

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
JUNE 2, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2055<sup>th</sup> meeting of the Milwaukie City Council to order at 7:40 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Sr. Planner Susan Shanks, Planning Director Katie Mangle, Community Services Director JoAnn Herrigel, and Engineering Director Gary Parkin

**PLEDGE OF ALLEGIANCE****PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

Principal Mark Pinder introduced Milwaukie High School Student of the Month Amy Aschenbrenner.

**CONSENT AGENDA**

**Councilor Chaimov** requested that in addition to tax lot numbers that maps be provided to the City Council in the future when property was involved such as the sewer extension project. He also requested information on OLCC applicants as he did not wish to vote on any he or his colleagues were representing.

**It was moved by Councilor Chaimov and seconded by Councilor Loomis to adopt consent agenda as presented:**

- A. City Council Work Session Minutes of February 3, 2009;**
- B. City Council Work Session Minutes of March 17, 2009;**
- C. City Council Regular Session Minutes of May 5, 2009;**
- D. City Council Regular Session Minutes of May 19, 2009;**
- E. Resolution 30-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Sherri Dow to the Milwaukie Park and Recreation Board;**
- F. Resolution 31-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Patty Wisner to the Design and Landmarks Committee;**
- G. Resolution 32-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Declaring the Need to Acquire and Approve the Purchase and/or Condemnations of Easements in the Dual Interest Area "A" for the Construction of the Northeast Sewer Extension Project;**
- Resolution 33-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the Appraisal and Easement Acquisition Services Associated with Northeast Sewer Extension Project with Right-of-Way Associates, Inc; and**
- H. OLCC Application for River Road House, 11931 SE 22<sup>nd</sup> Avenue, Change of ownership.**

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

**CITY COUNCIL REGULAR SESSION – JUNE 2, 2009**

**APPROVED MINUTES**

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## AUDIENCE PARTICIPATION

None.

## PUBLIC HEARING

### Adoption of Proposed Transportation Code Amendments, Land Use File ZA-09-02 – Ordinances

**Mayor Ferguson** opened the hearing on the legislative transportation code amendments to the Milwaukie Municipal Code initiated by the City that was continued from May 5, 2009.

**City Attorney Monahan** reviewed the purpose and procedure of the hearing. No conflicts of interest were declared, and there were no jurisdictional challenges from the audience.

**Ms. Mangle** provided background on the requested amendment to the zoning ordinance which regulated development. This package was about transportation planning and was one of many ways in which applications were reviewed for traffic impacts and community frontage needs for multimodal access, safety, and beauty. The City did not wish to allow development which the transportation system could not support, so the intent of these amendments was to strengthen and clarify the link. Development triggered certain improvements according to tax lots and did not apply to the Capital Improvement Plan (CIP) or projects of other public agencies. The amendments would apply to City properties. This effort was not transportation planning or promotion of City streets but rather impacts to the transportation system brought about by development.

**Ms. Shanks** provided the initial staff presentation. The action requested was for the City Council to adopt amendments to Milwaukie Municipal Code Title 19 Zoning, Title 17 Land Division, Title 15 Building and Construction, and Title 12 Streets, Sidewalks, and Public Places. Additionally there was a related fees schedule for transportation applications. All proposed changes were described in more detail in the commentary draft. Ms. Shanks provided project background which City staff with the assistance of the Angelo Planning Group had been working on for over one year. The project was about this one section of the City's development code and was not a street improvement program. The City developed a detailed scope of work, identified problems, and scheduled stakeholder meetings. Broadly the project goals were to develop fair, consistent and constitutional requirements, to implement the Transportation System Plan (TSP), and to develop a user-friendly code for the public and staff. The proposed amendments addressed legal obligations, improvement triggers, street design standards, the review process, and fee in lieu of construction (FILOC).

**City Attorney Monahan** stated in order to meet legal obligations the improvements had to relate to and be proportional to development impacts created by the project. These amendments brought the code up to date, and the attorney's office was part of the project team. He was satisfied the effort brought the code into legal compliance and was defensible. It replaced the value-based triggers with impact-based triggers, and he believed the rationale in the proposed code better served the objective of developers contributing to the infrastructure in an equitable manner. It better defined the FILOC program. It recognized the City's responsibility to perform the impact analysis each time there was a land use application that could impact the transportation system. In addition the responsibilities of the City and development community were defined along with identifying the criteria that needed to be applied on a consistent basis.

**Ms. Shanks** discussed the change to the impact-based approach that looked at whether additional lots would be built, if floor space was added, and if there was a new dwelling unit. Single-family residential development interior remodels and expansions under 200-square feet would not trigger the code. Since the last work session discussion staff recommended that expansions between 200 and 1,499 square feet would trigger right-of-way dedication if needed. If the addition was larger than 1,500-square feet, the approximate size of a single-family residence in Milwaukie, the property owner would be responsible for full street improvements if needed on that street. She discussed the importance of right-of-way acquisition and how property owners would contribute to completion of City streets in the future. Staff also looked at improving the review process to help people understand key points. She discussed the flowchart and code reorganization that made for a more understandable and transparent process. During the TSP process staff heard citizen express interest in more flexibility in street design standards based on the built environment. The community wanted structure with some discretion based on real world situations. Ms. Shanks discussed the fee in lieu of construction in the neighborhoods other than the downtown zone. The new code defined the program and provided guidelines for its administration. It was clarified that the money would be spent in the neighborhood in which it was collected so there was a benefit to both the property and the neighborhood being impacted.

Goal #2 of the project was how the amendments would implement the TSP in terms of safety, livability, and quality of design by completing streets as development occurred, design flexibility, design alternatives, and safe and adequate access standards. The code amendments would continue to require development to construct street improvements when there were impacts. Ms. Shanks reviewed the elements of design flexibility and showed a slide of the recent Logus Road improvements. New code allowed for different design elements such as horizontal separation, storm treatment facilities in the right-of-way, and bicycle boulevard applications. Finally safe and adequate access had to do with clear vision and access management.

**Mr. Parkin** addressed safe and adequate access related to clear vision and access management. A property may have a circular drive as long as the access points are 50-feet apart. The driveway width was changed from 18- to 20-feet.

**Ms. Shanks** discussed Goal #3 which was to make the code user friendly with flowcharts and updated references. She summarized the proposal. Public outreach included the development community, neighborhood leadership, and the Downtown Business Association. Generally there was overall support for the 3 main changes: the impact based approach, more street design flexibility, and a streamlined review process. The Planning Commission recommended approval of the amendments which did not include the residential expansion matter the City Council identified.

**Councilor Barnes** appreciated residential facility compromise.

**Councilor Stone** found herself still not agreeing with the compromise. She had a hard time believing because someone built a larger house that there would be more impacts and that the property owner should be responsible for street improvements. That did not resonate with her on a practical level. She did not agree with the idea that an increase in the size of the home or doing a remodel would sufficiently impact the streets. She was happy it was impact-based rather than value-based. She discussed fee in lieu of construction and asked if it applied to residential as well as commercial.

**Ms. Shanks** replied that it did.

**Councilor Stone** asked if a person on a narrow lot would be restricted from having a circular driveway and noted there was one on Tacoma Street where the circular drive seemed like a good idea due to traffic volumes.

**Mr. Parkin** replied there were restrictions. It did make sense in some situations on busy streets. This was a general application and also took into consideration the streetscape and amount of pavement.

**Ms. Shanks** added this was a situation with competing goals. More driveways resulted in more curb cuts and less on-street parking and created more potential conflict points. It was referenced in the old code and written in new code that property owners on local streets can back out of their driveways. There was a new provision that would require properties to contain all the backing movements on the property, so drivers can pull forward out of their driveways. The engineering department balanced on-street parking with safety and access.

**Councilor Stone** did not want to be too limiting.

**Ms. Shanks** noted the property owner could have a hammerhead turn, and there were a number of design possibilities.

Correspondence: Ms. Shanks summarized the additional correspondence received from Teresa Bresaw, Planning Commissioner, that addressed size of the remodel, a summary of her meeting with Greg Hemer, Design and Landmarks Committee member, who supported the single-family residence expansion proposal, dedication of right-of-way, and street improvement funding, and e-mail from Bruce Goldson, Compass Engineering, thanking staff for the information, and emails Alicia Hamilton discussing residential expansion.

**Mayor Ferguson** reviewed the conduct of the hearing and called for public testimony.

**Teresa Bresaw**, Milwaukie, spoke representing the Planning Commission. She noted walking in Milwaukie could be dangerous, and she liked sidewalks. A 1,500 square foot expansion was large, and could impact traffic now or in the future. She felt this was a conservative approach. The Planning Commission supported this change in standards.

**Sara Overbeck**, Angelo Planning Group, Portland. She worked with staff as a consultant and provided technical assistance to the planning and engineering departments. She felt this was a thoughtful and thorough job that addressed the City's unique circumstances. The amendments made for a smoother and more efficient document for applicants and City staff.

**David Aschenbrenner**, Milwaukie. From the Budget Committee perspective he expressed appreciation for the work done on FILOC administration. From the neighborhood side of things he appreciated being able to design streets and sidewalks that addressed neighborhood needs and character. He felt these amendments gave staff the tools they needed. He and others had been contacted for input, and he supported adoption of the proposed amendments.

**Ed Parecki**, Milwaukie business owner. He wanted to bring up some sore points this process had taken although he felt most of it was exceptional. He agreed with most of it. He discussed the constitutionality of the code he commented on during his 2007 renovation of the Main/Monroe Building. Most of what he mentioned at the time was being enacted. He asked for a look back at what happened in 2007 on his project and for a release from the 10% fee, \$12,500, imposed on him.

**Ms. Shanks** reviewed the staff recommendation. The existing code was not very legally defensible. She discussed the impact-based approach in single-family residence expansions that served the City's goals and preserved dedicated right-of-way to facilitate future projects. She discussed data used from the ITE Manual related to single-family residences specifically. A traffic study for each new single-family residence would be too onerous, and the ITE Manual was considered the standard. In

some cases impacts were not seen immediately, and it was important for the City to take its legal opportunity. She commented on the Main Street Program.

**Councilor Stone** asked if the FILOC would include the cost of dedicated right-of-way. Would the land offset the dollar amount?

**Mr. Parkin** replied the dedicated right-of-way would not be in the cost. The process did not work that way. The City would prefer the frontage be developed, and the FILOC was collected only in cases where it could not be done.

**Councilor Stone** used an example in the Waverley area and piecemeal sidewalk projects.

**Mr. Parkin** explained the dedication was not part of the cost, and there was no credit for it.

**Ms. Shanks** added the right-of-way dedication was a separate piece and was related to the impacts of that expansion. The impact approach was being applied in an sensible, equitable way manner. The right-of-way dedication would help mitigate those impacts.

**Mr. Parkin** pointed out 60<sup>th</sup> Avenue where some properties had dedicated right-of-way and others had not. Dedications were very important to the whole process. Unless it was a unique situation, such as a right-of-way dedication impacting setback requirements, the City would get the right-of-way it needed.

**Ms. Shanks** explained very large expansions would still pay FILOC along with dedicating right-of-way.

**Councilor Stone** asked how the City dealt with privately maintained roads if they were expanded.

**Ms. Shanks** replied the City had a number of private roads and those which were there by easements. Legally because of the need to have a relationship between what the City required and the project impact it could only require frontage improvements. In the case of a private road the City did not have jurisdiction, so there could only be requirements that addressed safety. Staff concluded the City was restrained legally and could only require FILOC.

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

**Mayor Ferguson** closed the public testimony portion of the public hearing at 8:57 p.m.

**Councilor Loomis** thought the low square footage was a hindrance for those who wanted to improve their property. He appreciated the changes that staff made since the work session. What happened with total tear down with one wall left standing?

**Ms. Shanks** replied the code addressed scrape offs specifically when one wall was left standing. That situation was subject to new construction standards.

**Councilor Chaimov** found it gratifying to see how well staff carried out City Council's direction to help make a better city.

**Councilor Stone** could not vote in support of these amendments. She felt the City would recoup money from the higher assessed value and did not want to set a policy that would deter people from making property improvements. She acknowledged that staff did make a concession related to square footage. She loved the ITE Manual but did not agree a larger building necessarily had greater impacts just because someone

wanted to be in a bigger house. She would not vote in favor of the ordinance unless there were changes.

**Mr. Swanson** commented the higher values would certainly impact the property tax revenues going into the general fund; however, higher values would not affect the transportation piece. The City's ability to address traffic issues would not change.

**Councilor Stone** replied it did not seem constitutional to her that one living on an unimproved street was subject to this. She did not care for piecemeal improvements. It looked a lot better to do a street completely. She agreed with Mr. Aschenbrenner's comments about design and noted Logus Road had turned out beautifully.

**It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance amending Title 17 Land Division and Title 19 Zoning and implementing Transportation System Plan policy recommendations. Motion passed with the following vote: Councilors Loomis, Barnes, and Chaimov and Mayor Ferguson voting "aye" and Councilor Stone voting "no." [4:1]**

**Mr. Swanson** read the ordinance for the first time by title only.

**Mayor Ferguson** announced since the vote was not unanimous the second reading of the ordinance would be set for June 16, 2009.

**It was moved by Councilor Chaimov and seconded by Councilor Loomis for the first and second readings by title only of the ordinance amending Title 12 Streets, Sidewalk, and Public Places and Title 15 Buildings and Construction. Motion passed with the following vote: Councilors Loomis, Barnes, and Chaimov and Mayor Ferguson voting "aye" and Councilor Stone voting "no." [4:1]**

**Mr. Swanson** read the ordinance for the first time by title only.

**Mayor Ferguson** announced since the vote was not unanimous the second reading of the ordinance would be set for June 16, 2009

**It was moved by Councilor Chaimov and seconded by Councilor Loomis to approve the resolution setting fees for services. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting "aye." [5:0]**

#### **RESOLUTION NO. 34-2009**

#### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SETTING FEES FOR SERVICES.**

**City Attorney Monahan** read the Land Use Board of Appeals (LUBA) information.

### **OTHER BUSINESS**

#### **A. Council reports**

**Councilor Barnes** hoped the Milwaukie Police officers involved in the shooting today would find the strength to get them through the ordeal. She attended the Volunteer Appreciation Brunch and announced the Milwaukie High School Graduation and Milwaukie Recycling Day event.

**Mayor Ferguson** thanked Milwaukie High School staff and contractors who built the new performing arts center and extended his appreciation to the volunteers who dedicated thousands of hours to the City.

**ADJOURNMENT**

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

**Mayor Ferguson** adjourned the regular session at 9:09 p.m.

*Pat DuVal*

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Pat DuVal, Recorder

# REGULAR SESSION

# AGENDA

## MILWAUKIE CITY COUNCIL JUNE 2, 2009

MILWAUKIE CITY HALL  
10722 SE Main Street

2055<sup>th</sup> MEETING

### REGULAR SESSION – 7:00 p.m.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page #    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>1. CALL TO ORDER</b><br>Pledge of Allegiance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |           |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |           |
| <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>1</b>  |
| <b>A. City Council Work Session Minutes of February 3, 2009</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>2</b>  |
| <b>B. City Council Work Session Minutes of March 17, 2009</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>9</b>  |
| <b>C. City Council Regular Session Minutes of May 5, 2009</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>15</b> |
| <b>D. City Council Regular Session Minutes of May 19, 2009</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>24</b> |
| <b>E. Reappoint Sherri Dow to Park and Recreation Board – Resolution</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>26</b> |
| <b>F. Reappoint Patty Wisner to Design and Landmarks Committee – Resolution</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>27</b> |
| <b>G. Northeast Sewer Extension Easement Appraisal Service Contract – Resolution</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>28</b> |
| <b>H. OLCC Application, River Road House, 11921 SE 22nd Avenue, Change of Ownership</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>37</b> |
| <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. 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.)</i> |           |

**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.)* **38**

**A. Adoption of Proposed Transportation code Amendments** **39**  
**Land Use File ZA-09-02 – Ordinances (Susan Shanks)**  
*Continued from May 5, 2009*

**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.)*

**A. Council Reports**

**7. INFORMATION**

**8. ADJOURNMENT**

**Public Information**

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660.
- 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.

3.

# CONSENT AGENDA

## MINUTES

### MILWAUKIE CITY COUNCIL WORK SESSION

February 3, 2009

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

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

Staff Present: City Manager Mike Swanson, Planning Director Katie Mangle, and Community Development and Public Works Director Kenny Asher, Economic Development Specialist Alex Campbell, Finance Director Ignacio Palacios

#### **Establish Date for Council Goal Setting**

The consensus was to meet on February 23 and March 2.

#### **South Ardenwald Master Plan Project Briefing**

**Ms. Mangle** provided the briefing and introduced Trell Anderson Clackamas County Housing Authority (CCHA). Providence Milwaukie Hospital expressed an interest in having an elderly care facility in close proximity as well as to see the surrounding underdeveloped property improved. Mr. Asher sat on the CCHA Feasibility Project Advisory Committee along with some Milwaukie residents to come up with a plan regarding Hillside Park. The City approached CCHA with the idea of creating a neighborhood based planning project to look at the 30-acre site and figure out what kind of development would make sense. The project was new, and they were in the process of establishing intent and strategy. It would be a ground-up project and would have a neighborhood planning process with an oversight committee using a charette process so residents and designers can interact directly. The outcome would be a vision for the area of what the street/sidewalk network would look like, and what type of use in addition to public housing would be there. They anticipated that the vision outcome would not be exactly what was in the current zoning code so they would need to have a re-zoning process through the Planning Commission. They were devising the scope of work to hire a consultant who specialized in this type of process. Staff had a meeting with an Ardenwald neighborhood representative along with Councilor Stone to make sure they were comfortable with where the direction of the project. They saw this as a way to redefine the area with a neighborhood plan.

**Mr. Anderson, CCHA**, said the project fits the County's 10-year strategic direction to redevelop and reposition its entire housing portfolio. There were 920 units across the County, and they started a feasibility study a year ago to look at various options and opportunities Countywide. He discussed the increased waiting lists for Section 8 and public housing. HACC formed a Feasibility Advisory Committee that included representatives from Milwaukie and Oregon City's Park Place Neighborhood. The Committee helped put together guiding principles and success measures. The steering committee created a 5-year action plan, which included Hillside Park. They plan to apply for federal funding in 2010 after site planning. Proceeds from the sale of 166 site homes Countywide would be used to build replacements. The 2 large properties in

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DRAFT MINUTES

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**RS PAGE 2**

Oregon City would not be sold at this time due to the unfavorable housing market. He reviewed the timeline with master planning through December 2009 and construction starting in spring/summer 2012.

**Ms. Mangle** added City staff saw this as a great opportunity to take an underdeveloped part of town and encourage residents to take a lead role in defining what it would look like.

**Councilor Chaimov** asked Mr. Anderson assuming the plan played out as hoped where would the units be?

**Mr. Anderson** said the direction was to acquire properties either new or existing in the North Clackamas urban renewal area or close to other existing community amenities and support services. Many current properties were in isolated places and people had trouble getting to places. Seniors and those with disabilities needed to be in places with access to amenities.

**Councilor Chaimov** said more important to him than the outcome was the process. He would evaluate it based on how the Hector Campbell and Ardenwald neighborhoods felt.

**Councilor Stone** said outcome was especially important to her. At the neighborhood meeting Thursday concerns were voiced about 1:1 replacement. Milwaukie, specifically Ardenwald, already had more than its fair share, from a regional perspective, of low-income housing. There was concern about property values and how this would enhance the neighborhood. She was concerned about the burden on roads, schools and police. It was important to meet frequently and get a good relationship going with neighborhood leaders. She would love to see some wonderful things like a community center. People's biggest investment is their homes and that needs protection.

**Councilor Loomis** agreed with Councilors Chaimov and Stone. The Oregon City property was not ideal for affordable housing, but it should not all be moved to Milwaukie. He was in favor of improving the property.

**Councilor Barnes** agreed with earlier comments. She heard there were 920 units in Clackamas County with 200 in Milwaukie. She would like distribution information.

**Mr. Anderson** replied there were 200 in Oregon City, 230 in Milwaukie, and the rest were scattered throughout the unincorporated area. There was more voucher use in Happy Valley than public housing. He would provide specific numbers.

**Councilor Barnes** said it was a good idea especially during this economy because it was needed. Ardenwald felt it was not being heard. The placement should be shared among other cities in Clackamas County.

**Councilor Stone** understood master planning would take less than a year and must have some vision of where units would relocate. There had been no solid answer about where those units would go. Would they end up in Milwaukie? That would make the already disproportionate distribution even more so.

**Mr. Anderson** said he could not give a number tonight because he wanted to be honest to the planning process. If the County sold those sites in Oregon City he did not know where those would go. They did not intend to bring them to this site. 100 units would stay in the high-rise as it was not financially feasible to move it. They want to replace Hillside Park on a 1:1 ratio. The rest came from engaged process.

**Councilor Stone** said it sounded good in terms of the idea and amenities it could bring to the area. If it was bigger than the City would support why go forward with the master planning process?

**Ms. Mangle** said they were working with several assumptions. 1:1 replacement, a community center, some kind of neighborhood network center, and those were a minimum. Staff would work with Mr. Anderson to make sure they were clear on assumptions from HACC.

**Councilor Stone** had a bad image of more high-rise buildings on site. The neighborhood would go ballistic.

**Mayor Ferguson** said it was important to play an active role in partnership.

### **CCSD1 Draft Wholesale Agreement**

**Mr. Swanson** requested direction from Council and what he recommended in letter form to Board of County Commissioners (BCC) Chair Peterson. The City had struggled with this issue for 30 years. We have a wholesale agreement that said the District would accept the flow, and the City would pay 40% local share. There had been 9 agreements since then. The original agreement was amended but was still in effect. Currently, the City was on a month-to-month agreement as a wholesale customer because it was not part of the District. The biggest issues that influenced the wholesale agreement were capacity and the future of the Kellogg Treatment Plant. He handed out copies of the most recent agreement that had tracked changes. The changes were requested by him for recognition of the City's past contributions to capital and the need to say something about Kellogg. The District was anxious that the City execute the wholesale agreement and have an answer because they were in the process of negotiating financing for projects that would lead flow diversions to Tri-City. One issue in the wholesale agreement was recognition of past contributions to capital. In 1970, there was no provision in the original agreement for any equity in that capital. He had argued the fairness that the City used 20-30 of capacity and paid 40% of the local share. There needed to be some recognition in the form of a monetary contribution. He had talked to Mr. Mantay and felt they could make some headway on that issue. Mr. Swanson thought the rest of the agreement was cast in stone. The Partnership group included Tri-City, Happy Valley, Damascus, and unincorporated that comprised District 1. They had agreed at last meeting that they would submit a letter to the BCC regarding decommissioning of the Kellogg Treatment Plant and engaging in a process. He had no answers on Kellogg. He recommended the first draft of the partnership agreement, which he passed out to Council. The benefit of a wholesale agreement was that it gave the City a seat at the table. The partners agreement would make Milwaukie a partner with full say on future capital expenditures. His recommendation was to send a letter to BCC Chair Peterson that stated what the City wanted. Risks - if we sign the agreement, then he and Mr. Mantay could negotiate on past payments and move forward as equal partners. If we did not sign it, he guessed that the District would probably declare it was pulling out of the contract. DEQ would probably frown on the City's not getting service and somehow they would end up having to come up with a new contract. The City would just end up with a different agreement but would not escape anything by refusing to sign. He did not see any change in the position on Kellogg, which concerned him.

**Mr. Mantay**, Clackamas County, said as he understands the IGA there were 2 issues. Kellogg Treatment Plant date of closure and equity that he would argue it was based on 30 years ago. He had spent the last couple of weeks talking with

Mr. Swanson about the equity issue. He sent some language that talked about equity and the question became what is the capacity. He knew that there was 40% of capital and in different years it had been between 25-35% and he did not have those answers. He went back about 15 years and there were some years he could not find the numbers. The District was willing to sit down and find out if Milwaukie paid too much or too little. It was a simple process that accomplishes the equity question. They would continue to talk on that and they were making progress. They were planning to go to the bond market and IGA's this old made it difficult and add to the cost. The more things you tie up the more saved by the ratepayers. He hoped that Council would make a decision as soon as possible.

**Mr. Swanson** said one of the problems when talking in December was the risk premium. He thought there was room to deal with that issue.

**Councilor Stone** asked about the bond market. Was the push to go sooner than later because of rates?

**Mr. Mantay** answered it was because they were in construction right now.

**Mr. Swanson** said the diversion issue and the need to capture capacity was an immediate need. Rates – Mr. Kuenzi provided rate information and it showed the City's rate as \$6.91 and being raised to \$20. The \$6.91 did not include the capital so it would be an increase but not as high. He was not sure what the true amount was.

**Mr. Kuenzi** said when he was here the last time it translated to an EDU basis now paying \$15 - \$16 and increasing to \$22 or \$23, which worked out to a \$7 increase over a 3-year period.

**Mr. Swanson** asked if that \$23 included capacity issues.

**Mr. Kuenzi** replied it had no growth capacity issues. It was for the capacity replacement that was leased years ago in lieu of expanding Kellogg.

**Mr. Mantay** said they started the overall project with \$15 million in the bank for Tri-City and another \$22 million. They would borrow about \$95 million over 3 phases. They matched the borrowings to the increases in the rates to spread it over a 3-year period. Their first borrowing was set for 2 weeks from today.

**Mr. Swanson** said we had Clearwater, and he was disappointed that we went from what was described as possible to where we are now.

**Mr. Asher** said the numbers were confusing. The City paid \$1.6 million last year capital and flows. If the EDU was \$15, which may have been true last year, but that was not our historic average. Staff looked back at over 11 years and it was more in the \$10 range. Somewhere in between is what can be expected.

**Councilor Barnes** asked what the rush was for bonds. Could we get bonds cheaper if we wait and get a better solution and not this short-term solution? The agreement looked at a short-term 10 to 20 year master plan. It had taken a lot of years to get it to this point. If we wanted to do this right we needed to make it a long-term solution.

**Mr. Swanson** said it was part of what they used to project revenue to pay off the bonds. The revenue that the agreement would generate was one of the things considered by the bond holders. They were proceeding with construction.

**Councilor Barnes** asked if they needed it in 2 weeks.

**Mr. Swanson** said if they did not have it in time they would end up with a higher interest rate because they would not have as much revenue. The higher interest rate could add up to \$4 per unit.

**Councilor Stone** said SDC charges did not benefit Milwaukie. Since the City was not part of the District, how was that fair? Her mind was spinning with all the twists and turns. It would not be responsible to sign an agreement in minutes without reviewing it. She wanted to have further discussion as a Council, and she proposed, given the length of the meeting, to reconvene the work session to talk about it. She was not prepared to make a decision by 7pm.

**Councilor Barnes** said there were citizens from Milwaukie that had notified Council that wanted to testify on the issue.

**Mr. Swanson** was asking for Council direction. He had been talking with the District for a year without having a lot of direction, and it was at the point where he felt uncomfortable carrying on discussions.

**Councilor Chaimov** said he thought Mr. Swanson should pursue a resolution of the issues as outlined on pages 16 – 17 of the work session packet. He had a personal preference to change the last clause of the first to most promptly and completely completes the Trolley Trail. He was not supportive of sending a letter to chair Peterson as it ramped up the tone of the discussion and would not be productive in the manner that Mr. Swanson and Mr. Mantay were working towards.

**Councilor Stone** and **Councilor Loomis** agreed.

**Councilor Chaimov** said he would like to keep on the radar screens, a prudent option, that was rather than decommissioning to construct a new and modern plant. He did not think that was the top priority of the citizens, but he did not want that forever removed from the table in the event that it became the option to keeping Kellogg longer in its current form.

**Councilor Stone** would like a written agreement on the future of the Kellogg Treatment Plant.

**Councilor Loomis** agreed with Councilor Chaimov and did not care for the tone of the letter. Mr. Swanson and Mr. Mantay were making progress in addressing the equity issue, and it sounded like there were few alternatives. He would like to see Mr. Swanson continuing to work with Mr. Mantay to come up with an agreement in the City's best interest. He would like to see some comparison numbers and supporting documentation.

**Mr. Swanson** said he has looked. He The Land Use action before the Planning Commission presented 2 or 3 sites. Island Station was one of the sites. It seemed that Island Station preferred the current site, and that may have been what people referred to as a demand.

**Councilor Loomis** asked if higher interest rates meant higher rates for everyone.

**Mr. Swanson** said we need to look at all the issues. Coming up with a cost was not that easy due to fluctuations and depending on the expenditure of capital. Higher interest rates were not the only reason to sign or not sign the agreement.

**Mr. Asher** said that raised a legal question. Our current agreement obliged to only pay for operation and maintenance at Kellogg and replacement of parts. Over the years the City had also contributed to capital, but only at Kellogg. A lot of this borrowing was for improvements elsewhere. If we were living on the

current agreement he thought there was a legal question of whether Milwaukie would be obliged to take on higher costs for those improvements.

**Councilor Loomis** said we were asking people in unincorporated to be partners and to see the value of decommissioning and the removal of the Kellogg Treatment Plant. He thought it was in the best interest to try to get to an agreement.

**Councilor Barnes** said we need to start an education campaign letting residents know rates would go up. The last time we raised rates it was a major concern. People need to be prepared.

**Mr. Asher** said the district has proposed phasing it in. The difference was under this agreement we were signing up for the debt service and it was a lot more than what people were used to paying.

**Councilor Loomis** asked what the alternative was.

**Councilor Barnes** said to keep talking.

**Mr. Swanson** said to say no or keep talking. There was a limit as to where we were going to get. Saying no would probably raise the cancellation provision of the original wholesale agreement. That would take us eventually into DEQ and the courts. He thought it would be better to get back together after the regular hearing.

**Mayor Ferguson** adjourned the work session at 6:49 p.m., and it was resumed at 8:40 p.m.

**Councilor Barnes** saw nothing in the proposed IGA that did anything to benefit current Milwaukie residents. It gave us a seat at the table, higher rates, and no promises. She couldn't condone going into an IGA to ask our ratepayers to pay more for something with a limited return and no promises in writing. She wanted to go back to the table and get something put in writing.

**Mayor Ferguson** said on the work session page 16 Council discussed earlier the bullet point, and he wanted to know if the rest of Council agreed with Councilors Chaimov and Stone about the amendments to the first bullet point. He shared the feeling that he would like the opportunity to review the partnership agreement before it was signed. He had not had enough time to review it and ask all the questions that he wanted to ask.

**Councilor Stone** did not like being forced to sign something hastily. It seemed to her that there were provisions in the agreement that would cost Milwaukie more because of the SDC charges. If rates are going to increase we needed to make sure we are not paying for other things, such as growth outside City boundaries. She thought that was the reason for pushing the issue now. It did not seem fair for Milwaukie so she did not support signing the agreement. It sounded from Mr. Mantay and Mr. Swanson like they were making headway.

**Mr. Asher** said there was a lot of confusion about being asked to pay for growth. Of the \$100 million about \$66 million of it was for retrofitting for capacity problems that exist today. \$34 million was for growth and will come out of SDC. There was a capacity problem that was the result of growth that already happened. That was something that we were being asked to help pay for.

**Councilor Stone** understood that it was for growth that already existed.

**Mr. Swanson** said he was going to look out 50 years, which no one had done. He could find an unlimited list of things he could criticize WES and Clackamas

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County for. He could find unlimited things he could criticize district 1 and the process that occurred. He could find unlimited things to criticize some of the other stakeholders. Ms. Batey should have gotten danger pay for the CAC summer. It robbed him of a summer where there was already a solution.

**Councilor Stone** said the County made a bad decision and should have put it on the ballot.

**Mr. Swanson** had to think about where we were today. People made bad decisions in 1970, and placed us in a situation where we were struggling with a lot of problems. Yes, we are subsidizing growth that had happened, but he was not sure there would be a point that we couldn't be responsible for growth that had happened in other areas. He didn't think we could eliminate subsidizing because that would be taking the parochial position. \$700,000 was spent on CAC and \$700,000 on this process. He was not sure that standing up and saying we won't do this got us to a different place than doing it. He was not sure he wanted to be absent at the table even though there had been 2 processes that hadn't resulted in much, but maybe another process would result in something.

**Councilor Barnes** said we were not walking away as partners we were just asking that the City's concerns be addressed in a more serious fashion.

**Mr. Swanson** said they would not give us a date on Kellogg.

**Councilor Chaimov** said Council did not think Mr. Swanson was through negotiating. This was not the drop dead offer, and they still saw some movement. He agreed there would not be movement on Kellogg, but if there was something more they could get in the partnership that would get them farther it might be enough to tip somebody from no to yes. They were looking for Mr. Swanson to continue to push the bullet points as best he can and when he's have gotten the best deal bring it back to City Council.

**Councilor Stone** wanted to add a bullet point about the SDC's.

**Mayor Ferguson** adjourned the work session at 8:58 p.m.

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Pat DuVal, City Recorder

## MINUTES

### MILWAUKIE CITY COUNCIL WORK SESSION

March 17, 2009

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

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

Staff Present: City Manager Mike Swanson, Engineering Director Gary Parkin, Resource and Economic Development Specialist Alex Campbell, Community Development and Public Works Director Kenny Asher, and Planning Director Katie Mangle, Senior Planner Susan Shanks, Associate Engineer Jason Rice.

#### **Set Date for Goal Setting Retreat**

The group agreed to meeting on March 28 from 8 a.m. to noon and again on April 6 at 6 p.m.

**Mayor Ferguson** said that Councilor Chaimov suggested a possible work session on wastewater when ready for a decision.

**Councilor Chaimov** said he wanted to devote a regular work session for that.

**Councilor Barnes** said the next Partnership meeting was this week, and she would let the group know that Council was not ready.

**Mayor Ferguson** said the wastewater issue would be tentatively set for the work session on April 21.

#### **Transportation Code Amendment Pre-Hearing Briefing**

**Ms. Mangle** said this was one of several code amendment projects they would be taking to Council about over the next 3-6 months.

**Ms. Shanks** had been working on this project with assistance from a consultant for about one year. There had been a number of work sessions with the City Council and Planning Commission, and the amendments should be before the City Council on April 21. She provided a PowerPoint presentation. The proposal was to amend the City's transportation regulations most of which was in Milwaukie Municipal Code (MMC) Chapter 19.1400. The focus of the project was to evaluate what kinds of development projects should trigger improvements and what kinds of improvements the City should encourage. As staff developed the amendments they did public outreach including 4 work sessions with the Planning Commission, 2 with City Council, meetings with Historic Milwaukie Neighborhood District Association (NDA) and the NDA Leadership group.

There were 5 things identified that needed to be fixed: applicability triggers, the review process, street design standards, legal obligations, and the fees in lieu of construction (FILOC) program. Applicability triggers had to do with what kind of development projects would trigger transportation regulations. The current Code listed types of projects that were applicable, and the remainder of the projects

were applicable based on permit value. Staff felt that the current code did not capture some projects that had impacts to the transportation system. The goal was to move away from variances, adjustments, and director's interpretations that and have the code be as fair and consistent as possible. The current code used a value based approach, and staff was proposing an impact based approach.

**Councilor Stone** asked when talking about street improvements was that to the street itself or sidewalks?

**Ms. Shanks** replied it could encompass any and all elements if street improvements were needed in the right-of-way. For a single-family residence (SFR) the proposed code says there would only be impacts if adding square footage. The ITE Manual looked at what kinds of uses generated what kind and how many trips. Studies showed larger homes generally resulted in more trips than smaller homes. They developed the incremental exaction approach to address additional square footage for SFR.

**Councilor Stone** did not find patchwork sidewalk aesthetically pleasing and was concerned that adding square footage triggered improvements.

**Ms. Shanks** discussed the FILOC program. If it was not feasible for improvements to be built an owner would pay a fee for future improvements. She noted transportation regulations and street improvements were complex. Another area that needed updating was the review process which staff wants to be more streamlined and transparent. Right now the process was hampered by rigid street design standards. She provided a flowchart of the review process.

Staff also wanted to address street design standards. Ms. Shanks showed a figure from the Transportation System Plan (TSP) that related to street design for different classifications and showed all the elements that made up those types of streets. The TSP gave staff the policy direction to build more flexibility into the street design standards. By introducing more flexibility review time was reduced and gave the engineering director the ability to develop street cross sections that supported the neighborhood character. The community said it wanted structure and flexibility, which was a difficult balance. Staff was not proposing to change design standards for the downtown because they were included in the Downtown Riverfront Plan.

**Ms. Shanks** discussed the clarification of the legal obligations. The FILOC program helped complete City streets, and funds were leverage to do bigger projects such as the Logus Road sidewalks. The City would be required to use the money within 10 years in such a way that benefited the properties that paid for improvements in the neighborhood from which it was collected. Staff is proposing that the downtown projects also have this option.

The proposed new code implements the TSP by continuing to require development to build improvements when there are impacts. Also, by requiring improvements to be built at the time of development to mitigate impacts. She showed a map of the City's sidewalk inventory that showed mot of the incomplete streets were local residential.

The existing and proposed new code would require street improvements for new SFR home construction. For redevelopment the new code would require some improvements based on additional square footage. The proposed code is clear and predictable for single-family homeowners. If the street improvements were already there the Impacts would be considered mitigated.

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**Ms. Shanks** discussed street design flexibility. The new code would allow flexibility in terms of elements. She showed a slide of SE 19<sup>th</sup> Avenue in Island Station and discussed the issues there and explained how the new code allowed for flexibility the existing code did not. The last way the code amendments implement the TSP was by allowing for more design alternatives including rain gardens or stormwater facilities. There was a need to be able to build in more ways to manage stormwater locally since drywells were no longer allowed in the right-of-way. The bike boulevard concept would have more treatments including striping and signage, which made a better travel corridor for cyclists.

There would also be some amendments to Title 12 pertaining to access management and clear vision standards. They were mostly technical in nature, and staff would be proposing some changes to the fee schedule. Generally, the key policy changes related to the impact based approach, incorporating more street design flexibility, and streamlining the review process had received board support from the development community and neighborhoods. The Planning Commission recommended approval of the amendments, and there was concurrence from the engineering, community development, and building departments. Staff was still accepting public comment and was available to discuss individual Council member's questions. An additional work session could be scheduled if necessary on April 7. The next step would be to have the public hearing on April 21 when all the comments would be compiled and given to Council.

**Councilor Chaimov** did not believe an additional work session would be necessary. He asked if any of the affected persons still had issues that need to be addressed.

**Ms. Shanks** replied the City received 2 comments from the neighborhoods, 2 from the development community, and 2 from the Oregon Department of Transportation (ODOT) and Metro. People had raised specific "what-if" questions. Probably one concern was that there was still no one easy answer. Requiring street improvements was very complicated and was almost a case-by-case situation. Staff's response was to require street improvements only when there are impacts to the system. They wanted to make the processes as transparent and consistent as possible and allow for some flexibility within some structure. When requiring street improvements staff would have to evaluate the project and determine how many impacts it would have. There were so many variables and the Code could not address every scenario.

**Councilor Stone** liked the idea of brainstorming different scenarios of how the code could be applied. If a private homeowner wanted to add square footage on an improved street with sidewalks, what fee would be required?

**Ms. Shanks** replied if the street was already improved there would be no fee as the City cannot require anything beyond the adopted standards.

**Councilor Stone** asked for an example of what it might cost a homeowner adding square footage for street improvements.

**Ms. Shanks** replied engineering had helped develop an incremental approach. The project may trigger one or more particular street elements. One required street element would be \$3,000 to \$5,000, and two would be \$6,000 to \$10,000. Streets varied widely in terms of issues, and some might need to be engineered to address stormwater or topography.

**Councilor Stone** was concerned that remodeling is expensive for a SFR. The City benefited when people remodeled their homes, and she did not want our

Code to be a deterrent. She would prefer to save up money to do street improvements to make the entire street look nice instead of taking a piecemeal approach. The Code could limit people's ability to do home improvements.

**Ms. Shanks** responded the Planning Commission had the same concerns. There was a community need for street improvements, but it needed to be reasonable and fair. The City policy could be that it did not require street improvements, but that did not address the community desire for better streets.

**Councilor Stone** said maybe there was another way to get better community streets. She wanted to do everything possible to encourage remodeling and property improvements particularly in these economic times. She asked if similar sized cities had these requirements.

**Ms. Shanks** she did not know in terms of population, but generally cities were requiring street improvements. It was more unusual to have a FILOC program. Staff tailored the plan to Milwaukie, and came up with the incremental approach to balance SFR improvements. She would provide the Council with ITE Manual information. Studies have shown that larger homes generate more trips. There was flexibility in Code to have FILOC to avoid isolated improvements.

**Councilor Stone** said it did not seem fair.

**Ms. Shanks** explained paying the FILOC was voluntary, and the City could not require it. The proposed Code took projects like a kitchen remodel off the table because there were no impacts to the system. The ITE Manual was the industry source for specific trip generation data.

**Councilor Loomis** had the same concerns as Councilor Stone on trying to figure out fair ways to implement this. How was the FILOC amount determined?

**Ms. Shanks** replied it depended on the street element required and was based on the linear footage of the frontage multiplied by a dollar amount based on a CIP project list. She understood the FILOC was generally less than what it would actually cost to construct improvements.

**Ms. Mangle** added that was because it simplified the design and did not include storm water systems, retaining walls or things of that nature.

**Councilor Loomis** asked if someone added a 400-square foot addition was it consistent?

**Ms. Shanks** said the size triggered the improvement, and the Code gave the engineering director discretion to consider it more closely.

### **Wastewater Master Plan Presentation and Discussion**

**Mr. Rice** said the City was currently working with an outdated Plan that was adopted by Council in 1994, and many of the projects listed had been completed. The draft 2003 Plan update was put aside due to wastewater treatment issues, and it was important for the City to move forward to ensure the correct projects were done. One of the key components was the Capital Improvement Plan, which went out to 2021. Expansions such as the dual interest area triggered projects down the line such as upsizing. He discussed the maintenance component also known as asset management. The 5- year plan focused on taking data collected from TVing the lines and prioritizing them for repairs. The Plan also focused on some issues in the Waverley area to get a sense of what it might cost to maintain that neighborhood. He noted the City's rates and system

development charges (SDC) were on track setting aside the unresolved Kellogg Treatment Plant issues.

**Councilor Stone** had many questions she wanted to ask at this time. Why was there a different figure on CIP projects as listed in the staff report compared to what is listed on the chart on page 17? The Main Street line was listed as \$600,000 in one place and \$300,000 in another. Filbert, Jefferson and Johnson Creek were also all higher.

**Mr. Rice** said the Main Street project was in 2 phases.

**Mr. Parkin** explained the difference on the others was due to inflation, which he factored in to the rates chart.

**Councilor Stone** asked if what was listed in the staff report was correct.

**Mr. Rice** replied the staff report was in today's dollars. He referred to Johnson Creek which was listed as \$800,000, but it was scheduled for 2020 so inflation was applied to that project.

**Councilor Stone** said also on the chart the rate on p. 14 rate increase schedule was given in percentages from 2009 – 2019. She wanted to know if that was reflective of what she was looking at on the chart.

**Mr. Parkin** said the green table had the assumptions that there would be a lack of growth of treatment cost from the agreements.

**Councilor Stone** said each year went up and up. At year 2018 we were looking at a monthly rate of \$71. She had questions about Waverly and the party lines. She understood the easement on figure 8-2 that the railroad right-of-way was abandoned. She thought that was private property. Waverley butted up to where the railroad property line was.

**Mr. Rice** said the line was actually on private property and there were easements for the long strip. It was not in the abandoned right of way.

**Mr. Parkin** said that did factor into what they did; it was just a notation on the map that they could remove.

**Councilor Stone** said she looked through these maps thoroughly. One of the suggested options on the map on page 82 or figure 8-4 suggested abandoning Eaton. It was fairly new so why would we abandon it?

**Mr. Rice** said when looking in that area one of the main things that came out of it was that this should have been done some time ago. To serve every property, lines should have been put in different places. He guessed at the time the City thought there was an issue and maybe they thought they could bring all of the properties in on the Eaton line. This plan showed how to serve every property making the Eaton line obsolete. It was an alternative up for discussion.

**Councilor Stone** was sure it was an expensive project. Right now everyone in that neighborhood had sewer except for one undeveloped property. She asked if everyone had a working sewer was it an option to get the last property on sewer and leave everything as is. The party lines had been there for years.

**Mr. Rice** said that had to be weighed against doing other things to take care of the area. Public from that neighborhood have called asking if they are tied in with multiple houses, what happened if the line was plugged. The answer was that it backed up. It will be difficult to come up with the right answer. They tried to look at all of the different scenarios at how they could take care of the area.

**Councilor Stone** said if one of the proposed plans were to go into effect would the property that is not connected be able to connect to sewer.

**Mr. Rice** said it would be a hard property to serve due to the downhill position of the property and the location of the lines. There were different alternatives that they might be used to serve the property under any of the scenarios.

**Councilor Stone** asked if it would take an easement from a property owner to connect them.

**Mr. Rice** said an option might be to pump sewage up Cambridge Lane to the nearest manhole. Being surrounded by properties made it difficult to serve.

**Councilor Stone** asked if there were any roads in that area that were owned by the County.

**Mr. Parkin** said staff thought when it was annexed to the City it might have been an issue but discovered that was not the case.

**Mr. Swanson** said the law as he understood it was that if it was a County road then the City had to specifically accept it. There was a question if Oxford was accepted when the area was annexed and if it was a City or County road.

**Mr. Parkin** said the County denied it was their road which they verified to some degree with counsel.

**Mr. Rice** said the plat reflected that the City had jurisdiction but there was no documentation.

**Mayor Ferguson** adjourned the work session at 6:59 p.m.

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Pat DuVal, City Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
MAY 5, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2053<sup>rd</sup> meeting of the Milwaukie City Council to order at 7:05 p.m. in the City Hall Council Chambers.

Present: Mayor Jeremy Ferguson, Council President Deborah Barnes, and Councilors Greg Chaimov, and Joe Loomis. Councilor Susan Stone excused.

Staff present: City Manager Mike Swanson, City Attorney Tim Ramis, Community Development and Public Works Director Kenny Asher, Light Rail Design Coordinator Wendy Hemmen, Engineering Director Gary Parkin, Planning Director Katie Mangle, and Community Services Director JoAnn Herrigel

**PLEDGE OF ALLEGIANCE**

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

**A. Safety Break of Oregon**

**Mayor Ferguson** read a proclamation naming May 13, 2009 as *Workplace Safety Awareness Day* in the City of Milwaukie.

**Milwaukie High School Student of the Month**

Milwaukie High School Principal Mark Pinder recognized Kelley Tallman as Student of the Month for May 2009.

**B. Harmony Road Presentation**

Board of County Commissioners (BCC) **Chair Lynn Peterson** and **Dan Johnson** provided an update on the proposed road project that would allow Clackamas Community College and OIT to grow and become a green campus. She discussed the relationship with the Clackamas Town Center Regional Center Plan and build out. She discussed a curriculum that would allow students to work in green economy jobs and the non-profit Active Space and its concept for start-up companies.

**Mr. Johnson** reviewed the Environmental Impact Study (EIS) process and the scale of the discussions. There was direction from the BCC to transition out of that process and scale things down and deal with existing issues. He commented on community transportation values, neighborhood integrity, safe streets, adequate transportation alternatives, and environmental awareness. Mr. Johnson provided copies of the near-term (0 – 5 years) and far-term (5 years plus) Harmony Community Campus Conceptual Master Plan. One of the key elements was that the Plan coordinated but did not dictate who would carry things out. The final Plan would be considered in June and contain a lot of information about development guidelines and objectives. He reviewed the Sunnybrook extension conceptual plan developed about 10 years ago. That was changed to some degree during the EIS process. One concept was to use the existing roadway as much as possible to provide access. He pointed out the particular points of interest including the Fuller Road intersection and proposed roundabout to preserve the Oak tree which an arborist assessed as being healthy. He pointed out the pinch point

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through the Oak stand with bike and pedestrian facilities on the north side of a 2-lane road. The road would transition around to the north side of the Oak trees to a 3-lane corridor. The intent was to get the road up and out of the habitat. He discussed the feasibility of widening of the 82<sup>nd</sup> Avenue corridor. The goal was to provide a plan that balanced concerns while dealing with issues of the region and local community.

**Councilor Chaimov** asked what the effect would be on the City of Milwaukie if this project were built.

**Chair Peterson** heard from the citizens of Milwaukie that they were worried about cut-through traffic in their neighborhoods which would happen anyway over time as the Clackamas Town Center Regional Center grew. They needed to discuss how the City and County dealt with the neighborhood and put measures in place to keep speeds down. Although people cannot be prohibited from driving through neighborhoods they can be told how to behave. There will be better access to the park and the green campus someday. It was important to grow the grid so no one neighborhood had to deal with continual road widening.

**Mr. Johnson** added they were committed to fiber optic signal operation. He discussed grade separation and interim improvements to deal with capacity issues.

**Councilor Chaimov** asked on the subject of capacity issues if the planning for the campus improvements included a study on what the traffic effects may be on Harmony Road leading to the Linwood – Railroad Avenue intersection.

**Mr. Johnson** replied in regards to this planning effort there was no traffic study; it would be done during the land use process. He was waiting to see what capacity was gained through some of the improvements including signals and future widening. It was difficult to gauge traffic needs and depended on when Clackamas Community College and OIT expanded.

**Chair Peterson** added there were two ways to look at this project. Portland, for example, would believe that if Harmony were a collector that it would stay that way since that was what it was when people purchased their property. If people begin using it differently, Portland puts measures in place to make people change their behavior. The rest of the region would rebuild the road. If the decision was made now that Harmony was a collector and put measures in place like a roundabout, then there was a conscious effort to keep it a collector forever. She discussed the 2030 model and unpredictable variables and commented on the use of fiber optics to manage the system cohesively rather than dealing only with single intersections each of which had its own problems.

**Councilor Barnes** asked if there were an estimate of how many additional cars would travel onto Harmony.

**Mr. Johnson** replied it depended on the land use. In 2005 there were 17,000 vehicles, and Metro showed that would likely double. Redirection of traffic depended on development and density. This option provided parts of the system. There was a lot of density in the regional center plan.

**Councilor Barnes** asked how traffic would be managed as people turned into the parking lots.

**Mr. Johnson** did not have a design speed at this time. It would probably be 35 mph, but they will try to get it lower. Today the road achieved the goal of moving traffic, but they would also eventually look at access. There would likely be a lot of right-in / right-out. The only full intersection was east of the Aquatic Park and the rest would be limited. It was big nodes/little roads with limited left-turn movements.

**Councilor Loomis** asked why the road needed to be built.

**Mr. Johnson** replied it was planned for today to deal with safety and congestion issues on 82<sup>nd</sup>/Sunnyside, 82<sup>nd</sup>/Sunnybrook, and Fuller/Harmony. The County needed to provide systems and not segments. This was one of the last legs to deal with the 20-year plan although it was a difficult discussion. There was a decision 20 years ago to provide connectivity, but who knows what will happen in the next 20 years.

**Councilor Loomis** appreciated the change although he was hoping for a partnership that would put a boulevard through Milwaukie.

**Mayor Ferguson** asked how many lanes there would be if 82<sup>nd</sup> Avenue were expanded.

**Mr. Johnson** discussed the number of lanes and said to get the turning movements it could take up to 10 lanes. They had also heard a lot about pedestrian connectivity.

**Mayor Ferguson** noted much of the area was elevated from 3-Creeks so if it was expanded how much would it encroach?

**Chair Peterson** responded there would be a lot of fill.

**Mayor Ferguson** asked if there were plans for a tree survey.

**Mr. Johnson** replied the County planned to do so and would study the overall impacts. Based on rough numbers with the EIS alignment about 6% to 10% of the total trees would come out of the estimated 2,200 trees.

**Chair Peterson** had walked the area with Commissioner Lehan, and she requested a tree survey by a professional arborist to determine the types and sizes of trees in the corridor that could or should be saved.

**Councilor Chaimov** asked Mr. Swanson what role if any the City had to play in these discussions.

**Mr. Swanson** responded the improvements were in the unincorporated area. The City's role was at the sufferance of the County and their inclusion of the City in its process. Councilor Barnes had been attending lots of meetings, so the City's role was one of participating and giving input.

**Councilor Chaimov** asked Chair Peterson at the time of rebuttal what role the City would play.

**Mr. Parkin** said the City had no official position at this time, but he was well informed on the process.

**Mr. Johnson** pointed out the newest construction and future development areas.

**Mr. Parkin** discussed potential future traffic increases and levels of service (LOS) at the intersections. The municipal code calls for an LOS of D, and currently the Linwood/Harmony intersection was at LOS E during peak hours. The neighborhood association identified a number of short-term fixes, and he outlined potential issues with the railroad.

**Ms. Mangle** discussed how Milwaukie was impacted downstream in terms of environment and traffic. A lot of work was being done on restoring Kellogg Creek and protecting habitat in riparian areas. The City was trying to be better stewards of the environment which had a direct connection to the City's drinking water source. Her perspective on the visioning effort was a refreshing change of approach to the earlier plans and allowed good conversations.

**Chair Peterson** addressed Milwaukie's role. The first was advisory because the site was outside the City limits at this time. There was also joint management of the area in terms of traffic, so they might want to talk about what could be done between Milwaukie and the Clackamas Town Center and available management tools when the Regional Center expanded. She would look forward to working jointly in the future.

**Mr. Swanson** observed that was timely as the Urban Growth Management Agreement (UGMA) had expired some time ago. Lake Oswego had a different UGMA than other cities. He felt the City would welcome a more active plan.

**Chair Peterson** added the other conversation at the County level was the County's role in the provision of urban services and for the long term how to provide higher levels of service through the cities. One of the issues was changes in land uses and who managed the area and size of road in the long-term.

**Beth Kelland**, Linwood Neighborhood District Association (NDA) Chair, sat on the PAC for 2 years. In the past it seemed as if politeness was construed as approval. They were opposed to any road in the neighborhood, and the second road would not alleviate the current bottleneck. Neighborhood cut through traffic was not moving fast enough to speed. This would just add to the safety problems near our schools.

**Dave Aschenbrenner**, Hector Campbell NDA Chair, supported the Linwood NDA's position and expressed concerns with impacts to Railroad Avenue. The amount of traffic now was not neighborhood related. People were also concerned about the proposal's impact to the wetlands and natural area.

**Ms. Kelland** encouraged the Milwaukie City Council to vote in opposition to the extension for the record. Traffic should go back to Hwy 224 and not into the neighborhood.

**Ann Wilson**, Milwaukie, moved here from Portland for the small town atmosphere and good walking places. The 3-Creeks area was the Mecca of parks, and she did not understand why a road would be built through the wetland and why 500-year old trees would be cut down. To use the word green and construction in one sentence did not seem appropriate. For the sake of the trees, birds, and people leave it as it is without roads. Connectivity should be about connecting people and not cars.

**Chris Runyard**, Tsunami Crew/Friends of Kellogg and Mt. Scott Creeks. The 3-Creeks area was his second home as he had spent thousands of hours in stewardship with the Crew planting 21,000 native trees and shrubs and working on wetland and streamside riparian zones. Little upland Oak remained in the Willamette Valley which they were aggressively defending. When one talked of removing only 2,200 trees some Oaks would not be replaced in our lifetimes or our great-great grandchildren's lifetimes. To touch this area for a pet road project, Sunnybrook, was shocking. He understood the intersection was nearly failing at LOS E. Water Environment Service (WES) says the watershed was failing which Mr. Runyard believed should take precedence over a failing intersection. Most hours of the day one can move right through, so it should be acceptable. Paving any of it was absolutely unacceptable. Cutting down an Oak tree was forever. This one sliver of green was all that was left after paving, and we were fighting over the scraps. They believed a small road would end up a big road. He believed the ODOT and Toy R Us property were fair options for campus expansion. He expressed concern about Milwaukie and the downstream traffic. Each of the large Oak trees can intercept up to 5,000 gallons of water and if cut there would be more flooding.

**James Thompson**, Portland, Tsunami 3-Creeks Restoration volunteer. He had worked on restoration projects for the past 11 years with the Nature Conservancy and Friends of Trees. He spoke at this meeting as a Tsunami volunteer and urged the City to move forward with the Kellogg Lake restoration project and recognize the 3-Creeks area was

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part of a strong watershed. He urged the Milwaukie City Council to come out against the Harmony Road Master Plan as proposed with the Sunnybrook Road extension. He urged that the City Council recognize the volunteer efforts and incorporate those into the campus plan rather than cutting the campus off from the rare habitat with a road. Move forward and let the campus be truly green rather than one that extended and depended on unsustainable growth patterns and outdated transportation goals.

**Charlie Ferranti**, Portland, Tsunami volunteer for 9 years. The 3-Creeks area was an ecosystem and did not work if segments were removed. The upland Oak habitat was an essential piece of a functioning stream system, and the dead and dying trees were some of the most important as they provided food and habitat. The impact of Sunnybrook extension on the entire creek system would be extensive and could not be avoided. The 52-foot road would have a significant impact on the upland habitat that would in turn impact the whole 3-Creeks system. This was an essential component of the natural area.

**Pat Russell**, President-Secretary North Clackamas Citizens Association (CPO). He stated this was a natural area and not a park. He was disappointed that County Chair Peterson was representing herself of behalf of the Commission as he understood the body had not voted on this matter. She may be speaking about the Comprehensive Plan. Mr. Russell would ask his CPO to authorize him to ask the County for a Comprehensive Plan amendment to change the map and get rid of the road. The City of Milwaukie and County should communicate with the neighborhood associations and the CPOs since all were partners. He was concerned about the significant changes resulting from the Sunrise Corridor, the regional center, and this project. What was the hurry to build this road? He supported the concept of growing inward, and the regional center should take the density and be a people place. The relative policies needed to be revisited, and he hoped the City of Milwaukie would participate in the growth management update that included the Regional Transportation Plan (RTP). He encouraged the City tell the BCC not to move so fast because there was no overarching pressure.

**Steve Berliner**, Director Friends of Kellogg and Mt. Scott Creeks Watershed. Normally his group did not weigh in on public works projects because the Friends were watershed advocates. But in this case there were many reasons for opposition because of watershed health. He thanked the City Council for its guidance and staff for its work on restoring Kellogg Lake. This proposed road project would pretty much neutralize the efforts downstream. Most of the impacts would be on this wonderful natural area, and some would filter down to the current Kellogg Lake area. This project would invite significant litter to the area. Why do it to wildlife and habitat in the upland Oak area? He discussed future increased traffic near the MarketPlace. He urged getting people to the campus who needed to be there and not separate it from the wonderful natural area. He recommended a 50- to 100-year vision for this area as a real community focal point in Clackamas County. The trees should not be sacrificed for a short-term gain.

**Dick Shook**, Clackamas County, member of Tsunami and Kellogg and Mt. Scott Creeks Watershed Board. He thanked Councilor Loomis for asking why the road was needed because he did not understand either. When talking about a green campus why was there a road through the middle? Will traffic control really work on the campus? How long would it be before the road was widened and more trees removed? Would this road produce more through traffic although traffic control was discussed? A number of people testified in support of the green area who came down on their weekends to volunteer their labor to improve the watershed. He urged the City Council to vote for trees, the neighborhood, and the environment; not for more pavement.

**Rob Kappa**, Milwaukie, spoke as an individual. Excellent points were made by those who had a love and passion for protecting a small area like this which in the future will be an even more precious gem. He felt strongly that we needed to go back to the drawing board with this road. Although it was stated that the impact would be minimal, he felt it would be dramatic. Chair Peterson stated one Commission cannot tie the hands of another, and sometime there would be Commission that wanted to expand the road and destroy the watershed. It was a choice between a road and a watershed preserved for future generations. In the past 60-years 74% of the watersheds in Oregon were gone due to agricultural practices and development. Those who spoke were not obstructionists; they wanted to help the City and County look at the environment first and consider other alternatives.

**Chair Peterson** deeply respected those who spoke. The County Commission was trying to balance partnerships and develop those area slated for development while protecting these gems. While Milwaukie did not have a UGB it was on the County's agenda, and it was not going further out into farm and forest land. It was an honor to work with Clackamas Community College and OIT. She noted she had spent her career trying to rightsize roads and make the entire system to work for connectivity. The County was willing to work with the City on downstream watershed and traffic shed issues.

**Mr. Swanson** did not schedule this matter for a decision but so the full Council could receive information. He asked what the process would be and how the City would interact. Staff has not had enough time to do a lot of study and respond, but he assumed there was a process that had just begun.

**Mr. Johnson** replied the process started in 2006 with public outreach and discussions. This was a locally-funded process and was not a federal EIS process. The plan had been to give this presentation when the master plan was finished which he assumed would be completed in June. It was up to the County to spec out how the stakeholders partnered from that point forward, and he had not put form to it yet. Fundamentally there needed to be guidance from the BCC to move forward with construction.

**Chair Peterson** asked for more specifics from the City in terms of a partnership. Was it traffic, for example, or green streets and other elements? They would try to formulate that into the process Mr. Johnson was developing. This matter was before the Commission Thursday for an update, but they would talk with the City before taking any action.

**Mr. Swanson** mentioned the map in the front of the room that showed the City's boundary as noted in the UGMA which included this particular area. He understood the UGMAs had expired, but the City did have an interest and held that area dear as it was in the Agreement.

**Chair Peterson** said it would be helpful to know the specific areas of interest without the County's having to guess.

**Councilor Barnes** still heard from the community they did not want this to happen. Two neighborhoods and an important segment of the community had come forward in opposition while the BCC wanted the road to go through. She hoped there could be some resolution because there were still many concerns. She did not recall this alternative on the table during the PAC and PRC meetings. Was there a way to do this without impacting the environment?

**Chair Peterson** understood Councilor Barnes wanted to see a committee formed that would deal with the specific issues left on the table. Or design charrette?

**Councilor Barnes** did not think a committee. She suggested sitting down together to come up with ideas that might work.

**Chair Peterson** responded the County had a lot of ideas on the table already. Could County and City staffs meet to talk about what they heard from the neighborhood in terms of the turning movements and signal timing and that sort of thing? Could that be part of the letter?

**Councilor Barnes** said citizen input would be directed to staff.

**Mayor Ferguson** called for a recess.

### **C. Preliminary Engineering Update on Light Rail Status No.1**

**Ms. Hemmen** provided an update on progress and issues related to Preliminary Engineering (PE) on the light rail project in the City of Milwaukie. Nine months ago the region adopted the Locally Preferred Alternative (LPA), and the City of Milwaukie signed an umbrella agreement with TriMet regarding its expectations of the project. At the end of March 2009 the Federal Transit Authority (FTA) granted approval of PE for the project, and TriMet expected to be 30% complete by February 2010. She briefly discussed the Willamette River crossing and the Eastside Portland Streetcar. Ms. Hemmen stressed the importance to Milwaukie of the project's ending at Park Avenue. Public outreach is ongoing with a substantial number of meetings scheduled. Staff is working with TriMet and Metro on mitigation of visual impacts to the Ardenwald Neighborhood. Coordination with the Kellogg for Coho Initiative continues on efforts to obtain federal and state permits for both projects.

**Councilor Barnes** had been taken off guard with the report in regards to the elevated structure near the Ardenwald Neighborhood. Where were we with the Neighborhood and the concerns that had been raised?

**Ms. Hemmen** was working to schedule a meeting with Matt Rinker and his group to walk the alignment and a subsequent meeting to review the data with affected residents.

**Mr. Asher** added there would be impacts close to the structure on the edge of the Ardenwald Neighborhood. Even though that was disclosed in the DEIS it had not been highlighted. The impact issues were described in broad terms and mitigations had not been suggested in that document. The first thing was to understand the extent of the impacts. The commitment was to gather that information and put it in an understandable form to present to the neighbors. Early suggestions were that the greatest impacts would be near Roswell which would lessen as the train went south. Staff would provide drawings for the neighborhood and get people's reactions.

**Councilor Barnes** noted there had been discussions with former Police Chief Larry Kanzler regarding live video feeds and asked if there were any updates.

**Mr. Asher** reported there were ongoing discussions with TriMet and that he and Ms. Herrigel were going to meet with Chief Jordan. Live feeds were not currently common practice in the TriMet system, and there were monitoring complications. That idea had been talked about repeatedly but without any resolution as to how to carry it out. Safety and security were the focus of the project, and he thought there would be more to say on that subject before PE was done.

**Councilor Chaimov** asked who prepared attachment 1, SDEIS of Milwaukie issues and why.

**Ms. Hemmen** replied she prepared the attachment which began as her notes to track the issues.

**Mayor Ferguson** and **Councilor Loomis** had no comments or questions. Mayor Ferguson called for public comment on light rail.

**Les Poole**, Clackamas County. His family donated property for Robert Kronberg Park and his was a familiar face on regional issues. It was ironic they were talking about the 3-Creeks that flowed down to Kellogg Lake. He had a lot of concerns about Kellogg Lake. This was not an attack on the County Commissioner, but she was understandably evasive. He commented on what had gone on a couple of years ago with Kellogg Lake. He thought about how originally the LPA was at Southgate. He thought about how he and others were treated at the hands of Councilor Barnes and former Councilor Collette. He referred to the big stack of emails he had with him. Excluding other Councilors. Backdoor meetings. Attacks on him and others calling them the idiot fringe. He had no confidence whatsoever in the light rail process. He did not come down here for political purposes but because it was time to take care of the environment. He was talking about everything. He did not trust Councilor Barnes to help make that happen. He began to read the emails that were public record.

**Councilor Barnes** said as part of the code personal attacks toward staff and Council should not be made, and asked Mayor Ferguson if he would allow this attack to continue as it had nothing specifically to do with the business on the agenda.

**Mr. Poole** said it did not have to have anything to do with tonight's business. It was pertinent to what has been an ongoing fiasco. He began reading an email which was a public record anyone could read. If he could not read the material he would go to the press or an attorney. He was not there to threaten anyone individually. He stopped talking as he did not wish there to be any more commotion or confusion; he was not a combative person. Anyone who looked at the public record or video and saw how citizens had been treated in the past would probably agree it was time for Councilor Barnes to resign. He hoped he would not have to wait 3 months for the minutes.

## **CONSENT AGENDA**

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt consent agenda as presented:**

A. Resolution 26-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the Construction of Main Street Wastewater Line Extension (Jefferson Street to Scott Street)

Resolution 27-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Transferring Appropriation Authority.

**Motion passed with the following vote: Councilors Chaimov, Loomis, and Barnes and Mayor Ferguson voting "aye." [4:0]**

## **AUDIENCE PARTICIPATION**

None.

## **PUBLIC HEARING**

### **Adoption of Transportation Code Amendments, Land Use File ZA-09-02 – Ordinances**

**Mayor Ferguson** called the hearing to order at 9:16 p.m.

**Councilor Chaimov** said given that **Councilor Stone** was excused and absent from this evening's meeting and has indicated a desire to participate on this agenda

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item, and given that staff has at City Council's direction provided alternatives that City Council members desire to study further, and given that the public hearing on the Transportation code Amendments, Land Use file ZA-09-02 was properly noticed for this evening and may be continued to a future hearing upon motion and approval by the City Council he moved that the public hearing on the Transportation Code Amendments, Land Use File ZA-09-02 be continued to the June 2, 2009, Regular Council meeting at 7:00 p.m. in City Hall. Mayor Ferguson seconded the motion. Motion passed with the following vote: Councilors Chaimov, Loomis, and Barnes and Mayor Ferguson voting "aye." [4:0]

## **OTHER BUSINESS**

### **A. Council reports**

**Councilor Barnes** announced the Friends of the Library Plant Sale and opening day of the Milwaukie Farmers' Market.

**Mayor Ferguson** announced Speaker of the House Dave Hunt's Town Hall.

## **ADJOURNMENT**

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adjourn the meeting. Motion passed with the following vote: Councilors Chaimov, Loomis, and Barnes and Mayor Ferguson voting "aye." [4:0]

**Mayor Ferguson** adjourned the regular session at 9:18 p.m.

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Pat DuVal, Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
MAY 19, 2009**

**CALL TO ORDER**

**Mayor Ferguson** called the 2054<sup>th</sup> meeting of the Milwaukie City Council to order at 7:30 p.m. in the City Hall Council Chambers.

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

Staff present: City Attorney Tim Ramis

**PLEDGE OF ALLEGIANCE**

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

**Councilor Barnes** read comments into the record remembering Madalaine Bohl, Milwaukie Museum Curator, who passed away on May 17, 2009.

**CONSENT AGENDA**

It was moved by **Councilor Stone** and seconded by **Councilor Barnes** to adopt consent agenda as presented:

- A. City Council Work Session Minutes of February 17, 2009;
- B. City Council Work Session Minutes of March 3, 2009;
- C. City Council Regular Session Minutes of April 7, 2009;
- D. City Council Regular Session Minutes of April 21, 2009;
- E. Resolution 28-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for the Paving of 27<sup>th</sup> Avenue;
- F. Resolution 29-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Adopting an Identity Theft Prevention Program ("ITPP") to Comply with the Oregon Identity Theft Protection Act (2003) and the Federal Trade Commission Red Flag Rules of 2008 Pursuant Thereto and Repealing Resolution 25-2009; and
- G. Extension of the City Manager's Employment Agreement.

Motion passed with the following vote: Stone, Loomis, Barnes, and Chaimov and Mayor Ferguson voting "aye." [5:0]

**AUDIENCE PARTICIPATION**

None.

**PUBLIC HEARING**

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

**Mr. Ramis** provided background on the proposed amendments and recommended continuance of the hearing.

It was moved by **Councilor Chaimov** and seconded by **Councilor Stone** to continue the hearing to the June 16, 2009, City Council meeting. Motion passed

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with the following vote: Stone, Loomis, Barnes, and Chaimov and Mayor Ferguson voting “aye” and Councilor Barnes voting “no.” [4:1]

## **OTHER BUSINESS**

### **A. Council reports**

**Councilor Barnes** would attend the Columbia Care tour of the Balfour facility and the flag dedication at Milwaukie High School.

**Councilor Chaimov** attended the meeting in Oak Grove regarding incorporation.

**Mayor Ferguson** expressed appreciation to the community for its support of the Ledding Library Plant Sale.

## **ADJOURNMENT**

It was moved by Councilor Chaimov and seconded by Councilor Stone to adjourn the meeting. Motion passed with the following vote: Stone, Loomis, Barnes, and Chaimov and Mayor Ferguson voting “aye.” [5:0]

**Mayor Ferguson** adjourned the regular session at 7:36 p.m.

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Pat DuVal, Recorder

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING SHERRI DOW TO THE MILWAUKIE PARK AND RECREATION BOARD**

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

**WHEREAS**, Milwaukie Municipal Code Section 2.16.020(A) provides for appointment of members of the Milwaukie Park and Recreation Board “by the council;” and

**WHEREAS**, Sherri Dow possesses the necessary qualifications to serve on the Milwaukie Park and Recreation Board; and

**WHEREAS**, the City Council waives the two consecutive term limitation as it is in the public interest to do so pursuant to Milwaukie Municipal Code Section 2.10.030.D;

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

SECTION 1: That Sherri Dow is reappointed to the Park and Recreation Board by consensus of the Milwaukie City Council on May 19, 2009.

SECTION 2: That her term of reappointment shall commence on May 19, 2009 and shall expire on March 31, 2013.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on June 2, 2009.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

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,  
REAPPOINTING PATTY WISNER TO THE DESIGN AND LANDMARKS COMMITTEE**

**WHEREAS**, a vacancy exists on the Design and Landmarks Committee; and

**WHEREAS**, Milwaukie Municipal Code Section 2.16.020(A) provides for appointment of members of the Design and Landmarks Committee “by the council;” and

**WHEREAS**, Patty Wisner possesses the necessary qualifications to serve on the Design and Landmarks Committee; and

**WHEREAS**, the City Council waives the two consecutive term limitation as it is in the public interest to do so pursuant to Milwaukie Municipal Code Section 2.10.030.D;

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

SECTION 1: That Patty Wisner is reappointed to the Design and Landmarks Committee by consensus of the Milwaukie City Council on May 19, 2009.

SECTION 2: That her term of reappointment shall commence on May 19, 2009 and shall expire on March 31, 2012.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on June 2, 2009.

\_\_\_\_\_  
Jeremy Ferguson, 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, Community Development and Public Works Director

**From:** Jason Rice, Associate Engineer

**Subject:** Northeast Sewer Extension Easement Appraisal Service Contract

**Date:** May 12, 2009 for June 2, 2009 Regular Session

**Action Requested**

Approve resolutions providing the City Manager the authority to enter into a contract with Right-Of-Way Associates to acquire, easements to construct wastewater pipes for the Northeast Sewer Extension (NESE) Project in the amount of \$147,750, and to make such acquisitions by eminent domain if necessary.

**History of Prior Actions and Discussions**

**February 2009:** Staff presented an update during Work Session to refresh Council on the NESE Project status.

**February 2009:** Council approved a resolution authorizing the City Manager to enter into a contract with Century West Engineering for the engineering services needed to provide a sewer system to the Dual Interest Area "A".

**December 2008:** Council approved a loan agreement for the Clean Water State Revolving Fund (CWSRF) loan to fund the extension of wastewater sewer to the Dual Interest Area "A" (Resolution No. 94-2008).

**October 2008:** Council approved moving forward with the extension of wastewater sewer to the Dual Interest Area including; entering into an Intergovernmental Agreement (IGA) with Clackamas County for use of Century West Engineering services through a contract between Century West Engineering and Clackamas County; making application for a DEQ loan needed to accomplish the sewer extension; and moving forward with the public information needed for the project (Resolution 81-2008).

**September 2008:** Work session discussing the sewer extension project. Council requested additional information prior to acting.

**May 2008:** Work session to discuss the sewer extension project in light of City, County, State and intergovernmental requirements and policies. Staff presented information on relevant City and County policies, state law regarding annexation, and raised questions regarding service delivery and governance.

**March 2008:** Work session to discuss the need for, and timing of wastewater service to the unincorporated area adjacent to the northeastern border of the City. Working with Clackamas County, the City was beginning a public outreach effort to inform residents about the Dual Interest Area and determine public interest regarding connection to the City's public wastewater sewer system.

**November 2002:** Council directed the City Manager to sign a CDBG grant application to subsidize connection costs for low-income residents in the Dual Interest Area. This proposal assumed a City project to extend service to the unsewered unincorporated area.

**July 1990:** Clackamas County Order No 90-726 established an Urban Growth Management Agreement (UGMA) in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County. In the northern Dual Interest Area (DIA), or DIA, the agreement states: *"The City shall assume a lead role in providing urbanizing services."*

### **Background**

The design of the NE Sewer Extension project will be completed by the end by July 2009. As the design has been finalized, thirty-four (34) properties have been identified as requiring easements (both permanent and temporary, see attachment 1). These easements are necessary for the construction of the sewer and, in the case of the permanent easements, its maintenance.

Although there is no indication that the City will not be able to acquire the easements for this project through friendly negotiation, it is prudent for the City to establish its right to

condemn and acquire needed easements to avoid lengthy confrontations. Attachment 2 is a resolution that provides for the City to exercise its legal authority of condemnation for this project.

The need for a consultant to complete the work needed to obtain the easements for this project became evident as the number of affected properties became known. A request for proposals for the easement acquisitions was advertised on April 17<sup>th</sup> with a deadline of May 5<sup>th</sup>. Two proposals with nearly identical costs were received; the other from Universal Field Services. The review of the proposals leads staff to propose Right-of-Way Associates as the consultant for this project. Their proposal demonstrated better attention to detail, and they are able to support the tight timeframe the City desires to work in.

Attachment 3 provides the anticipated schedule of the events leading up to completion of this project.

### **Concurrence**

Support for the project has been provided by the Community Services, Planning, Engineering, Public Works, and Community Development Departments.

The proposals for the appraisal services were reviewed by the Engineering and Community Development staff.

### **Fiscal Impact**

Funds to acquire the necessary easements will be included in the NESE Project cost and funded by the City's Clean Water State Revolving Fund (CWSRF) loan with the Department of Environmental Quality (DEQ). The loan will be paid off by the connection fees collected from properties connecting to the sewer system.

If the eminent domain authority was invoked, and a property owner were to oppose such an action in court, the City could incur additional legal expenses. Every effort will be made to complete all purchases as negotiated sales without use of the City's eminent domain authority.

### **Work Load Impacts**

Approval of this resolution itself is likely to reduce staff workloads. Operating without this authority could lengthen negotiations and impact the project delivery schedule.

### **Alternatives**

It is possible to move forward without the authority at this stage, however the NESE project schedule would be delayed until staff could accomplish the tasks presented within this RFP.

### **Attachments**

1. List of necessary easements
2. Resolution providing condemnation authority for the City to obtain sewer easements for the NE Sewer Extension project
3. Easement acquisition schedule
4. Resolution providing City Manager authority to enter into a contract with Right-Of-Way Associates

<u>Easement Number</u>	<u>Tax Map</u>	<u>Tax Lot</u>	<u>Description Date Exhibit A</u>	<u>Drawing Date Exhibit B</u>	<u>Temporary Easement (sq. ft)</u>	<u>Permanent Easement (sq. ft)</u>	
N1	1-2E-30AB	6900	3/11/2009	3/9/2009	3,319	---	See Note 1
N2	1-2E-30AB	7000	3/11/2009	3/9/2009	1,002	---	See Note 2
N3	1-2E-30AC	300	3/16/2009	3/19/2009	5,273	280	
N4	1-2E-30AC	400	3/23/2009	3/23/2009	26,667	10,121	
N5	1-2E-30AC	600	3/16/2009	3/23/2009	4,066	---	
N6	1-2E-30AD	6600	3/23/2009	3/24/2009	2,267	3,181	
N7	1-2E-30AD	7100	3/27/2009	3/27/2009	1,500	2,000	
N8	1-2E-30AD	8400	4/7/2009	4/7/2009	1,036	---	
N9	1-2E-30AD	8500	4/7/2009	4/7/2009	497	---	
N10	1-2E-30AD	2400	5/4/2009	5/4/2009	1,582	---	
N11	1-2E-30AD	2500	5/4/2009	5/4/2009	545	---	
N12	1-2E-30AD	3400	5/4/2009	5/4/2009	545	---	
N13	1-2E-30AD	2700	5/4/2009	5/4/2009	545	---	
N14	1-2E-30AD	2800	5/4/2009	5/4/2009	645	---	
S1	1-2E-30AD	6100	3/30/2009	3/27/2009	4,669	3,155	
S2	1-2E-30AD	6200	3/30/2009	3/30/2009	471	---	
S3	1-2E-30AD	6300	3/30/2009	3/30/2009	5,817	932	
S4	1-2E-30AD	7300	3/30/2009	3/31/2009	5,390	2,695	
S5	1-2E-30DA	3700	4/20/2009	4/17/2009	795	795	
S6	1-2E-30DA	3800	4/20/2009	4/17/2009	795	795	
S7	1-2E-30DA	3900	4/20/2009	4/17/2009	830	830	
S8	1-2E-30DA	4000	4/20/2009	4/17/2009	910	---	
S9	1-2E-30DA	4100	4/20/2009	4/20/2009	760	---	
S10	1-2E-30DA	8900	4/21/2009	4/17/2009	200	150	
S11	1-2E-30DA	9000	4/21/2009	4/21/2009	750	562	
S12	1-2E-30DA	9100	4/21/2009	4/17/2009	1,490	1,118	
S13	1-2E-30DA	9300	4/21/2009	4/21/2009	1,500	1,125	
S14	1-2E-30DA	9400	4/21/2009	4/21/2009	960	720	
S15	1-2E-30DA	9500	4/22/2009	4/22/2009	1,100	825	
S16	1-2E-30DA	1900	4/27/2009	4/29/2009	1,200	1,600	
S17	1-2E-30DA	2201	4/27/2009	4/27/2009	1,575	---	
S18	1-2E-30DA	2300	4/27/2009	4/27/2009	---	2,100	
S19	1-2E-30DA	5000	4/27/2009	4/27/2009	1,469	---	
S20	1-2E-30DA	4900	4/27/2009	4/22/2009	1,719	---	
<b>TOTALS</b>					<b>81,889</b>	<b>32,984</b>	

**Notes:**

- Includes additional area outside the permanent pump station easement purchased previously. Temporary easement to construct pump station was not identified. Originally purchased Permanent Easement is not included in this area calculation
- Includes additional area at northwest corner of property necessary to construct pump station on adjacent Tax Lot 6900. Temporary easement to construct pump station was not identified. Exhibits also includes the original temporary and permanent easements which have already been purchased. Originally purchased Temporary and Permanent Easements are not included in this area calculation

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DECLARING THE NEED TO ACQUIRE AND APPROVE THE PURCHASE AND/OR CONDEMNATIONS OF EASEMENTS IN THE DUAL INTEREST AREA “A” FOR THE CONSTRUCTION OF THE NORTHEAST SEWER EXTENSION PROJECT.**

**WHEREAS**, Chapter Six of the City of Milwaukie Comprehensive Plan and the City-County Urban Growth Management Agreement both identify the City as the preferred provider of urban services, including wastewater collection, within the Dual Interest Area “A”; and

**WHEREAS**, the City by Resolution 7-2009, has authorized a contract for the completion of design of the Northeast Sewer Extension Project for the purpose of installing sewer main in the Dual interest Area “A”; and

**WHEREAS**, in order to complete the project the City must acquire permanent and temporary easements from multiple properties in the project boundaries; and

**WHEREAS**, the City of Milwaukie has authority to acquire property by condemnation under ORS 223.001-.110; and

**WHEREAS**, the combined value of the easements may total more than \$25,000; and

**WHEREAS**, the Milwaukie Municipal Code section 3.15.030 requires that a purchase of real property values at more than \$25,000 requires the “approval of the City Council”;

**NOW THEREFORE, BE IT RESOLVED** BY THE City Council of the City of Milwaukie that:

Section 1. The acquisitions of easements over the properties listed in the attached Exhibit A are needed for the Northeast Sewer Extension Project,

Section 2. Pursuant to Milwaukie Municipal Code Section 3.15.030 and ORS 223.001-.110, the City Council approves the purchase and/or condemnation of the easements over real properties identified in Exhibit A, and authorizes the City Manager to take all action necessary, including execution of all necessary documents, to complete said purchases or condemnation.

Section 3. Upon the trail of any suit or action instituted under the provisions of Section 2 above, the easement agent’s legal counsel, after consultation with City Staff, is authorized to make any stipulation, agreement or admission that in the counsel’s judgment may be for the best interest of the Project and the City of Milwaukie.

Introduced and adopted by the City Council on .

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

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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

Document1 (Last revised 09/18/07)

ATTACHMENT 3

<b>NE Sewer Extension Easement Appraisal, Negotiation and Closing</b>			
<b>Description</b>	<b>Responsible</b>	<b>A Properties</b>	<b>B Properties</b>
<u>Issue Notice to Proceed</u>	CITY	6/3/09	6/3/09
<u>Open Project</u>	ROWA	6/3/09	6/3/09
<u>Open Parcel Files</u>	ROWA	6/3/09	6/3/09
<u>Provide Legal Descriptions and Exhibit Maps</u>	CITY	6/3/09	6/3/09
<u>Review &amp; process legal descriptions and exhibit maps</u>	ROWA	6/3/09	6/3/09
<u>Intro Letter / 15 Day Notice of Inspection - Draft to City</u>	ROWA	6/3/09	6/3/09
<u>Intro Letter / 15 Day Notice of Inspection - Review comments from City</u>	CITY	6/7/09	6/7/09
<u>Intro Letter / 15 Day Notice of Inspection - to Owners</u>	ROWA	6/7/09	6/7/09
<u>Order Trios &amp; Preliminary Title Reports</u>	ROWA	6/7/09	6/7/09
<u>Engage Appraiser</u>	ROWA	6/7/09	6/7/09
<u>Provide conveyance document templates</u>	CITY	6/13/09	6/13/09
<u>Appraisal Inspections</u>	ROWA	6/22/09	6/22/09
<u>Receive &amp; process Title Reports</u>	ROWA	6/24/09	7/1/09
<u>Offer Letter &amp; Packet - Draft to City</u>	ROWA	7/1/09	7/18/09
<u>Offer Letter &amp; Packet - Review comments from City</u>	CITY	7/8/09	7/29/09
<u>Appraisals Due</u>	ROWA SUB	7/13/09	8/12/09
<u>Engage Appraisal Reviewer</u>	ROWA	7/13/09	8/12/09
<u>Appraisal Reviews Due</u>	ROWA SUB	7/21/09	8/22/09
<u>Submit Appraisals &amp; Reviews to City</u>	ROWA	7/22/09	8/23/09
<u>Authorization to Proceed w/ Negotiations</u>	CITY	7/26/09	8/26/09
<u>Present Offers to Owners</u>	ROWA	7/27/09	8/27/09
<u>Negotiate</u>	ROWA	9/1/09	10/3/09
<u>Submit Acquired Documents By</u>	ROWA	9/2/09	10/4/09
<u>City Acceptance of Easements, Issue Payments to Owners</u>	CITY	9/13/09	10/14/09
<u>Record Easements, Order Title Insurance</u>	ROWA	9/20/09	10/21/09
<u>Provide Duplicate Acquisition File (incl recorded Easement &amp; Title Policy)</u>	ROWA	9/27/09	10/27/09

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE APPRIASAL AND EASEMENT ACQUISITION SERVICES ASSOICIATED WITH THE NORTHEAST SEWER EXTENSION PROJECT WITH RIGHT-OF-WAY ASSOCIATES INC.**

**WHEREAS**, in order to complete the Northeast Sewer Extension Project the City must acquire permanent and temporary easements from multiple properties in the project boundaries; and

**WHEREAS**, the project was included in the 2009-2013 Capital Improvement Plan; and

**WHEREAS**, a formal proposal process following Chapter 30 of the City Public Contracting Rules was conducted; and

**WHEREAS**, Right-of-Way Associates was selected as the most qualified responding proposal;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milwaukie authorizes the City Manager to sign a contract for the appraisal and easement acquisition services with Right-of-Way Associates Inc., in the amount of \$147,750.

Introduced and adopted by the City Council on June 2, 2009.

This resolution is effective on June 2, 2009.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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

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



**To:** Interim Mayor Ferguson and Milwaukie City Council  
**Through:** Mike Swanson, City Manager  
**From:** Bob Jordan, Chief of Police  
**Date:** May 11, 2009  
**Subject:** O.L.C.C. Application – River Road House – 11921 SE 22<sup>nd</sup> Avenue

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**Action Requested:**

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from River Road House – 11921 S.E. 22<sup>nd</sup> Avenue.

**Background:**

We have conducted a background investigation and find no reason to deny the request for liquor license.

5.  
PUBLIC HEARING

**MILWAUKIE MUNICIPAL PROPOSED CODE  
AMENDMENTS  
CONTINUED FROM MAY 5, 2009**

**PLEASE REFER TO DRAFT INCLUDED IN  
THE MAY 5, 2009 COUNCIL PACKET**