.

**THEREFORE**, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

**1. Services**

Contractor may have some contact with the public in the course of performing this contract. Contractor shall maintain good relations with the public. Failure to maintain good relations with the public shall constitute a non-curable material breach allowing the City to terminate under Section 14A and to disqualify Contractor from future work for the City.

Contractor's services under this Agreement shall consist of the following:

Contractor shall complete all Work as specified or indicated in the Contract Documents. The project and Work is generally described as follows:

**WELL NO. 8 RECONSTRUCTION – PHASE 2, CIP-07-008**

The project consists of furnishing all labor, materials and equipment for the construction of a new well enclosure including the installation of a submersible well pump and associated piping, and the installation of piping and valving systems in the existing well control house. The project also includes new variable frequency drive, upgrade of the electrical and instrumentation and control systems and upgrade of the gas chlorine system. A bid alternate includes the installation of a 72-inch diameter steel contact pipe and associated piping.

2. **Prevailing Wage**

The provisions of ORS Chapters 279 and all other Oregon and Federal provisions pertaining to minimum salaries and wages are incorporated herein by reference as if fully set forth. The Contractor agrees that the workmen in each trade or occupation required for the work to be done pursuant to the contract, employed in the performance of the Contract, either by the Contractor or Subcontractor or other person doing or contracting to do any part of the work contemplated by the Contractor shall be paid not less than the prevailing, minimum hourly rate of wage specified by the Commissioner of the Bureau of Labor, and attached hereto.

For contracts \$25,000 or greater, the City shall pay a fee equal to one-tenth of one percent (.001) of the price of the contract. The fee shall be paid on or before the first progress payment or 60 days from the date work first began on the contract, whichever comes first. The fee is payable to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Bureau of Labor and Industries  
Wage and Hours Division  
Prevailing Wage Unit  
800 NE Oregon Street, # 32  
Portland, Oregon 97232

3. **Contract Documents**

The Contractor is hereby bound to comply with all requirements of this agreement, the Contractor's proposal, the detailed specifications and requirements, the drawings, and the special conditions and modifications in conditions as set forth in the documents prepared by the City Engineer and the performance pertaining to this contract, in the City of Milwaukie, Oregon, and by this reference made a part hereof to the same legal force and effect as if set forth herein in full.

4. **City's Representative**

For purposes hereof, the City's authorized representative will be the City Engineer, 6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206 Telephone 503-786-7600.

5. **Contractor's Representative**

For purpose hereof, the Contractor's authorized representative will be:

---

6. **Contractor Identification**

Contractor shall furnish to the City the Contractor's employer identification number, as designated by the Internal Revenue Service, or Contractor's social security number, as City deems applicable.

7. **Compensation**

A. **Progress Payments:** City agrees to pay Contractor

\_\_\_\_\_ Dollars  
(use words)

( \$ \_\_\_\_\_ )  
(use figures)

for performance of those services provided hereunder, which payment shall be based upon the following applicable terms:

Payment shall be based upon the unit prices bid by the Contractor, as listed in attached proposal. Contractor shall prepare and submit each month to the City Engineer, 6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206, a statement of services rendered, (indicating the description of each service used in the proposal and the dollar amount of each service completed through the stated date), together with a request for payment duly verified by the Contractor's Representative.

Payment by the City shall release the City from any further obligation for payment to Contractor for services performed or expenses incurred as of the date of the statement of services. Payment of installments shall not be considered acceptance or approval of any work or waiver of any defects therein. City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

Contractor shall include proof of payment to any and all subcontractors and suppliers with each statement submitted to the City. The City shall retain the right to withhold payments if required proof of payment to subcontractor and suppliers is not included with a statement.

B. **Timing of Payments:** Progress payments, less a five percent retainage as authorized by ORS 279C.555, shall be made to the Contractor within twenty (20) days of the City's receipt of the statement of services. The Contractor agrees that the "Time of Completion" is defined in the Bid Proposal, and agrees to complete the work by said date. The Contractor and City agree that the City will suffer damages each day the work remains uncompleted after the Time of Completion and that the amount of those damages are difficult to calculate. Contractor and City agree that a reasonable amount of damages for late completion is \$ \_\_\_\_\_ per day and Contractor agrees to pay damages in that amount if the work is not completed by the Time of Completion.

C. **Final Payment:** The Contractor shall notify the City in writing when the Contractor considers the project complete, and the City shall, within 15 days after receiving the written notice, either accept the work or notify the Contractor of work yet to be performed on the contract.

Upon acceptance by the City, the entire balance due to the Contractor, including the retained percentage, shall be paid to the Contractor, by the City within 30 days after the date of said final acceptance.

The City shall pay to the Contractor interest at the rate of one and one-half percent per month on the final payment due the Contractor, to commence 30 days after the work under the Contract has been completed and accepted and to run until the date when final payment is tendered to the Contractor. If the City does not, within 15 days after receiving written notice of completion, notify the Contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

As a further conditions of final acceptance, the City may require the Contractor to submit evidence, satisfactory to the City's Representative, that all payrolls, material bills, and other indebtedness connected with the project have been paid, except that in case of any disputed indebtedness or liens, the Contractor may submit in lieu of evidence of payment, a surety bond satisfactory to the City guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by surety bond.

8. **Status Of Contractor As Independent Contractor**  
Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent Contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.
- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- C. If this payment is to be charged against Federal funds, Contractor certifies that he or she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

- D. Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- E. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- F. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

**9. Subcontracts - Assignment & Delegation**

Contractor shall submit a list of Subcontractors for approval by the City, and Contractor shall be fully responsible for the acts or omissions of any Subcontractors and of all persons employed by them, and neither the approval by City of any Subcontractor nor anything contained herein shall be deemed to create any contractual relation between the Subcontractor and City.

This agreement, and all of the covenants and conditions hereof, shall inure to the benefit of and be binding upon the City and the Contractor respectively and their legal representatives. Contractor shall not assign any rights nor delegate any duties incurred by this contract, or any part hereof without the written consent of City, and any assignment or delegation in violation hereof shall be void.

**10. Contractor - Payment of Benefits - Hours of Work**

A. The Contractor shall:

- 1) Make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for in this contract;
- 2) Pay all contributions or amounts due the under the Worker's Compensation Law from such Contractor or Subcontractor incurred in the performance of this contract;
- 3) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 4) Pay fee to the Bureau of Labor and Industries
- 5) Not permit any lien or claim to be filed or prosecuted against the City of Milwaukie, on account of any labor or material furnished;

B. The Contractor or the Contractor's Surety and every Subcontractor or the Subcontractor's Surety shall file certified statements with the City in writing in form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage, which certificate and statement shall be verified by the oath of the

Contractor or the Contractor's Surety or Subcontractor or the Subcontractor's Surety that the Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor's or Subcontractor's knowledge.

- 1) The certified statements shall set out accurately and completely the payroll records for the prior week, including the same and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.
  - 2) Each certified statement required herein shall be delivered or mailed by the Contractor or Subcontractor to the City. A true copy of the certified statements shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries. Certified statements shall be submitted as follows:
    - a) For any project 90 days or less from the date of the award of the contract to the date of completion of work under the contract, the statements shall be submitted once before the first payment is made, and once before final payment is made of any sum due on account of the contract.
    - b) For any project exceeding 90 days from the date of the award of the contract to the date of completion of work under contract, the statements shall be submitted once before the first payment is made, at 90 day intervals thereafter, and once before final payment is made of any sum due on account of the contract.
    - c) Each Contractor or Subcontractor shall preserve certified statements for a period of three years from the date of completion of the contract.
- C. The Contractor agrees that if the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this contract as such claim becomes due, the proper office of the City of Milwaukie may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of such contract. Payment of a claim in this manner shall not relieve the Contractor or the Contractor's Surety from obligation with respect to any unpaid claims.
- D. Contractor agrees that no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or where the City of Milwaukie absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday as specified in ORS 279C.540.

- E. No City employee shall be required to work overtime or on a Saturday, Sunday or holiday in the fulfillment of this contract except where the Contractor agrees to reimburse the City in the amount of money paid the employee for such work as determined by state law, the City's personnel rules or union agreement. The Contractor shall require every Subcontractor to comply with this requirement.

11. **Drug Testing Program**

ORS 279C.505 requires that all public improvement contracts contain a provision requiring contractors to demonstrate that an employee drug-testing program is in place. The Contractor demonstrates that a drug-testing program is in place by signing of the contract. The drug testing program will apply to all employees and will be maintained for the duration of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

12. **Contractor's Employee Medical Payments**

Contractor agrees to pay promptly as due, to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness or injury to the Contractor's employees, all sums which the Contractor agreed to pay for such services and all money and sums which the Contractor collected or deducted from employee wages pursuant to any law, contract or agreement for providing or paying for such service.

13. **Early Termination**

- A. This agreement may be terminated without cause prior to the expiration of the agreed upon term by mutual written consent of the parties and for the following reasons:

- 1) If work under the Contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than a suit or action filed in regard to a labor dispute; or
- 2) If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract.

- B. Payment of Contractor shall be as provided by ORS 279C.660 and shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Contractor against City under this Agreement.

- C. Termination under any provision of this paragraph shall not affect any right, obligation, or liability of Contractor or City which accrued prior to such termination.

14. **Cancellation with Cause**

- A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds,
- 2) If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement,
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed, or
- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.
- 5) If Contractor fails to maintain reasonable relations with the public. Verbal abuse, threats, or other inappropriate behavior towards members of the public constitutes grounds for termination.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**B.** City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (b), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall

be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

**15. Access to Records**

City shall have access to such book, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.

**16. Work is Property of City**

All work performed by Contractor under this Agreement shall be the property of the City.

**17. Adherence to Law**

- A. Contractor shall adhere to all applicable laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning workers' compensation, and minimum and prevailing wage requirements.
- B. To the extent applicable, the Contractor represents that it will comply with Executive Order 11246 as amended, Executive Order 11141, Section 503 of the Vocational Rehabilitation Act of 1973 as amended and the Age Discrimination Act of 1975, and all rules and regulations issued pursuant to the Acts.
- C. As provided by ORS 279C.525, all applicable provisions of federal, state or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the work under this contract are by reference incorporated herein to the same force and affect as if set forth herein in full. If the Contractor must undertake additional work due to the enactment of new or the amendment of existing statutes, ordinances or regulations occurring after the submission of the successful bid, the City shall issue a Change Order setting forth the additional work that must be undertaken. The Change Order shall not invalidate the Contract and there shall be, in addition to a reasonable extension, if necessary, of the contract time, a reasonable adjustment in the contract price, if necessary, to compensate the Contractor for all costs and expenses incurred, including overhead and profits, as a result of the delay or additional work.

**18. Changes**

City may at any time, and without notice, issue a written Change Order requiring additional work within the general scope of this Contract, or any amendment thereto, or directing the omission of or variation in work. If such Change Order results in a material change in the amount or character of the work, an equitable adjustment in the Contract price and other provisions of this Contract as may be affected may be made. Any claim by Contractor for and adjustment under this section shall be asserted in writing within thirty (30) days from the date of receipt by Contractor of the notification of change or the claim will not be allowed. Whether made pursuant to this section or by mutual agreement, no change shall be binding upon City until a Change Order is executed by the Authorized Representative of City, which expressly states that it constitutes a Change Order to this Contract. The

issuance of information, advice, approvals, or instructions by City's Representative or other City personnel shall not constitute an authorized change pursuant to this section. Nothing contained in this section shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the Contract, as changed.

19. **Force Majeure**

Neither City nor Contractor shall be considered in default because of any delays in completion of responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the party so disabled, including, but not restricted to, an act of God or of a public enemy, volcano, earthquake, fire, flood, epidemic, quarantine, restriction, area-wide strike, freight embargo, unusually severe weather or delay of Subcontractor or suppliers due to such cause; provided that the party so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under Contract.

20. **Nonwaiver**

The failure of the City to insist upon or enforce strict performance by Contractor of any of the terms of this contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

21. **Warranties**

All work shall be guaranteed by the Contractor for a period of one year after the date of final acceptance of the work by the Owner. Contractor warrants that all practices and procedures, workmanship, and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this contract.

22. **Attorney's Fees**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may adjudge reasonable attorney's fees and court costs including attorney's fees and court costs on appeal.

23. **Governing Law**

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any questions arising under this Agreement must be brought in the appropriate court of the State of Oregon.

24. **Conflict Between Terms**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the proposal of the Contractor, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

**25. Indemnification**

Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the negligence of the City and its employees. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

**26. Insurance**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

- A. **Commercial General Liability Insurance:** Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1986 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$50,000
Medical Expense (Any one person)	\$5,000

- B. **Commercial Automobile Insurance:** Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the contract, Commercial

Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

- C. Workers' Compensation Insurance: The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not to obtain such coverage." This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 each accident.
- D. Additional Insured Provision: The City of Milwaukie, Oregon, its officers, directors, and employees shall be added as additional insureds with respect to this contract. All Liability Insurance policies will be endorsed to show this additional coverage.
- E. Notice of Cancellation: There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days notice of cancellation provision shall be physically endorsed on to the policy.
- F. Insurance Carrier Rating: Coverage provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- G. Certificates of Insurance: As evidence of the insurance coverage required by the contract, the contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.
- H. Independent Contractor Status: The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.
- I. Primary Coverage Clarification: All parties to this contract hereby agree that the contractor's coverage will be primary in the event of a loss.

J. Cross-Liability Clause: A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this contract.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Office of City Recorder	Business Phone: 503-786-7504
City of Milwaukie	Business Fax: 503-653-2444
10722 SE Main St.	Email Address: ocr@ci.milwaukie.or.us
Milwaukie, Oregon 97222	

Such policies or certificates must be delivered prior to commencement of the work. Ten days cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

27. **Method and Place of Giving Notice, Submitting Bills and Making Payments**

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

<b>City of Milwaukie</b>	<b>Contractor:</b>
Attn: Accounts Payable	Attn:
10722 SE Main St., Milwaukie, Oregon 97222	Address
Phone: 503-786-7524	Phone:
Fax 503-786-7528	Fax:
Email Address: finance@ci.milwaukie.or.us	Email Address:

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

28. **Hazardous Materials**

Contractor shall supply City with a list of any and all hazardous substances used in performance of this Agreement. That list shall identify the location of storage and use of all such hazardous substances and identify the amounts stored and used at each location.

Contractor shall provide City with material safety data sheets for all hazardous substances brought onto City property, created on City property or delivered to City pursuant to this Agreement. For the purpose of this section, "hazardous substance" means hazardous substance as defined by ORS 453.307(4). Contractor shall complete the State Fire Marshall's hazardous substance survey as required by ORS 453.317 and shall assist City to complete any such survey that it may be required to complete because of substances used in the performance of this Agreement.

**29. Hazardous Waste**

If, as a result of performance of this Agreement, Contractor generates any hazardous wastes, Contractor shall be responsible for disposal of any such hazardous wastes in compliance with all applicable federal and state requirements. Contractors shall provide City with documentation, including all required manifests, demonstrating proper transportation and disposal of any such hazardous wastes. Contractor shall defend, indemnify, and hold harmless City for any disposal or storage of hazardous wastes generated pursuant to this Contract and any releases or discharges of hazardous materials.

**30. Severability**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.

**31. Complete Agreement**

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

**IN WITNESS WHEREOF**, the City has caused this agreement to be executed by its duly authorized undersigned officer, acting pursuant to authorization of the City Council, duly passed at the regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, and the Contractor has executed this agreement on the date herein above first written.

**CITY OF MILWAUKIE**

**CONTRACTOR**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name & Title*

\_\_\_\_\_  
*Printed Name & Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

Creation of Milwaukie Arts Committee



To: Mayor and City Council  
Through: Mike Swanson, City Manager  
From: Beth Ragel, Community Services Program Coordinator  
Subject: Milwaukie Arts Committee—Member Appointments  
Date: May 6, 2008

Action Requested

Approve the attached ordinance amending Chapter 2 of the Milwaukie Municipal Code adding Section 2.17 to create the Milwaukie Arts Committee.

History of Prior Actions and Discussions

At the March 18, 2008 regular session City Council adopted an ordinance to create the Milwaukie Arts Committee. These ordinances created The Milwaukie Arts Committee--a committee for which seven people would be appointed to promote the arts within Milwaukie. Council interviewed ten candidates for the Milwaukie Arts Committee at its April 15, 2008 work session and regular session meetings City. After the interviews Council discussed the potential members and favored appointing all ten candidates. Council directed staff to change the Ordinances making the Arts Committee a 10-person committee rather than a 7-person committee.

Attached is adopting ordinance to create this committee—revised to include ten members.

Concurrence

The Community Services Department, Design and Landmarks Committee, City Attorney, Community Development and Public Works, and Planning Directors concur with this proposal.

Fiscal Impact

None at this time.

### **Work Load Impacts**

Workload impacts will be moderate. City staff person, Beth Ragel, has been identified as the staff liaison to this new committee and will provide basic assistance and guidance. It is anticipated that the committee will be self-motivated and not require a lot of staff assistance or time.

### **Alternatives**

1. Accept the attached ordinance as written to create the Milwaukie Area Arts Committee.
2. Direct staff to modify the attached ordinance.
3. Deny approval of the attached ordinance and direct staff on further action.
4. Take no action.

### **Attachments**

1. Adopting Ordinance

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 2 OF THE MILWAUKIE MUNICIPAL CODE TO REVISE SECTION 2.17, THE MEMBERSHIP AND TERMS OF OFFICE OF THE MILWAUKIE ARTS COMMITTEE.**

**WHEREAS**, the City Council by Ordinance No. \_\_\_\_ created the Milwaukie Arts Committee on \_\_\_\_\_, 2008,

**WHEREAS**, the City Council has determined that the number of members of the committee should be increased to accommodate the large number of interested and qualified applicants who seek membership,

**WHEREAS**, by having a larger membership the committee will have greater opportunity to work to bring multiple partners together to promote and enhance arts in all forms within the City;

**NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

Section 1. The Milwaukie Municipal Code Chapter 2.17 is amended in part to read:

**2.17.20 membership.**

The committee shall consist of ten members appointed by the Mayor with the consent of the City Council. The majority of members shall be residents of the City.

**2.17.030 Term of office.**

Initially five members shall serve a three-year term and five shall serve a two-year term. At the expiration of the initial terms, each position shall be filled for a two-year term.

Section 2. The remaining sections of Chapter 2.17 remain as written.

Read the first time on \_\_\_\_\_, and moved to second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_  
Jim Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

Document1 (Last revised 09/18/07)

# 7. INFORMATION

North Clackamas Parks and Recreation District  
MILWAUKIE CENTER/COMMUNITY ADVISORY BOARD  
Minutes of March 14, 2008

MEMBERS PRESENT: Joan Staley, Chuck Petersen, Joy Estes, Molly Hanthorn, Jane Hanno, Ben Horner-Johnson, Kim Buchholz, Katie Rudfelt, Carolyn Mills, Ben Tabler

MEMBERS EXCUSED: Eleanor Johnson

STAFF PRESENT: Joan Young, Donna Lugibihl, Beth Meyer

CALL TO ORDER: Joan Staley called the meeting to order at 9:35 am. Motion was made to accept the minutes as printed. Chuck asked that the minutes be approved and was seconded by Ben Horner-Johnson. Minutes were approved unanimously.

GUESTS: None

CORRESPONDENCE: None

DISCUSSION & ACTION ITEM:

Joan Y. passed out the Milwaukie Center Budget Planning packet for 2008-2009, with fiscal year 2007-08 year end notes. Kim went through and highlighted some of the accomplishments for the past fiscal year and items that will be included in the new budget. He noted that this past year has included many capital repairs and interior upgrades to the Center.

In the last fiscal year, the Nutrition Program obtained a new dishwasher, received \$9,000 income from managing the NCP concessions stand and successfully ran the March for Meals fund-raising campaign.

This past budget year, the Transportation Program has worked hard on getting bus ad revenue, but is dealing with a reduced number of riders and a large increase in gas costs. Joan explained that it has become harder and harder to qualify for Medicaid reimbursement and therefore, a reduced number of Medicaid-eligible bus riders.

Recreation Services has seen growth in Travel Program day trips and the trekkin' walking program and hired a new Recreation Supervisor, Beth Meyer.

Items included in the proposed 2008-2009 budget include:

- Full time staff positions going to a 40 hr/wk which would be a 9% increase in wages
- Allocated costs (such as computer support) will increase significantly.

- Capital Improvement requests include back flow device, moveable wall repairs, retrofitting for generator.
- An average utility increase between 10-11%
- Joan requested that Cheryl Nally stay on part time (15 hr/wk) for special projects (grant writing)

Nutrition Program will continue to grow the March for Meals fund-raising drive and NCP concession stand efforts and will create a task force to review the decrease in congregate meals and make recommendations.

Transportation Program will ensure bus ads are at maximum revenues.

#### Recreation Services

Beth went through the budget for Recreation Services and has proposed adding more programs to help offset the increased costs. Part of the increased personnel costs for 2008-09 is for Beth's salary and for full time staff going to 40 hrs/wk.

Joan Y. noted that the proposed budget will now be sent to NCPRD Administration and then the DAB, where they will review it line by line. Kim made a motion that the proposed 2008-09 budget be referred to the District Advisory Board. Molly seconded it and it was passed unanimously.

### BOARD/COMMITTEE REPORTS

#### NC DISTRICT ADVISORY BOARD MEETING

Molly reported that the DAB met on Thursday evening, March 13. Dan Zinzer proposed a naming process for the District. Nominations will come from the general public, with an appointed review committee submitting a recommendation to the DAB. The DAB will send the proposed name to the BCC for their review and approval. This process will start in March 2008 through January 2009 and was approved by the DAB.

A copy of the Field Use Policies and Procedures was distributed and will be reviewed at a future meeting.

There was a lot of discussion about the Portland to Milwaukie Light Rail Project and how it will affect parks along the route. There are still questions about Kronberg and the Trolley Trail parks and how they will be impacted.

The Molalla annexation must be voted on by Molalla residents and by residents of NCPRD. There is some urgency as it needs to be submitted for the May 20<sup>th</sup> election. A group is being formed to provide information to the public.

Michelle Healy had a listing of capital projects for the next 5 years. There was a lot of discussion, suggestions and questions. The Board's concerns will be addressed in this document as it appears in the budget.

The NCPRD bond sale to fund land purchase and some capital improvements at the new Happy Valley Community Park occurred on Feb 20. Because of the NCPRD's good financial rating, the bonds were upgraded to an A+ rating and a 3.78% interest rate. Because of the improved rating, the debt service payments on the bonds will be reduced by \$40,000 annually over the term of the bonds.

The next meeting is scheduled for April 10 at 5 pm which will be a budget work session. Dinner is included.

#### NC PARK STEWARDSHIP COMMITTEE

Joan reported for Eleanor who was on a trip. The Stewardship committee met on February 27. The newly hired Natural Resource Director, Tonia Burns, will be working very closely with the Stewardship Committee. It was reported that a committee will be established to determine Rules for the dog off leash area. The first phase of north side improvements will be to expand the dog off leash area and to split it into two sections – one for large dogs and one for small dogs.

The Friends of North Clackamas Park and staff will be celebrating Earth Day at the Milwaukie Center on Tue, April 22. Fun activities are planned.

The horse arena is still not completed yet because of poor weather. Hopefully it will be up and running for next year.

#### NUTRITION/TRANSPORTATION COMMITTEE

Ben Tabler reported that the March for Mutts netted \$397 and that the March for Meals is currently underway. Last year's proceeds were \$16,000 and this year they're hoping for \$25,000. There are 4 restaurants participating and several other businesses are taking collections.

Ben noted that last year the ball field concession stands netted \$9,000 and they expect to do much better this year. There are also plans to add a Papa Murphy's pizza wagon this year.

The Valentine candy sales brought in \$2,500 and they are now selling Easter Candy until March 21.

#### FUTURE VISION TASK FORCE

Kim reported that the Task Force met on Thu, March 13. They are drafting a 4 part statement that should be completed by April. It relates to the mission statement which is to continue to grow and ensure the future of the Milwaukie Center.

## FRIENDS OF THE MILWAUKIE CENTER, INC.

Joan Y reported for Eleanor. There were no final results yet for the Spaghetti Dinner although the numbers were down for the poker tournament. Willamette View and Clackamas Federal Credit Union were the two major sponsors for the event.

The Wine and Roses Dinner Theatre is coming up on Sat, May 3, along with a live and silent auction. This is one of the Friend's biggest fund-raisers so Joan encouraged everyone to support it and invite their friends.

## GOVERNOR'S COMMISSION

Joan Staley said that the commission did not meet so there was nothing to report.

## CENTER REPORT

Joan mentioned about the March for Meals and how some of the restaurants in the area are supporting this fund-raiser. Some of the restaurants require coupons, which are available at the Center. Bob's Red Mill is matching donations so that would be a great place to donate.

The 14<sup>th</sup> Annual Community Quilt Show will be held on March 21 and 22<sup>nd</sup>. The special exhibit this year is "Milestone Quilts" which are quilts made for a special occasion or celebration. Raffle quilt tickets are being sold for the "Sun & Sky" Quilt, \$1 each or 6 for \$5.

The Spring Healthy Living Guide is now out so look for your copy.

## INFORMATION/ANNOUNCEMENTS

Donna L. reported that the tax program is totally booked through April 15 and there's a long waiting list. Two clinics have also been scheduled to help those who need to file to get the stimulus money.

Joan Staley and Eleanor Johnson thought it would be a good idea to have a luncheon and invite people who have previously served on this board as well as past staff employees. Joan Y said she would try to get the names and contact information together.

## AGENDA FOR NEXT MEETING

Joan Y. thought it might be helpful to ask staff who haven't attended a C/CAB meeting to come in April. Joan also thought it would be beneficial to show how much the Friends donate to the Center. Molly suggested that we might want to invite people from Happy Valley to serve on the Board.

ADJOURN –The board meeting was adjourned by Chair Joan Staley at 10:28 am.

Minutes prepared by: Donna Lugibihl

North Clackamas Parks and Recreation District  
**Milwaukie Center Division**  
Monthly Report for March, 2008

***Programs/Services:***

With the Federal 'Economic Stimulus Check' payments available to all eligible households, the Tax Aide program and the Milwaukie Center have had to gear up quickly to meet the needs of those who don't regularly file income taxes but qualify for the upcoming stimulus payment. This Federal program has been developed and is being implemented within a few short weeks. The Center has responded with immediate outreach and assistance for those older adults who need to file for this payment.

The 14<sup>th</sup> annual Quilt Show was a great success. This year's theme was Milestone Quilts, with more than 120 quilts displayed – from antiques to brand new. Over 1,500 raffle tickets were sold for the beautiful "Sun and Sky" raffle quilt. Terri Sasse, an avid quilter, won the quilt. Nearly 1,000 people attended this year's show. The success of the show was due to the dedication of the volunteer Quilt Show Committee that meets year-around to plan the event, and dozens of volunteers helping throughout the event.

March marked the completion of Winter Term classes. Over 440 participants enjoyed art, exercise, language, computer classes, and more. The week of March 31, over three dozen offerings for Spring Term classes started up, with several of the classes already at capacity.

Our second corporate volunteer team, New Seasons Market at Happy Valley, has started delivering Meals on Wheels once a week. The New Seasons team delivers on Wednesdays in their service area, around Sunnyside Road. Milwaukie Branch of Clackamas Federal Credit Union employees have been delivering meals every Thursday for several years.

Folks enjoyed visiting popular destinations with the Travel Program during March, including the Trappist Abbey, Carson Hot Springs Resort and the popular annual St. Patrick's Day outing to Kell's Irish Pub in downtown Portland. Additionally, "Keep On Trekkin'" destination walks to downtown Milwaukie, Sellwood, and Westmoreland Park included people from our current and very successful 10-week walking program. Over 14 million steps have been logged to date by this group of avid walkers!

***Facility:***

With the volunteer guidance of two interior design professionals, the Center is sporting new carpet, vibrant paint colors inside & out, and new fabrics on many existing pieces of furniture, in addition to some new furniture. The finishing touches of new countertops and a glass tile accent wall are just around the corner. The commercial kitchen has a desperately needed new dishwasher. The sidewalk outside the South side of the building has been improved and replaced. After fifteen years, the Center looks great!

***Fund-raising:***

The Transportation Program's transit advertising sells space on the outsides of the buses to support provision of transportation for older adults and people with disabilities. Revenue of \$20,000 annually comes from this program. The latest advertisers include Bob's Red Mill and Water Environmental Services.

The 3<sup>rd</sup> Annual March for Meals campaign has been busy. Despite cold, wet weather, March for Mutts garnered revenue of \$327 and lots of good will for our dog-friendly community. Clackamas County employees held a delicious breakfast mid-month netting \$567.50. New Seasons Market in Happy Valley staged two weekends of the March for Meals campaign. The Bomber, Claim Jumper, Noodles and Sweet Tomatoes provided opportunities to eat out and support March for Meals. Bob's Red Mill matched donations throughout the month while Clackamas Federal Credit Union and Columbia Bank gathered donations. Month-long event sponsors included North Pacific Supply Co., Homewoods on the Willamette, Rose Villa & West Coast Bank.

# Park & Recreation Board

## PARB

Tuesday, February 26, 2008

7:30AM

City Hall – Conference Room

10722 SE Main Street

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### Minutes

<b>Type of meeting:</b>	Regular
<b>Attendees:</b>	Mart Hughes, Sherri Dow, Ray Harris, Val Hubbard, Bob Cooper
<b>Absent:</b>	Kate MacCready,
<b>Staff:</b>	JoAnn Herrigel, Joan Young, Kevin Cayson
<b>Guests:</b>	Michelle Healy, Dana Cody

### Minutes

November minutes of the joint meeting with the Riverfront Board were approved 6-0.

### Report on NCP Master Plan

Michelle Healy provided the Board with the final proposed master plan for the north portion of North Clackamas Park. Following summarizes her presentation:

- NCPRD held 3 public meetings and an open house
- The CCAB has reviewed the plan
- A survey was conducted on options for the north side plan
- Staff took the plan to the DAB in January (DAB liked it in concept but wanted the City's input)
- Additional parking is now integrated
- Dog run is moved to east away from creek
- 70 foot buffers on streams are integrated
- Traffic flow still needs some work – Milwaukie Center users still have concerns
- Controlled access only to creeks (all crossings currently exist)
- Master gardeners green house is in the plan
- Maintenance shed is located to accommodate both the Milwaukie center and the Park maintenance equipment
- Restroom is relocated

- Exercise stations will include both interactive equipment and interpretive signs about health
- Existing A frame is replaced with 80-person A Frame plus a smaller shelter
- Project will be phased: Phase 1 (\$1.5 million) will build pathway, do environmental enhancement, educational interpretation, move dog run, master gardeners hut, new fencing and replace west end crossing.
- Phase 2 will rebuild restrooms, picnic shelter and install maintenance and storage buildings and maybe the caretaker building
- Phase 3 would do the parking lot and access over creeks
- Phase 4 would install play equipment, signage and exercise stations

Board comments:

- Hubbard: what is time frame for construction? (Healy – depends on funding – project costs is estimated at \$3million)
- Hughes: wouldn't trees have to be removed for the parking lot or shelters (Healy – don't know yet but design development will determine that)
- Hughes: is there methodology in the plan for retaining trees or at least replacing those that are removed. Notes that the Urban Forestry program in Portland has a process like this. He expressed his interest in seeing where the trees are and which ones would be affected. He said he hoped that trees of equal caliper replaced those that needed to be removed.
- Herrigel and Healy said that the project staff would soon meet with City Planning staff to determine what land use processes were going to be required. Herrigel said that typically design plans showed landscape plans that identified which trees were proposed to be removed and/or replaced.

Harris made a motion to approve the concept plan for the north side of North Clackamas Park pending clarification of land use processes and integration of tree location and replacement plan. Motion passed 5-0.

## District Budget/CIP

Healy said the District Master Plan was adopted in 2000. It is reviewed and revised every 10 years. Capital projects listed in the master plan span a 20-year period. The Capital Improvement Plan (CIP) informs the use of the System Development Charges (SDCs). The District just increased the SDCs recently. SDC funds go mostly to regional projects. District does 5 year CIP and this is reviewed by the DAB. March 13 the DAB will start discussing what they hope to do next year. Decisions on projects will be later in the budget process. She noted that April 10<sup>th</sup> the DAB will go through their whole budget.

Hughes noted that the SDC rate in Milwaukie is lower than Happy Valley's. He posited that if the City had more projects we could have a higher SDC rate.

Healy noted that SDC calculation involved a fairly complicated formula. Many things play into the establishment of the actual rates.

Herrigel said she would propose that the PARB do some priority setting next meeting for both maintenance issues (annual expenditures) and capital projects. All agreed that would be a good idea.

Hughes: should the pond house property be annexed into Scott Park?

### **District Update**

- Natural Resource person has been hired (Tanya)
- Feiffer Park @122<sup>nd</sup> dedicated 4:30 on March 13 – it's an active recreation park with soccer fields and ball fields
- Molalla is looking at annexation to the District – vote in May
- Canby and Estacada also in discussion with District re: annexation
- Aquatic Park boiler is down – cold showers available only
- Milwaukie center holding 3<sup>rd</sup> annual March for Meals (delivered 75,000 meals last year and expect 77-78,000 next year)
- Cheryl Nally, human services for the Center has retired and position will be filled

### **City Update**

**Spring** – Beth Ragel working with Lando and Associates to design parking and integrate it into the plan previously approved by Planning Commission.

**Balfour** – Property acquisition completed by the City. Site being stabilized.

**Century** – tennis courts being remodeled.

Motion to adjourn by Harris, seconded by Cooper and passed 5-0.