

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
October 7, 2008**

CALL TO ORDER

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

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

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

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

Metro Councilor Carlotta Collette announced upcoming Metro Regional Choices meetings.

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

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

CONSENT AGENDA

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

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

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

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

AUDIENCE PARTICIPATION

- Les Poole, Clackamas County

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

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

- **Robert Mack, Milwaukie**

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

- **Kim Hutchinson, Milwaukie**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- **Bryon Dorr, Milwaukie**

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

- **Dianna Jones, Milwaukie**

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

- **John Holladay, Milwaukie**

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

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

PUBLIC HEARING

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

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

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

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

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Mayor Bernard reviewed the conduct of the hearing.

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

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

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

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

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

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

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

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

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

Staff Report

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

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

Mayor Bernard asked what a high score was.

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

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

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

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

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

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

Close Public Hearing

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

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

Council Decision

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

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

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

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

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

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

ORDINANCE NO. 1986:

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

Mr. Monahan read the LUBA information.

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

OTHER BUSINESS**A. Extension of Wastewater Collection System to Dual Interest Area A – Resolution**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Councilor Stone said but it was not impossible.

Mr. Asher replied nothing was impossible.

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

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

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

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

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

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

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

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

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

RESOLUTION NO. 81-2008:

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

Council Report

Councilor Loomis enjoyed working at the Farmers' Market.

Councilor Stone was looking forward to attending the Poetry reading.

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

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

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

ADJOURNMENT

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

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



Pat DuVal, Recorder

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL OCTOBER 7, 2008

MILWAUKIE CITY HALL
10722 SE Main Street

2039th MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page # |
|---|-----------|
| I. CALL TO ORDER | |
| Pledge of Allegiance | |
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| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | 5 |
|
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| National Fire Prevention Week Proclamation | |
|
 | |
| 3. CONSENT AGENDA <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> | |
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 | |
| A. City Council Minutes of August 19, 2008 Work Session | 7 |
| B. City Council Minutes of September 2, 2008 Regular Session | 16 |
|
 | |
| 4. AUDIENCE PARTICIPATION <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> | |
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| 5. PUBLIC HEARING <i>(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.)</i> | |
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| Zoning and Comprehensive Plan Map Amendments Related to the Demolition of Ardenwald School Located at 8950 SE 36th Avenue – File Nos. ZC-08-02 and CPA-08-02 – Ordinance (Brett Kelder) | 32 |

- 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. Extension of Wastewater Collection System to Dual Interest Area A – Resolution (Kenny Asher) 48**
 - B. Council Reports**

7. INFORMATION

- A. Center/Community Advisory Board Minutes, August 8, 2008 71**
- B. Park and Recreation Board Minutes, June 24, 2008 74**

8. ADJOURNMENT

Public Information

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

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS

NATIONAL FIRE PREVENTION WEEK PROCLAMATION

WHEREAS, the City of Milwaukie is committed to ensuring the safety and security of all those living in and visiting our state; and

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

WHEREAS, home fires killed more than 2,500 people in the United States in 2006, according to the latest research from the nonprofit National Fire Protection Association (NFPA), and fire departments in the United States responded to nearly 400,000 home fires; and

WHEREAS, cooking is the leading cause of home fires and home fire injuries, while heating equipment and smoking are the leading causes of home fire deaths; and

WHEREAS, first responders are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and

WHEREAS, City residents are responsive to public education measures and are able to take personal steps to increase their safety from fire, especially in their homes; and

WHEREAS, residents who have planned and practiced a home fire escape plan are more prepared and will therefore be more likely to survive a fire; and

WHEREAS, the 2008 Fire Prevention Week theme, "It's Fire Prevention Week – Prevent Home Fires!" effectively serves to remind us all of the simple actions we can take to stay safer from fire during Fire Prevention Week and year-round.

THEREFORE, I James Bernard, Mayor of Milwaukie, do hereby proclaim October 5-11, 2008 as Fire Prevention Week throughout this City, and I urge all the people of Milwaukie to protect their homes and families by heeding the important safety messages of Fire Prevention Week 2008, and to support the many public safety activities and efforts of Oregon's fire and emergency services.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of October 2008.

ATTEST:

Pat DuVal,
City Recorder

James Bernard, Mayor
City of Milwaukie

3.
CONSENT AGENDA

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

August 19, 2008

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

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

Staff Present: City Manager Mike Swanson, City Attorney Bill Monahan, Operations Director Paul Shirey, Water/Wastewater Supervisory Ronelle Sears, and Utility Specialist II Jim Lund.

Public Safety Advisory Committee Interviews

Mayor and Council interviewed Ray Bryan for reappointment as the Historic Milwaukie Neighborhood representative.

Proposed Amendments to Milwaukie Municipal Code Chapter 13.12.063 – Fats, Oil, and Grease (FOG) Control

Mr. Shirey reported 13 months ago he brought an ordinance to amend the fats, oils, and grease (FOG) control section of the code to Council. They began implementation of that by notifying those who fell under the regulation. They had been implementing the program for nearly a year. At a meeting in June one of the businesses subject to FOG control brought forward a series of concerns about whether coffee shops were regulated under the code and or any business that conformed at the time of building codes and retrofit according to FOG regulations. They had provisions in the original ordinance that were passed in July 2007 in terms of penalties that did not conform to our current practice in administering civil penalties for non-compliance. They had gone back and reexamined the ordinance and made a number of proposed amendments. One of the amendments was to clarify that coffee shops would be subject to FOG regulation as a food facility as defined in new provisions of the code. They amended the penalties applicable to violators. In May in response to the concern by some of the coffee shop owners they started to draft an agreement that would allow for the City to incur the expense of installing a grease trap at the sink in the facility and measure the accumulation of FOG. After 6 month if there was more than an inch of accumulation then the owner would reimburse the City for the cost of the installation and proceed with a program to regularly clean out the grease trap and conform to the code. If there wasn't more than an inch of accumulation then the owner could choose to take it out or continue to use the trap. They held that in abeyance during the time that this question came up and met with three of the coffee shop owners a couple of weeks ago to explain what they are doing. He couldn't say that any of them were happier with what they were proposing because rather than excluding or excepting they were including those businesses as FOG generators and subject to FOG control. Staff included some disgusting pictures of these traps and a couple of establishments that served coffee and what that looked like. They included a list in attachment F of food service companies subject to this ordinance in this City. In attachment E they listed the cities they knew that had FOG regulations and those that did and did not include coffee shops. Attachment D was the explanation of why coffee

CITY COUNCIL WORK SESSION – AUGUST 19, 2008

DRAFT MINUTES

Page 1 of 9

Page 4

shops should be subject to regulation and the federal regulations regarding the discharge of fats, oils, and grease. One of the original questions was why are we doing it and where is the authority? Should coffee shops be subject to this regulation, and if not, why? Staff recommended adopting the proposed language and continuing to offer the installation at the City's cost for the three subject coffee shops.

Councilor Barnes had been trying hard to understand both sides since the last discussion. Great American Video was about the same size. What did they have to say?

Mr. Shirey introduced Jim Lund, Wastewater Specialist II and Ronelle Sears, Storm and Wastewater Supervisor.

Mr. Lund said the initial up front cost was a concern to Great American Video. They understood what the ordinance required and why we were doing it. One of the photos in the staff report was from Great American Video. Since the fixture had been installed it had obviously been working. Their initial reaction was that it would be costly, but they were willing to comply because there could be a concern or an issue.

Councilor Barnes noted some people at home put grease down their sinks without thinking, so why focus on restaurants? She knew there were regulations, but she wondered how much we put in the system other ways as well.

Mr. Lund agreed that did happen in homes. The point was getting it where it was concentrated and getting businesses involved to handle it up front. That was the key. He said a public outreach about grease should be considered.

Councilor Chaimov commented on the list of restaurants and coffee shops provided. Why did it say there is no grease at Big Town Hero and Quizno's? What did that mean?

Mr. Lund said all of their foods come prepared, prepackaged, and pre-sliced. When they took it out of the package it went directly into the sandwich. There were no dishes involved in the process, so they were not FOG-producing businesses. That was why there was separation among the businesses.

Councilor Chaimov said his interest was in making sure the City was imposing this ordinance on facilities that made enough of a difference to our water system and pipes to require compliance. Was there a way to quantify the level at which a business was considered to be contributing enough to require them to install the equipment.

Mr. Shirey replied the quantification was a tough issue. The really big producers were subject to an entirely different set of requirements, and the smaller producers were a challenge to measure. They knew that when throwing things like coffee and cream down the sink contributed fats and oils. Great American Video was their best opportunity to give an example of what that created because they installed the trap. That was one of the reasons why they wanted to go ahead with the program to install at the City's expense at the 3 coffee shops to actually get a measurable result. Every other jurisdiction they talked to that regulated small producers said the issue was that enough accumulation from those businesses all added up. There was no control mechanism for municipalities to target homes; they tried to education people. There was the ability and a trend to regulate this source of FOG in the system. No one was measuring; they tried that and realized it did not work. You have to install a grease trap to make the measurement.

Mr. Lund gave an example of why it could not be measured even on a large producer. There was a meat packing company in Clackamas and one of the problems was backups in that area. They would try to quantify by measuring it, and you could do it. The problem was that the grease was a stratospheric and clings to the pipe.

Councilor Chaimov understood Great American Video had a service that came in periodically to clean out the trap, and from that they knew how much was pulled out. Was that something that could be applied at other places?

Mr. Shirey replied measuring could not be done without installing a trap.

Councilor Chaimov understood the City was saying if an inch was found, then the business has to pay for it. It struck him that an inch, depending on the size of the trap, was not a sufficient way to quantify. Could it be done by weight?

Mr. Lund said they tended to go by percentages because even though there may or may not be a weight quantification one had to figure out how much was being put into the system. One had to look at the cumulative effect on the system. Even if it went all the way to the City pipe, once it hit the 8-inch sewer line it stopped and built up, and water could not pass.

Mr. Shirey did not know how much was enough because there was no standard to go by. He did not know of another community that was doing that. He did not have a way of saying one pound or a gallon or a different measure of some kind was a threshold at which a business would need to install a trap.

Councilor Chaimov assumed the City would require installation and depending on how much was collected the business may or may not have to pay for the trap. He was looking for a reasonable amount.

Mayor Bernard thought there needed to be an established amount and that the City should not arbitrarily tell people they need a trap.

Councilor Loomis thought there needed to be a comparison with other restaurants. If they were putting out the same as a household, it would be hard to hold the business to that standard. The installation was not cheap. Great American spent \$1,600 plus the pumping fee every 6 months.

Mr. Lund said initially the cycle would be 8 weeks, and from that point on service would be pushed out as appropriate so additional costs were not incurred.

Mr. Shirey said the problem was that all grease traps were not built alike. They came in different sizes and of course they would accumulate at different rates depending on a number of variables. That was why most communities adopted that if a business meets the food service definition then the assumption is you would accumulate in some fashion grease, fats or oils. It did not matter if it was a gallon or 600.

Mr. Swanson explained when this came up in June he wanted to have some time and have them look at it again as he was skeptical. In the end he said to go forward because of the impact. The impact was not a single place. It was a cumulative effect of multiple businesses. It was a standard that needed to be made up because in order to measure you had to have a grease trap. The question was if a grease trap was required. In order to come up with a standard you have to have it. We have said an inch of grease on the surface would be a trigger point at which there was responsibility. Anything less than that, the City would cover the cost of installing the trap, which was a standard. If one looked at the Brookside station one saw a layer of grease on top of all of the other stuff. It

would probably be the easiest thing to measure because there was no standard for grease traps. All traps were not created equal. Consequently if you were to do a pound measurement it would be difficult to come up with a standard. The one-inch was something that was available. He believed that the coffee shops did create a serious enough problem given more than one was dumping into the system. Staff was trying to afford some protection to the infrastructure.

Mayor Bernard did not feel anyone on Council disagreed with that idea, but there are so many different sizes of traps and accumulation could vary. It seemed to him a pound measurement made more sense than an inch measurement unless they were all the same size traps.

Mr. Lund said when the cleaners clean the traps they look at it and they can see the depth. You cannot weigh it out because the haulers come in with a sucker hose that pulls everything out. They based everything on a percentage. The percentage was based on the water level compared to the fat level. The reason they use that particular factor was because there were different sizes of traps. Once it gets to a certain point it starts bypassing the trap and is not working. That was why they used a percentage value. One also had to take the amount of solids on the bottom into account.

Mr. Shirey explained there were baffles so when the water moved through them the water stopped if it got too full and went right across the top.

Councilor Barnes asked if the six other cities with regulations had specifics.

Mr. Lund replied they were all inclusive.

Mr. Shirey said that was the method staff proposed with the exception of the three coffee shops. They would be a special exception to the rest of the program.

Councilor Chaimov noted Pietro's complied and asked what happened if after a year they found not much was contributed. If we were applying a standard to coffee shops, should it apply to Pietro's too?

Mr. Lund said County was planning on adopting a FOG program that he understood would include coffee shops.

Mr. Shirey understood that the County was going to do what staff proposed. He needed to leave with some direction on what to come back to Council with.

Councilor Chaimov's preference was that staff show Council using its best judgment an amount that would show up in traps and was enough to require that business to cover the expense of putting in the trap and below which the public should cover the expense.

Mr. Shirey asked about the business that had already installed their traps?

Mayor Bernard did not believe there should be an exception.

Councilor Chaimov said that was the issue they had to confront.

Mayor Bernard was concerned about opening the City up to liability for making the exception for the three shops.

Councilor Chaimov did not see it as an exception for three coffee shops. It had to be applied across the board or not at all. He would like to hear what was the staff's best judgment.

Mr. Swanson commented there were a number of businesses in town that saw this as a need. Starbuck's did it as a policy. Another business owner saw it as

good business and citizenship and did not expect compensation. There were people that saw it as good public policy so went ahead and did it. They did not expect any compensation. There were a substantial number of people that did comply. He was not very supportive of putting in a grease trap and paying for it if something did not happen. He thought that ignored the fact that a number of people did it voluntarily as they saw it as a good thing. He saw this as supporting a different behavior.

Councilor Chaimov might ultimately agree that no exceptions are warranted, but he would like to have the ability to weigh the options.

Mr. Shirey said the staff recommendation was a 40-pound trap and one inch accumulation. That was the smallest size trap which he assumed would go into the coffee shops and was the most appropriate size for that kind of business.

Councilor Chaimov did not see making an exception for coffee shops because he did not see why a coffee shop was any more or less likely to cause a problem than Big Town Hero or Milwaukie Bowl. The basis was that it was either prepackaged or it was not, and things went down drain. His perspective was if things were going in the drain it did not matter whether it was a coffee shop or any other establishment. There ought to be a single standard applicable to everyone. Wichita Pub should be held to the same standard that coffee shops were.

Mr. Shirey said we are too late for that. If we would have talked about this a year ago before the ordinance was implemented that would have been fine. That did not work here. He believed we needed to either do the coffee shop thing or make everyone comply that meets the definition.

Mr. Lund said part of the problem with having an oversized tank was that if it was not pumped out the tank would begin rotting because of the pH drop. Then not only do you incur the cost of the maintenance, but the cost of replacement.

Councilor Loomis said he spoke with Great American Video and was told it was not something they wanted to do; they were just complying. The owner described himself as a left wing greenie, but did not feel it was really necessary. If it were not retroactive it would be a different thing. It was a tough time for businesses, and any added expense was difficult. We cannot compare them to Starbuck's. He needed something that was measurable. How often did it need to be pumped out? He had a feeling that citizens were contributing more than the coffee shops.

Mr. Swanson said he would not speculate on what WES would do, but if the County was adopting the same standard he would not be surprised if a wholesale customer would have to adopt similar standards. His point was if county did adopt the FOG ordinance in the same manner as proposed here, that as a wholesale customer there would come some point at which Milwaukie would be requested to adopt the same standard. They would not be happy having district customers limited in some way and wholesale customers having an easier ride.

Councilor Chaimov did not have a problem with the requirement. It was a question of who paid for it. He would like staff to come back with an ordinance that included some cutoff, and then Council could vote.

Mr. Shirey understands the request, but he was not certain he could bring back what Councilor Chaimov was asking for. It would be good to get some clarity on what the County was going to do.

Councilor Chaimov said the impossibility of the task might influence a direction.

Councilor Barnes asked if we could see what other jurisdictions did outside of Oregon?

Mr. Lund said it was more common on the east coast, and they actually charged a yearly permit fee to administer and inspect. Portland was considering it because of DEQ restrictions.

Wastewater Contract and Proposed Rates

Mr. Swanson said there were three separate. Questions 1 and 2 related to Community Partnership process. Did City Council wish to continue into the next phase and if so who would you want to represent you? Staff recommended continuing. The last group came up with some principles one of which was the Kellogg Treatment Plant recommendation. Everyone was asked to buy into the principles. The City's goal was still to decommission Kellogg, not to make the footprint smaller. Before leaving tonight we want to make sure that they told Mr. Kuenzi if the City wished to continue and who would represent it in the process.

Mr. Swanson thought there might have been some misunderstanding. In December 2007 WES reviewed the information. The reason we are here was that we did have some problems with what was being proposed. The last time he invited Mr. Kuenzi to make some restatements and to answer any questions because ultimately we did have a big issue in front of us, which was the big decision on the wastewater treatment agreement and proposed rates.

Mr. Kuenzi distributed a summary presentation on the Community Partners Task Force. The item on Kellogg remained open. The Task Force got to a sticking point over the Kellogg Treatment Plant question. This was about the best you could do at this point with the Kellogg question until we started to go forward putting binding agreements in place, and then start making decisions as a whole. They looked at the cost of decommissioning Kellogg Treatment Plant and doing the replacement at Tri-City at a cost of about \$150 million. The Task Force was not willing at this point to say the group would absorb that cost. It did not mean that as we went forward in the future they would not reconsider it. Going into the process he would not put too much weight on this. His gut feeling was you go forward, and the decommissioning would be a business decision when it costs more to invest in Kellogg than it did to replace that capacity elsewhere. There was a business argument to be made there, and the timing was not right as part of this process.

They were asking Council to ratify those recommendations and appoint someone to the next group to work out those binding agreements. The intergovernmental agreement (IGA) was a separate issue. There was no guarantee that the community partners forum would go forward. He hoped that it did because he believed there was a real benefit to everyone by going forward. They still have to have an IGA in place between CCSD#1 and Milwaukie for those services. When he came on December 4, 2007, Mr. Kuenzi asked to look at options for distributing equally and fairly the cost of the Phase 1 program across all customers whether you were inside or outside of the District on a contractual basis. They came back to the board with four different options. The Board landed on the case for Milwaukie and Johnson City that are not in the District. That meant that Milwaukie would be equally sharing the cost of those improvements that were needed within CCSD#1 and fell back to the existing customer base. They stripped out the growth component of the Phase 1 improvement program because CCSD#1 would get a portion of those revenues through system development charges (SDC) so they did not think it was fair to

charge wholesale customers for that growth component. They took the remaining \$64 million for the cost of improvements and billed that against all of the customers. He pointed to a figure of \$20.12 per connection was their first stab at what that would look like for Milwaukie. The Council directed him to go forward with that concept and develop a new IGA between the City and CCSD#1. As the Community Partners went forward the IGA may be folded into the binding agreement or it may continue to hold depending on what Council wanted to do. They needed to have an agreement in order to go forward.

Chris Storey, CCSD#1 Attorney, said the IGA in addition to reflecting the Board direction also tried to address the plethora of previous IGA's between Milwaukie and CCSD#1. By his count there were 13 different IGA's ranging from 1986 to current. A lot of them had bits and pieces that were useful, but most had fallen by the wayside. The purpose was to reflect the rates and the responsibilities of management. The first section defined various terms in the agreement. Section 2 referred to the services that were to be provided by CCSD#1. That was pulled from a 1990's IGA with updated language that reflected the current regulatory environment. The main differences were in section 3-rates and how they were assessed. The previous mechanism in place was that there was a meter at the pipe that delivered sewage to Kellogg, and they measured the flow into the plant. At the end of the year they created a percentage that when multiplied by the operating costs determined Milwaukie's charge for the year. There was no true capital component; it was purely an O&M charge. As capital facilities needed updates there were separate amendments to the IGA to reflect the capital charges that went against Milwaukie's percentage. The new rate arrangement was intended to short circuit that process by building in both a capital and normal O&M expense component leveled over time as part of a standard wholesale rate. Instead of measuring at the Plant they measure it per customer/per household. They charge out on an EDU basis and allocated the anticipated borrowing costs for this \$64 million, the cost of O&M they anticipate, and the cost of capital. The initial calculation was a little different than before. The costs came out to \$22.05. As part of the conversation with the Board they thought that was a pretty steep jump and they wanted to reduce that. In section 3.3 there was a phase in of the rate that would be charged which would start at \$18 per EDU per household per month. It then phases up to \$20 and then \$22 after 3 years.

Mike Kuenzi said one of the reasons they went to a fundamental shift in the way we charge was because they never knew what they were going to charge the City and the City never knew what you were going to pay until the end of the year. This year you got hit up for \$1.8 million and last year it was about \$1.2 million it was all over the map because of the flow, and the changes or expenses. This way the City would know what you owe and the City could plan for a 3 to 5 year horizon.

Mayor Bernard said the City had no input on capital expenditures.

Mr. Storey mentioned that the remainder of the agreement was intended to reflect prior existing agreements as far as coordination of the system, SDC charges, coordination of pre-treatment programs and other issues.

Mr. Kuenzi said the Mayor was right. The City was not in the District so it had no say in planning although he knew several people from Milwaukie had attended meetings and given input into the project. That was the contractual arrangement at this point. There were some choices. The City could join the District, which would give it a say in the participation in that process. The City could continue

the way it was. His perspective was that it was best right now for the City to push Community Partnership and have a seat at the table moving forward.

Mayor Bernard asked if Milwaukie had the option of buying from someone else?

Mr. Kuenzi replied the City could buy from Oak Lodge or Portland.

Mr. Swanson did not think Portland was an option because it was so expensive. He supposed Milwaukie could build its own facility. He did not believe Oak Lodge was interested in taking wholesale customers. What we had was some different perceptions of history. In 1970's a bunch of folks likely went to the Elks to talk about wastewater treatment. At the time the City had its collection system. When it came time to create District 1 the reason the City did not become part of the District was because it was created both to finance the collection system and the treatment system. Milwaukie already had a collection system, so financially the choice would have been made to become a wholesale customer of the resulting District. Over time Milwaukie suffered for what was basically a wise business decision back then. On the other hand they had made some very unwise business decisions because the agreement they entered into with the District did not provide for equity. It basically put the City on the hook for 40% of the local share to the construction of Kellogg Treatment Plant and some interceptors. The City funded 40%, but he did not believe it had ever used 40% of the plant capacity. Any capacity issues that had been raised over the last 34 years had not been a result of the City. Now Milwaukie was being asked to deal with capacity issues even though it was not using it. There was also a problem with the risk premium, which would be a revenue bond.

Mr. Kuenzi said it would be a 20% fee to cover the fact that CCSD#1 ratepayers are incurring the debt in Milwaukie, as the City is not financially responsible for that debt. There were ways around that. If Milwaukie wanted to take on a proportional share of that debt in terms of responsibility they could build that in to get rid of the fee. He was not sure how to do that legally since the City was not part of the District, but there were some options. Milwaukie could walk away from this agreement right now with no debt obligation because the entire debt obligation is on CCSD#1.

Mr. Swanson said realistically the chances of walking away were zero. He did not see much risk for the District. Milwaukie was actually in the risk position because it was on a month-to-month contract that could be canceled with 180-days' notice. He thought the City had been unfairly characterized over the years as a leech on the system because it was not part of the District. Quite to the contrary the City had spent a substantial amount of money to pay for capital, and those who would argue that the City was somehow living off of the District were either misinformed or uninformed. The new methodology of charging based on EDU was something the City was interested in. Right now the ability to predict was pretty weak, and that part of it worked in our favor.

Mr. Storey said the EDU was an assumption that the rules say each household contributed about this much so the households were not actually metered. A Laundromat, for example, would be more than one EDU. It was a standard rate that was adopted industry wide.

Mr. Monahan said there was probably more work to do to analyze the agreement than what he had done to this point. He was looking for Council direction and primary issues.

Councilor Barnes would not approve the IGA because of a number of issues many of which had been brought up at the table. There was still a lot of work to

be done so Milwaukie and its citizens were not put in a bad position. The staff report talked specifically about finance fees, and risks to the City were huge for her. She did not want to leave the City open to that. More important was the cost to Milwaukie. They had discussed this and had their updates on the Community Project. Milwaukie sat at the table and said what it was willing to do. It still bothered her that no one stood up and said Milwaukie had done this this and this, and we were willing to look into it. She could not support the IGA that was before the body now. Milwaukie staff needed to sit down with County staff and work this out so it did not open Milwaukie residents and the City legally to more risk and it needs to be more fair and equitable. Milwaukie had done more than its share supporting CCSD#1 as a whole for many years. There were a few bad IGAs in the past, and she did not want to continue that.

Mr. Kuenzi was not aware there was anything in front of the City Council in final form. There was still work to be done. Mr. Swanson had been very clear that there were some issues that needed to be worked out. Some he was not sure could be worked out, and some of them they could try to resolve. They were still a couple of months away before having a final IGA to vote on.

Mr. Swanson said this was nowhere near final. It would be good for Mr. Kuenzi to hear from Council.

Mr. Kuenzi said there were two issues that came up in staff discussion: equity and rate. The rate reflected exactly what the increase was to CCSD#1 ratepayers. He was not sure there was a lot of room there. Certainly if the equity issue was important he could quickly arrange a discussion. With the amount of available talent the language details could certainly be worked out in order to move forward.

Councilor Stone arrived 6:39 p.m.

Councilor Chaimov wanted to see the regional partnership program continue and suggested Councilor Barnes continue in that capacity. As to the agreement he thought the key issues had been identified. If the City and County staffs continue to work together, he was confident that they would come up with an agreement that was satisfactory to both sides.

Councilor Loomis echoed Councilor Chaimov's comments. It was a work in progress.

It was Council consensus to continue the process with Councilor Barnes as the City's representative.

Mr. Kuenzi hoped to get things moving by mid-September because he would like to get through the agreements by the end of the year.

Mayor Bernard adjourned the work session at 6:41 p.m.

Pat DuVal, City Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
September 2, 2008**

CALL TO ORDER

Mayor Bernard called the 2037th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Development and Public Works Director Kenny Asher, Senior Planner Susan Shanks, Operations Director Paul Shirey, Utility Specialist II Jim Lund.

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Constitution Week Proclamation

Mayor Bernard read a proclamation naming September 17 through 23 as *Constitution Week* in the City of Milwaukie.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the consent agenda.

- A. City Council Minutes of July 15, 2008 Regular Session; and
- B. **Resolution 80-2008**: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Ray Bryan to the Public Safety Advisory Committee as the Historic Milwaukie Neighborhood District Association Representative

Motion passed with Councilors Stone, Barnes, and Chaimov and Mayor Bernard voting 'aye.' [4:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

- A. **File A-07-02 (Annexation)**
Applicant: Frank Walker & Associates
Owner(s): Genevieve Holton Bentz and Hans Thygeson
Address: 5900 and 6011 SE Harmony Road
Legal Description: Map 1S2E 31D, TLID 1800, 1900, and 1990
NDA: Adjacent to Lake Road NDA, Linwood NDA, and N. Clackamas Citizens Association

Mayor Bernard called the public hearing on annexation petition A-07-02 to order at 7:05 p.m.

This application was considered by the Planning Commission at its August 12, 2008 public hearing, and the Commission recommended approval of the annexation petition. The Council hearing was de novo, and the Mayor recognized all persons wishing to speak.

Mr. Monahan stated the purpose of the hearing was to consider the Milwaukie Planning Commission's recommendation to approve the request for annexation of property located at 5900 and 6011 SE Harmony Road. The applicable standards were Comprehensive Plan Chapter 2 for plan amendments, Oregon Revised Statutes (ORS) 222 City Boundary Changes, Metro Code Chapter 3.09 Local Government Boundary Changes, and provisions of Milwaukie Municipal Code Title 19 Zoning Ordinance, specifically 19.900 Amendments, 19.1011.4 Major Quasi-judicial Review, and 19.1500 Boundary Changes.

Mr. Monahan reviewed the procedure. The applicant had the burden of proving that the annexation proposal conformed to all applicable criteria of the City's Comprehensive Plan and Zoning Ordinance. All testimony and evidence had to be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail precluded an appeal based on that criterion or issue. Failure to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow a response precluded an action for damages in circuit court. Any party with standing could appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing were those who submitted written comments or testified and signed the City Council Attendance sign-up sheet.

Mayor Bernard reviewed the conduct of the hearing and noted any continuance or extension would be subject to the limitations of the 120-day rule unless the continuance or extension was requested or agreed to by the applicant.

Mr. Monahan asked if any members of the Council had visited the site. **Councilor Chaimov** drove by the site but did not notice anything other than what he read in the report.

Mr. Monahan asked if there were any ex parte contacts or any actual or potential conflicts of interest. **Councilor Chaimov** received a message from a citizen asking for help in facilitating a meeting with City staff, but he did not know if the request pertained to the annexation application or the underlying land use that would be following. Mr. Monahan understood the contact was merely for procedural questions as opposed to anything about the merits, and Councilor Chaimov replied that was correct. No one from the audience challenged any Council member's impartiality or ability to participate in the decision. There were no objections to the Council's jurisdiction to consider the matter.

Staff Report

Ms. Shanks reported the applicant was Frank Walker & Associates, and the property owners were present. The site was located at 5900 and 6011 SE Harmony Road next to the International Way Business Center between the two intersections on Harmony Road. The applicant proposed to annex the two properties into the City limits. They were proposing a Business Industrial (BI) designation as well as an Industrial (I) designation. The current County zoning was light industrial, and the County land use designation was general industrial. This was similar to the proposed zoning. The Planning Commission recommended approval of the annexation petition at its August 12 hearing. At its last hearing on August 26 the Commission reviewed the development

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proposal packaged with this annexation. That development proposal approval was contingent upon the site being annexed in order to receive City services.

Ms. Shanks showed an aerial photo of the site. The smaller property was 5900, and the larger property was 6011 SE Harmony. She pointed out the intersections of Linwood, Harmony, and Railroad. The other intersection was Lake Road / International Way / Harmony. It was immediately adjacent to the International Way Business Center that was annexed to the City in 2004 and developed after that. There was some residential development to the north across the way from Railroad Avenue and the tracks that ran along the northern end of the property. She pointed out the City BI zone, County Industrial, and the City limits. The property was adjacent to the City limits on its north and west sides.

Staff identified a number of key issues when evaluating the annexation. It was considered a non-expedited annexation that required a review of the zoning that would be applied at the time of annexation. With an expedited annexation the zoning was automatic based on the table in the zoning code. In this case the applicant proposed BI zoning and was evaluated as part of the annexation process. The key issues were did the annexation comply with all applicable State, Metro, County and City regulations? Staff did a thorough review of all the applicable code provisions, regulations, and statutes found in Exhibit A of Attachment 1. In short the answer was 'yes.' The annexation did comply with all applicable regulations. In particular it complied with the City's Urban Growth Management Agreement (UGMA) with Clackamas County. It also complied with all ORS regarding annexations and all the notifications and legal hurdles. It complied with all intergovernmental agreements (IGA) as well as the City's Comprehensive Plan policies regarding annexation.

The second key issue was if this annexation was in the City's and public's best interest. Staff believed it was in the best interest for a number of reasons. The site was currently in the Urban Growth Boundary (UGB) that the City expected to annex within the near future. Because of the immediate adjacency to the City limits it was eligible for annexation at this point in time. It was consistent with the City's UGMA with the County in order to transfer the properties to the City and get them into the City limits in order to receive City services. This annexation was consistent with the Comprehensive Plan annexation policies regarding a unified system of governance. The Comprehensive Plan specifically defined that as having basically a single urban service provider. This annexation would result in this property mostly being served by City services. In the course of researching this annexation it was discovered that there was a City waterline in the Harmony Road right-of-way that was currently serving this property. There was some development on site in the form of single-family residences, but the site was presently in Clackamas River Water District. The District had been billing the properties, and the City should have been recouping it from them. The annexation would rectify the provision issue because Milwaukie had been providing the site with water for many years. At some time that extraterritorial water extension occurred, and this would make it right in terms of getting this particular property into the City and also receiving City services. It would not adversely affect the health, safety, and welfare of the community. The site was currently on septic instead of being connected to a wastewater system. Given the City's supply was well water it was in the best interest of the community to get properties off septic to improve the groundwater supply in that area. The annexation would also take advantage of existing utilities including water and sewer lines and roads that the site would be able to use. It would allow the site to redevelop as zoned and contribute to the City's tax base.

Another key issue was whether the City should apply this particular zone and land use designation to this site. With a non-expedited annexation an applicant can propose anything. Staff would evaluate the appropriateness. In this particular case staff felt it

was appropriate to apply a BI zone to the property primarily because the site was adjacent to a large swath of BI zoning which Ms. Shanks pointed out on a map. The site immediately next door, annexed in 2004, had similar County land use and zoning designations as this site. The City at that time decided a BI zone and an industrial land use designation was appropriate. City staff believed it was appropriate for this site as well. In the zoning code the automatic zoning designation based on the site's exiting County zoning would be manufacturing. There was a large area of manufacturing zoning in the City, but it was well to the west of this site near the McLoughlin area. Staff did not believe it was appropriate to zone this site manufacturing because it was not adjacent to any other manufacturing. Additionally, the manufacturing zone standards required a certain number of employees per acre, so at 3 acres this site would require a minimum of 30 employees. Staff did not feel that would be appropriate for this location given the traffic impacts 30 additional employees would have on this particular corridor. For that reason staff believed the BI zone was the more appropriate designation because it did not have a similar employee requirement. The County land use was general industrial. Staff suggested the site have an industrial land use designation.

The fourth key issue was whether the City should annex the portion of Harmony Road along the site's frontage. She spoke with the engineering director about this because when a property annexed the road, often a local street, was annexed along with the property. In this case because Harmony Road was an arterial and not a local street the engineering director did not feel it was appropriate at this time to annex this one portion of Harmony Road for a number of different reasons which had to do with fragmentation of jurisdiction and making for problematic improvements. It would not give the City any more leverage with the County regarding Harmony Road planning. The road was not annexed with the International Way Business Center, so it would just be the frontage along this site. It would not make sense. If at some point in the future it looked like the City wanted to annex and take jurisdiction of Harmony Road it could be negotiated separately with the County and had nothing to do with this particular annexation. The City utilities and facilities were adequate, and Ms. Shanks pointed out the water and wastewater lines through the property and along Harmony Road.

Staff recommended that Council approve A-07-02 and adopt the findings in support of approval.

Correspondence

No additional correspondence had been received on this matter other than items included in the packet.

Applicant's Testimony

Hans Thygeson, property owner, West Linn. He concurred with the City planning department's comments and findings and supported the criteria. It would be a great addition and needed in the City of Milwaukie. The business would be a good neighbor and generate tax dollars for the City.

Testimony in Support of the Application – None.

Testimony in Opposition to the Application -- None.

Neutral Testimony -- None.

Questions from Council to Staff

Councilor Stone asked if this was the time to comment on the design.

Ms. Shanks replied the development proposal was a minor quasi-judicial review heard by the Planning Commission and approved at its August 26 hearing. Unless appealed the City Council would not actually hear it. This was a hearing on the annexation itself.

It was moved by Councilor Barnes and seconded by Councilor Chaimov to close the public testimony portion of the hearing. Motion passed with Councilors Stone, Barnes, and Chaimov and Mayor Bernard voting ‘aye.’ [4:0]

Mayor Bernard closed the hearing at 7:23 p.m.

Council Discussion

Councilor Barnes saw benefits in the widening of Harmony Road in the area and traffic safety signal modification that may help in the long-term with the Harmony Road project. The project seemed to offer long-term impacts to the benefit of Harmony Road.

Councilor Stone was concerned about design relating to noise and lighting and all those things that affected the neighborhood. She did not see it would be a gated, locked security entry. She was a little concerned about how the surrounding neighborhood might be impacted by noise and lighting. It did not seem like traffic would be that much of an issue. She noted it was a 13-hour per day operation that started at 7 a.m. Her concern was the earliness of the hour in terms of the neighborhood.

Mr. Thygeson replied the business hours would be 9 a.m. to 5 p.m. with a gated entry and security cameras so people would have the ability to access longer hours. It would be customers who had access and would be able to enter typically from 7 a.m. A lot of self-storage facilities had 24-hour access, but this facility did not. Traffic generation from this type of facility was minimal, particularly during off hours, so people would rarely access the site during off hours.

Councilor Stone was pleased to see there was not a huge traffic impact although there were a lot of storage units.

Ms. Shanks added the notice of decision and development proposal and staff analysis heard on August 26 could be made available to Council and were currently available online. There was extensive review of the impacts, and the Planning Commission felt they were appropriately mitigated. The traffic impacts were low and favorable for this application. There were 13 additional trips during peak hours, so the impact was minimal.

Council Decision

It was moved by Councilor Chaimov and seconded by Councilor Barnes for the first and second readings by title only and adoption of the ordinance approving the applicant and findings in support. Motion passed with Councilors Stone, Barnes, and Chaimov and Mayor Bernard voting ‘aye.’ [4:0]

Mr. Swanson read the ordinance two times with an amended title for identification and filing purposes: “An Ordinance of the City of Milwaukie annexing a tract of land identified as 5900 SE Harmony Road and 6011 SE Harmony Road into the City limits of the City of Milwaukie and withdrawing the tract from the territory of Clackamas River Water, Clackamas County Service District for Enhanced Law Enforcement, and Clackamas County Service District No. 5 for street lights. (File #A-07-02).

The city recorder polled the Council: Councilors Stone, Barnes, and Chaimov and Mayor Bernard voting ‘aye.’ [4:0]

ORDINANCE NO. 1984:

AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING A TRACT OF LAND IDENTIFIED AS 5900 AND 6011 SE HARMONY ROAD INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM THE TERRITORY OF CLACKAMAS RIVER WATER, CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT, AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS. (FILE #A-07-02)

C. Proposed Amendments to Milwaukie Municipal Code Chapter 13.12.063 Fats, Oils, and Grease (FOG) Control – Ordinance

Mayor Bernard called the public hearing on the proposed amendments to Milwaukie Municipal Code section 13.12.063 to order at 7:30 p.m.

The purpose of the hearing was to hear public comments on the proposed amendments to the fats, oils, and grease control section of the code.

Staff Report

Mr. Shirey discussed why the City was doing this, how FOG control worked, whose problem it was, how food service providers (FSP) differed from one another, whether or not any FSP who were subject by definition in the code subject to FOG control should be subsidized, and offer a staff recommendation.

FOG control was a well-established best practice. He had hoped to have the number of jurisdictions by total that had adopted FOG ordinance throughout the State, but he did not get that number. He would talk to the City Council about those in the metropolitan area who had adopted FOG along with a few other places where he had a chance to actually speak with people who were administering FOG programs. The reason it was a best practice was because it protected the infrastructure and the environment. From an infrastructure standpoint you start out with the lateral that the business owner was responsible for and was connected to the sinks or drains of sinks and dishwashers in the business. If FOG accumulated and plugged those up it was the business owner's responsibility to unplug them. If it got into the City's sewer system and into the public collection system, it contributed to the deterioration of those pipes in a much faster way than if FOG was not there or was limited. It was a best management practice because it was all about being proactive. Pay me now or pay me later. That was said in respect to the Street Surface Maintenance Program. It was a matter of getting ahead of what you knew was a problem and dealing with it rather than reacting to it. The City had a source control agreement with Clackamas County for wastewater treatment at the Kellogg Treatment Plant. There was an existing intergovernmental agreement (IGA) that specified the City should incorporate and enforce FOG control. The City was in the midst of negotiating a new IGA with the County

Councilor Chaimov asked Mr. Shirey if he had the language in the IGA with CCSD#1.

Mr. Shirey read from the current IGA, "Clackamas County Service District #1 rules and regulations. 6.5, grease, oil, and scum traps. All restaurants, fast foods, delicatessens, taverns, and other food preparation facilities which prepare food on site, service stations, automotive repair facilities, or other facilities so determined by the District shall install grease, oil, and trap separators to remove fats, oils, greases, and scums. In addition all proprietors will be responsible for cleaning and maintaining these separators. The District shall also have the authority to enter upon the premises by any side sewer at all reasonable hours to ascertain whether this provision of limiting the introduction of fats, oils, greases, and scums to the system has been complied with.

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Violators of this provision may be directed to prepare a schedule of corrective action, pay a penalty as prescribed in Section 11 or both.” That was the existing language. The new language stated things like the City may be required to categorize discharges, keep track of records and compliance, sample, test, and monitor, enforce, and collect fees, etc. All proprietors shall be responsible to ascertain whether limiting had been complied with. Violators may be scheduled to pay penalty. Milwaukie was doing those things already.

Food service providers, those by definition in this code who handled food or beverage in any way, were required to install a trap or interceptor. The entry into the system was through sinks and dishwashers and things that drained into the sewer system. Putting in a trap or an interceptor trapped the grease, oil, and fat and allowed the clean water to flow through to the sewer system. Depending on the quantity, cleaning or pumping out the content of the devices was periodic. The less you produce the less you clean. Produce more and clean more. The traps come in various sizes. If it was small then it would probably be pumped out more frequently. The City inspects to ensure that the cleaning schedule was maintained. If these were not maintained and got too full they did not work. Instead of separating the clean water from the fat, oil, and grease it all got commingled and pushed through into the system. Grease traps were steel or aluminum boxes that allowed the drain water full of grease, oil, and fat to sit on top. The baffle allowed the clean water to go into the sewer system. An interceptor was the same principle in terms of separating, but it was typically installed in the ground outside the building and was a much greater size of about 750 gallons. The traps installed under a sink came in 40-, 50-, and 60-pound sizes. Depending on the gallons per minutes the FSP generated, that was the variable used to determine what size trap would be installed.

Mr. Shirey discussed FOG compliance in Milwaukie. Some modifications had been proposed to an existing ordinance the Council adopted July 2007. The basis of the recommendation was that the ordinance did not have the language to enforce FOG in Milwaukie. Staff sent out letters in August 2007 to businesses identified as FSP, and 40 out of 44 were in voluntary compliance. Three coffee shops and one restaurant were not yet in compliance. There were a couple of additions to the list the Council did not see the first time which were Quizno's and Home Town Hero. Staff went back and inspected at lunch time, and it was obvious they were generating FOG. The City got a letter from one of the businesses that had a concern about installing a trap and alerted staff to that condition which was appreciated.

In Clackamas County, West Linn, Happy Valley, Gladstone, and Oregon City were all in CCSD#1. Beaverton, Tigard, Hillsboro, and Tualatin were all part of the Clean Water Services District that provided wastewater treatment on the west side. There was Eugene as well. Mr. Shirey talked to program administrators in ten of the communities and asked pointed questions to determine if Milwaukie's proposal was different. He found no difference and emphasized the similarities. They defined coffee shops as FSP or food service establishments. One of them used the criteria of if they had to get a health permit or food handler permit or used a triple sink. He also found out for whatever reasons the supermarkets were exempt from getting food handler permits even though they operated a delicatessen. FOG control was required in all those jurisdictions. It was not an issue of how much was too much. Any amount of FOG, any amount of food handling generated the requirement for a trap. There were discussions about how to measure. In his discussions one could measure for certain constituents once it was in the collection line, but it was very hard to draw any sound conclusion. The tests were unreliable. In terms of knowing whether you had FOG or not, you either captured it on the front end or waited until it clogged up somewhere and caused a problem. Some cities had FOG, but not everyone did. The question was what was the

right thing to do and what was the best thing to do. From staff's view just because everyone did not do it did not mean Milwaukie should not be doing it. Being proactive was less costly both for the business owner and our community that invested a lot of money in the infrastructure. Keeping the arteries healthy was a nice metaphor, and everyone wanted to do that.

Whose problem was this? The system belonged to the ratepayers. FOG was a community problem. Most jurisdictions in the area controlled FOG including coffee shops. It was not the rule that some FSPs were excluded because they produced low amounts of FOG. Staff strongly believed that all who contributed to FOG from an equity and fairness standpoint should comply with the FOG control ordinance.

All FSPs were not the same. Each contributed according to the type of product and method of preparation, disposal of waste, dishwashing methods, and product volume. FOG was difficult to measure unless it was captured upfront or there was a blockage. In staff's opinion the quantity of FOG production should not determine who was regulated.

Should the City subsidize compliance with FOG control? Mr. Shirey felt it presented major challenges any of which could be overcome, but when all four were combined there was no obvious precedent to follow. It was debated extensively a couple of weeks ago in a work session, and staff did not think there was much likelihood of agreeing on that. No one else had established a threshold in the region, so he had no precedent to use. He could not say it was working in Vancouver. FSPs were regulated. Measurement was a challenge. There was no obvious testing method. There were methods to look at certain constituents, but Mr. Shirey was told they were not very reliable. That was why it was not done. Finally, the fairness challenge that he thought might be the biggest hurdle to any consideration of a subsidy. 90% of the FSPs had already complied at their own expense, and 25 of them were small businesses. He took an intuitive look at the list as to who was a small business versus a big business, so some may quibble with his count of 25.

Finally, what should City Council do? Staff felt because of the four challenges, passing any FOG compliance costs to the public was not appropriate, warranted, or fair. He recommended adoption of the code amendments as presented. The County, WES, City Attorney, and Oregon Association of Clean Water Agencies all concurred with the recommendations. The amendments were to clarify the business activities subject to FOG and included coffee shops, corrected the compliance language to conform with existing code enforcement practice to delete term "excessive grease" as a quantitative measure was never intended to be used. It was an error, and he did not know why that word was used. Grease, grease traps, and grease interceptors were defined.

Councilor Stone asked if all schools in Milwaukie were complying with FOG.

Mr. Shirey replied they were not. In fact staff had been in correspondence with the School District. They were complying at Linwood as a result of the remodel project. They were complying at Ardenwald because they were building a new school. He volunteered weekly at Lewelling through the school year, so he saw the process there. The lunches came in pre-prepared in large containers. The kitchen staff used utensils or just their hands to put the lunches together on a hard plastic tray. Kids ate whatever, and most of them did not eat all of their food. As they left there was a trashcan, and they hit the tray against the trashcan. Half of the food went in and half did not. It stuck to the tray, and there was a big stack of food-dirty trays. The kitchen staff stood at a large kitchen sink using a nozzle and spraying off all the food debris. That stuff went straight down the drain. That was a great example of someone's saying he did not prepare any food and only served it. The cleanup afterward was a principal contributor

to the FOG problem. His point was that the City would need to enforce on four or five of the schools in town and work with the School District on meeting requirements.

Councilor Stone did not see how it could be required of some businesses and not others if they were indeed preparing food and disposing of food.

Mr. Shirey agreed the City did not want to do that.

Correspondence – Council had received various emails.

Testimony in Support of the Amendments -- None

Testimony in Opposition to the Amendments

- **Ed Parcki, Milwaukie business owner**

Mr. Parecki spoke in opposition of the proposal to include coffee houses. There were several problems with the proposal. One being as staff pointed out the current IGA with the County only applied to facilities that prepared food on site, and none of the coffee houses actually prepared food onsite. That was point number one. The cafeteria issue came up already. Why were cafeterias excluded when they were actually included in the current guidelines? He was happy the City wanted to include the cafeterias. He was not happy to hear that the School District was serving food prepared outside of a cafeteria for consumption for kids. Prepackaged food. It was a horrible thought, but he digressed. He sent an email to City Council explaining how to measure a grease trap and what it meant to have a five-gallon bucket of grease every week versus a grease trap that was known to fill up one-inch over a six-month period and the definition of 'excessive.' It was interesting how all of the striking out of the code and trying to make us comply with a new code that was obviously defective. Staff mentioned that the City did not have the language to enforce the code, yet they issued a citation to Café Bonjour. He had a problem with that as well. He thought we needed to get some legal advice on why that citation was issued despite the fact there was language in the code that it could not be enforced. He also had a problem with the implication we did not comply with the code even though 40 businesses did comply, and we did not voluntarily comply. We did comply with the code. There was nothing in the code we violated per the existing code. They did not produce an excessive amount of grease. They actually did not produce any amount of grease. There was no onsite preparation of food. It was catered, and they served the food. A grease trap could not be installed through a dishwasher or after a dishwasher by code. What we cleaned and put in the dishwasher could not be trapped anyway. One of the interesting things was how long it took for grease or fat or oil to congeal and cause a problem? How far down the line did it have to go before it caused a problem? He said it would congeal before it got to the City sewer. His business was at least 50-feet away. If it did not congeal within 50-feet he would be surprised. The arteries were his problem. If they got full, he had to clean it at his expense. He did not have a problem with that risk that he might or might not be taking. If it got to the City sewer, that was a different problem. He did not think anyone was close enough to a City sewer that fat, oil, or grease runoff would become a problem. If it was the cumulative effect of grease; 88% of the sewer accounts in the City of Milwaukie were residential. If it was any amount, then everyone in the City needed to install a grease trap at his or her expense. He did not think that was going to fly. We needed to think this over. There were 58 communities in the State of Oregon, and only 18 had a FOG control program. He talked to Eugene, and it did not have a FOG control program. Portland did not have a FOG control program. Salem did not have a FOG program. Why do the big cities not have a FOG program specifically for coffee houses? Maybe they understood coffee houses did not produce excessive amounts of grease. Let's not create a problem and make us pay for a problem that did not exist.

Councilor Chaimov asked Mr. Parecki what went down the drain at Spring Creek.

Mr. Parecki replied the worst case was when they rinsed out milk containers. They served 16-oz, and if there was a film left they would rinse it off and throw it in. Maybe at the end of the day if there was any left over coffee in a carafe, they would throw that down the drain. That was the extent of it. Dirty dishes from prepared food would go into the dishwasher and be sanitized.

- **Cindy Fetty, Milwaukie business owner, Purdy's Pit Stop**

Ms. Fetty and her husband Mike owned Purdy's Pit Stop on Harrison. They were also in an extended family business with Purdy's carwash and auto detailing. She was from Central Oregon and had lived in Portland for about eight years. One of the attractive things about the City of Portland was all of its pocket neighborhoods like Milwaukie. It was fun to go to the Farmers' Market and see all the improvements in the City. In addition to that, they loved doing business as a family in this City. She felt like they were one of the only businesses of its size that did not increase the price of their lattes when gas prices rose. They did business with integrity and ethics and put their customers first. With that said, she was here to raise the awareness on this issue. She did not want to create a ripple in the reputation of their businesses. At the same time she dealt with this fat, oil, and grease ordinance issue for a full year. She dealt with it with diligence, cooperation, ongoing communication, and she felt like tonight we had gotten little or nowhere on the issue.

First she addressed her issues regarding the code and then the issues with Attachment F from the work session that was the new list of businesses being looked at for enforcement. Finally she would address an issue she had if required to install a grease trap. For her this had never felt like an issue between herself and the City. She never said she did not want to comply. She simply, until now, just wanted to use the City and staff as a resource for her business. It would be a huge, financially devastating investment for her to pay for a grease trap. Under the municipal code it read that grease interceptors and/or traps shall be provided by facility owners when in the opinion of the City they were necessary to prevent grease in excessive amounts from entering the sanitary sewer system. First of all the term excessive did not apply to a definite number. The terminology needed to be a measurable and a defined quantity in her opinion. If she had been exceeding that quantity, then she would voluntarily install the trap not just to comply with the City code but also to protect her attachment from her building to the sewer and as an environmentally consciousness move. Based on her over 18-years of extensive restaurant experience, she did not feel she was exceeding any number. To reinforce her thinking she contacted several colleagues in the industry; she could give names and numbers of many general managers and restaurant operators to vouch for the difference between a large restaurant that of course would need a grease trap or interceptor and a restaurant or a mobile unit such as hers. She also contacted several plumbing companies to get information on grease trap installations at coffee stands for which she had not had any luck since they did not have experience doing that type of work which was telling. She also contacted some of the Portland area grease haulers and inquired about their maintenance schedules for coffee shops like hers. They had little information and had spoken off the record with her that they did not even believe it was excessive in nature. She provided detailed information to the wastewater and stormwater staff about her current business volume as well as operations procedures and tried to explain why she did not contribute excessive amounts of grease to the sewer. They did a month-long traffic study to prove the volume of their business. She liked the idea of the City's paying for the installation of a grease trap. She understood it was difficult to come up with a measurement. Today she spoke with Wilsonville staff, and he suggested a number to her of something like 3-

inches in 3 months or 30-35% from top to bottom of the grease trap. That was not her area of expertise, but she thought it would be worth researching other areas. He also suggested to her there were, as there were in Wilsonville, businesses that can responsibly manage with best management practices. If excessive cannot be defined without installing a grease trap or spending the money to send water to a lab for testing, why could we not adopt a similar best management FOG control practice plan that other cities had in place. There were models out there. There was a gray area for small food and beverage producers like herself. She did not feel some of the examples that were shown were reliable when comparing them to her. Organizations like the National Pretreatment Program, Association of Clean Water, EPA, all suggested that food service establishments use best management practices. Sometimes that did include a grease trap. It can also include diligence in dishwashing, proper disposal of food waste, and training. If the City Council decided not to consider best management practices as part of the criteria, she would simply like to know where this list was compiled, how they developed the criteria for compiling the list of businesses, and why in her opinion certain businesses were not on there. For example, where she had dinner tonight and three restaurants she passed walking down here. She was looking for a resource, consistency, and definitions of the word “excessive.” She felt like a great team was established to take on this goal of having clean sewers. She did not feel like she was not environmentally conscious or did not want to comply; she was simply looking for more information.

- **Ray Peck, Milwaukie business owner, Wind Horse Coffee**

Mr. Peck had 18 years in the downtown with coffee shops. The FOG came up, and he understood Mr. Shirey’s passion and interest in getting everyone into compliance. He loved the program. What he did not like about the program was he personally had no money to do that because of the volume of business. If the program had been a requirement at the beginning of his build out there would be no problem. He would have a grease trap. He would not be here talking to Council this evening. Since it came about there were no funds or resources to do that. Mr. Shirey mentioned 25 small businesses in compliance, and he suspected those 25 small businesses produced a lot of fat and grease. He recommended that this ordinance apply to only new and particularly in the area of coffee shops. He would do that also if he came into town and opened a new place. He did not wish to argue about the details. Other arguments he heard from Spring Creek and Pit Stop were really quite good. He did talk with a person in Wilsonville who was at the same level as Mr. Shirey, and he indicated that it did not make sense for a small shop that did about the same volume as Wind Horse to install a grease trap because of the cost and small amount of wastewater, fats, oils, and grease produced. They issued and had in place a best management agreement that put everyone into compliance and everyone was happy. It did not mean someone opening a new shop would not be required to install that program. He asked for an exception as money was an issue for him. He did everything he could to meet all the codes and regulations that were required to build out and establish the business.

Councilor Stone understood Mr. Peck’s issue was mostly about not being required to install one when he first established his business, and he felt like he should not have to install one now. It was not that his business did not produce FOG.

Mr. Peck replied the FOG was so minimal that it would not make a difference. Based on location he agreed with Mr. Parecki that it would not go more than 50-feet to the street, so it would be his rather than the City’s problem.

Councilor Stone heard Mr. Peck say if the City had been applying the rules at the beginning of his business he would have happily put one in. She asked if his business

did produce FOG or was it more of a question because the City did not make him do that initially that he should not have to do this now.

Mr. Peck replied that was a hard one to answer. He would love to say he had done that and to be able to say he was in compliance. Then it would just be over. Due to the fact it was not a requirement at the onset, yes. He felt he did not have to put one in. He requested an exemption based on economics. Great American Video's comment in the paper last week was that he did do what he did, but what was coming out of his grease trap was negligible. It was not really worth the cost other than to be in compliance.

Neutral Testimony – None.

Staff Comments – None at this time.

Questions of Clarification – None.

Mayor Bernard closed the public testimony portion of the hearing at 8:15 p.m.

Mayor Bernard thought the last argument was the worst one he heard. His business opened in 1925, and he had to comply with many new regulations over the years including vapor recovery which cost \$50,000. He had to remove his gas tanks in the 1980's at a cost of \$40,000 because he could not comply with new federal regulations. At some point, laws did change. His business opened in 1925. Many laws had changed as environmental impacts were more understood. Several years ago he removed all of his hoists and tanks. It was not because the laws changed but because he wanted to protect the environment as much as possible. Laws did change. He really had mixed feelings about this particular ordinance.

Councilor Chaimov asked Mr. Shirey in the CCSD rules what he understood "prepare food onsite" to mean. It listed the restaurants that needed to comply or establishments that needed to comply but was qualified by "prepare food onsite."

Mr. Shirey replied in his conversation today with Ed Gilmore, administrator of the source control program at WES, he assured him this language, though imprecise or vague as it may seem, gave the County the authority to regulate food service providers or food service establishments in the same fashion as Milwaukie currently did. It was not unlike the school cafeteria example. He was sure coffee houses had things delivered to them that was prepared and prepackaged. If someone bought something from vending machine and consumed it somewhere else it was not an issue. Some of the food items were taken out of the package and heated in some way and served. The things used to do that level of preparation may not include cutting meat and that kind of thing. Those things were cleaned and produced FOG in the sink. The same thing went for the dishwasher detritus.

Councilor Chaimov asked if the CCSD rules, particularly the one to which Mr. Shirey referred, were binding in the City because it was in a contract with CCSD.

Mr. Monahan believed they were binding on the City as part of the overall system requirements.

Councilor Barnes asked if the City had a chance to check in with Great American about what they had seen in their trap since installation.

Mr. Lund had checked on that and saw what was in the trap. There was a great volume on top with solids on the bottom.

Councilor Barnes asked if Great American had the same types of prepackaged food that the other coffee houses had in the City.

Mr. Lund replied they had the same types of food including various pastries. The primary product was coffee, and there was milk fat involved.

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Councilor Barnes understood Great American had not called the City to come out in 2 – 3 weeks.

Mr. Lund did the last check about a month ago.

Councilor Barnes asked if Libbey's was in compliance.

Mr. Shirey replied they had come into compliance since the list was made. Café Bonjour was the restaurant not in compliance. The owner contended it was just a coffee shop and not a restaurant. That was not what Mr. Lund had observed while inspecting the operation. The citation was dismissed.

Councilor Stone had a question that came up in Mr. Parecki's testimony about being able to install the grease trap interceptor to capture the water coming out of the dishwasher. Was that not possible to do?

Mr. Lund responded in the Plumbing Code a dishwasher did not dump into the grease trap. The trap was to capture what came off dishes during the pre-wash cycle. A dishwasher runs at approximately 160-degrees. If that water went into the grease trap, the grease would melt and be sent down the line and bypass the trap.

Councilor Stone said so the answer was to put all the grease in the dishwasher. At the last meeting Councilor Loomis discussed having some quantitative way to measure what was excessive grease and what was not. It did not seem like we really had an answer to that.

Mr. Shirey agreed there was no answer to that. That was why he spent a lot of time talking with his counterparts and sent out an inquiry through the Oregon Association of Clean Water Agencies asking others how they administered their programs. Was there a quantitative measure as a basis for enforcement? No one did. No one measured, and there was obviously a good reason for that. The only way to do any kind of measurement was to capture up front and decide how much was enough. The staff recommendation was for the FSP to install the trap. That was what others did and seemed to be the prevalent practice.

Councilor Stone understood others including the City of Salem exempted espresso shops. It was very unclear to her. She felt the City needed to be really fair. She liked the FOG program and thought it was a good idea to keep as much grease from getting into the wastewater system as we can. Her concern was that the City would be regulating people who should not be regulated. The City of Salem chose not to regulate coffee shops. That was a choice the Council had. Some cities like Eugene and Portland were not listed. Portland was huge. She got on the Internet and pulled off some information about the City of Los Angeles and the Bureau of Sanitation. The best management practices she felt should be paramount in the City policy in terms of education not only for businesses but also for residences. There was a lot of grease getting into the system from every single household. She did not put grease down her sink; she stuck it in a can. She learned that years ago when we used to save the bacon grease.

Mr. Shirey agreed, and the Association of Clean Water Agencies provided cities with literature to distribute in their utility bills along with tops to go on cans to capture the grease. The City did take advantage of those.

Councilor Stone read the best management practices: using less liquid oil instead of solid grease or lard. Coffee shops did not do that. Dry wiping all dishes pots and pans before putting them in the dishwasher. Collecting and disposing used oil through a licensed grease hauler instead of pouring it down the drain. Again coffee shops did not do that. Use of disposable paper products instead of dishware when possible. Capturing the oil accumulated in ventilation and exhaust systems. They were not

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cooking, so they did not have that. Cleaning grease traps on a regular basis and keeping grease traps and interceptors well maintained and properly operating. It was not as cut and dried as she would like to see this ordinance before adopted. She agreed with the practice totally. She felt like the Council needed another look at whether coffee shops that did not really prepare food were really the culprits.

Mr. Shirey responded the fat residue going down the drain in coffee shops was really a problem and referred to an attachment to the staff report about that matter. Mr. Parecki said they rinsed out their milk containers and cream and left over coffee. If you did that at your house, that was once a day. If you were a business it was many more times than that. Staff argued it was the cumulative effect. He observed what ended up in traps was pretty substantial.

Mr. Lund talked with the Beaverton inspector. If black coffee only was served, a trap was not required. If they served espresso and drinks that included milk products, then traps were required. It was the milk fat and cream that contributed.

Councilor Stone asked what if used non-fat milk only. They have skinny lattes all the time.

Mr. Swanson said a couple of years ago there was a question about a mud path adjacent to Rowe Middle School. He called the operations supervisor and asked him to pour a 2-foot strip of asphalt because the kids were walking in the street to avoid the mud. The city engineer at the time told him he could not do that because that path was not to City standards. Mr. Swanson told the city engineer to turn the page where it read that the city manager could waive the necessity of installing a public improvement to City standards. It talked about if no purpose would be served and it would not result in harm in the future and things of that nature, then he told him the path should be installed. The answer here may lie somewhere in an ordinance that was written to include all service preparers but added a provision for exceptions for those whose contribution was minimal and to have the burden of proof on the business to prove it was minimal. One thing the City would look at was the employment of best practices. The other would be just how much was contributed to the system in reality. If the decision was to require it, then make it appealable to the manager. He did not want the City Council to be involved with coffee shop after coffee shop. He suggested rewriting it in a way that allowed for an exemption, placing the burden of proof on the business, and making the exemption somehow related to minimal contribution to the system and employment of best practices. The City of Salem exempted coffee shops, but others did not. That led him to believe there was a difference in policy approaches to this particular issue. The way to handle it might be on a case-by-case basis. Portland would not be a good example because it was still dealing with combined sewer problems. It would at least provide a way to enforce. He kept hearing people say they like a FOG ordinance and dealing with the problem. Mr. Peck's email was heartfelt. He said he liked the FOG ordinance and what it was meant to accomplish, but he did not feel he really contributed. Maybe the way to deal with that was not with a blanket requirement but some kind of avenue to at least consider them on a case-by-case basis. The burden of proof would be on the businesses. Obvious businesses like Starbucks would not be coming in for an exception. He felt there was another approach.

Mayor Bernard asked if new coffee shops were required to put these in.

Mr. Shirey replied they were.

Mayor Bernard said in that case the only ones coming in for exceptions would be those current coffee shop owners sitting in the audience.

It was moved by and seconded by Councilor Stone to continue consideration of the ordinance amending Municipal Code Section 13.12.063, fats, oil and grease control to the regularly scheduled City Council meeting on September 16, 2008.

Councilor Barnes appreciated Ms. Fetty's comments. She provided a compelling argument that was not emotional and did not attack the City Council. She appreciated that facts and not opinions were stated. She did feel badly for the people at Great American who stepped up and complied to the rules. It bothered her that some had not stepped up. We lived with laws and codes and choices. She was not saying the folks in the audience did not comply, but the folks at Great American stepped up and said they did not like it and could not afford it but would do it because it was the right thing to do. If the decision was made that certain coffee houses were exempt she was not feeling good that Great American and other businesses just like them said they would bear the burden. It was not fair or equitable to her. She felt Great American was being told the rules had changed. That should be considered.

Mayor Bernard thought this was a good opportunity to provide guidance for other cities that did not have a FOG ordinance. This was a chance to prove through Great American how much FOG a coffee shop produced. He felt the City should talk to Great American and at least pay for some testing and defray some costs.

Mayor Bernard added the City never put anyone out of business and suggested this should not have been such a big deal.

Motion passed with Councilors Stone, Barnes, and Chaimov and Mayor Bernard voting 'aye.' [4:0]

OTHER BUSINESS

Council Report

None.

Mayor Bernard announced the City Council would recess to executive session pursuant to ORS 192.660(2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed. City Council would return to regular session after the executive session

Mayor Bernard recessed the regular session at 8:42 p.m. and reconvened the regular session at 8:49 p.m.

ADJOURNMENT

It was moved by Councilor Chaimov and seconded by Councilor Stone to adjourn the meeting. Motion passed with Councilors Stone, Barnes, and Chaimov and Mayor Bernard voting 'aye.' [4:0]

Mayor Bernard adjourned the regular session at 8:51p.m.

Pat DuVal, Recorder

5.
PUBLIC HEARING



To: City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director
Susan P. Shanks for Katie Mangle, Planning Director

From: Brett Kelter, Assistant Planner

Subject: Zone Change and Comprehensive Plan Map Amendments related to Ardenwald Elementary Demolition

Date: September 30, 2008 for October 7, 2008 Public Hearing

Action Requested

Adopt the proposed amendments to the City's Zoning Map and Comprehensive Plan with the recommended findings in support of approval. The amendments would result in the following actions:

- Remove the "contributing" historic resource designation from 8950 SE 36th Avenue (Ardenwald Elementary School) on the Milwaukie Zoning Map.
- Remove the "contributing" historic resource designation from 8950 SE 36th Avenue (Ardenwald Elementary School) on Milwaukie Comprehensive Plan Map 4 (Historic Resources).
- Remove 8950 SE 36th Avenue (Ardenwald Elementary School) from the City's Historic Resources Property List, found in Appendix 1 of the Milwaukie Comprehensive Plan.

History of Prior Actions and Discussions

- **September 2008** – The Planning Commission approved the demolition of the existing Ardenwald Elementary School, designated as a "contributing" historic resource.

- **December 2007** – The Planning Commission approved a community service use proposal to build a new school building on the current site of Ardenwald Elementary (land use file CSU-07-04).
- **November 1989** – The City of Milwaukie updated the Comprehensive Plan, adding a list of historic properties that included Ardenwald Elementary School as a “contributing” historic resource. Historic designations were based on a cultural resource inventory conducted by Clackamas County.

Background

The existing Ardenwald Elementary School will be demolished in summer 2009 to make room for a new, larger school building to be completed by fall 2009. Because the school is designated as a “contributing” historic resource on the City’s list of historic properties, a special review process was required before the demolition permit could be issued. On September 9, 2008, the Planning Commission conducted the necessary review and approved the land use application for historic review # HR-07-02. The School District is now free to demolish the existing school building in accordance with its project timeline. The proposed action before the City Council is an administrative matter only; it is not a request for approval for the School District to proceed with the improvement project.

The Planning Commission initiated the proposed amendments as a housekeeping measure to keep the City’s zoning map and relevant comprehensive plan documents current. The historic designation applied to the old school building itself and not to the site as a whole. Since the historic school building will be demolished, the property no longer warrants a historic designation on any City maps. The proposed amendments will implement the Planning Commission’s decision to allow demolition of the school by removing the “contributing” historic resource designation from the applicable City maps and documents.

The site’s existing zoning designation is Residential R-7 with a Historic Resource overlay and designation as a “contributing” historic resource. The existing comprehensive plan land use designation is Public (P) on the western two-thirds of the site and Low Density (LD) on the easternmost one-third, with a denotation as site #36 on the Historic Resources Property list. If the proposed map changes are adopted, the historic resource designations on both the zoning and comprehensive plan maps would be removed and the site would appear simply as R-7 and P/LD on the two maps, respectively. Site #36 would be removed from the Historic Resources Property list.

The zone change and comprehensive plan map amendments have been processed and public notice has been provided in accordance with Milwaukie Municipal Code (MMC) Subsection 19.1011.4 Major Quasi-Judicial Review. All applicable agencies and citizens have been notified about the proposed amendments. An analysis demonstrating the consistency of the proposed amendments with the Metro Growth Management

Functional Plan has been provided to Metro at least 14 days before the final hearing for this application.

Staff has evaluated the proposed amendments for compliance with all applicable State, Metro, and City regulations. Statewide Planning Goal 2 emphasizes maintaining a comprehensive plan and zoning ordinance that are up to date and consistent with one another. The approved school development involves the demolition of a designated historic structure, so the proposed amendments allow the City to ensure that both the zoning map and comprehensive plan maps accurately reflect the current status of historic properties in Milwaukie.

Concurrence

The application was forwarded to the following City departments for review and comment: Engineering, Fire, and Building. It was also forwarded to the Design and Landmarks Committee and the Ardenwald-Johnson Creek Neighborhood District Association. No objections to or concerns about the proposed map changes have been received.

Prior to the September 9, 2008, public hearing with the Planning Commission, staff received three inquiries by phone about the proposed amendments, all asking for more information about how the zone change and comprehensive plan map amendment applications would affect their properties. Staff answered all questions, noting that the proposed zone change and comprehensive map amendment are specific to the school site and will not directly affect any of the surrounding properties.

Prior to the October 7, 2008, public hearing with the City Council, all necessary parties, affected City departments, and residents and property owners within 400 feet of the site were notified of the map amendment proceedings.

Fiscal Impact

The proposed changes to the City's zoning map and comp plan map are not expected to have any fiscal impact.

Work Load Impact

Workload impacts will be minimal and will likely include efforts by City Information Systems Technology (IST) and Administrative staff to revise the affected maps and distribute the new information as needed.

Alternatives

The Council has the following three decision-making options:

1. Approve the application and adopt the recommended findings of approval.

2. Approve the application and adopt modified findings of approval. (Any modifications must be read into the record.)
3. Deny the application and specify reasons for denial.

If the Council rejects the Planning Commission recommendation and denies the proposed amendments, the zoning and comprehensive plan maps as well as the historic properties list will simply remain unchanged. The documents will remain inaccurate until they are updated at a future date.

Attachments

1. Draft Ordinance for Adoption
 - Exhibit A. Recommended Findings in Support of Approval
 - Exhibit B. Proposed Zoning Map
 - Exhibit C. Proposed Historic Resources Map
 - Exhibit D. Proposed Historic Resources Property List

ATTACHMENT 1

ORDINANCE NO. _____

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

WHEREAS, Ardenwald Elementary School is designated as a "contributing" historic resource on the City's list of historic properties; and

WHEREAS, at a public hearing on September 9, 2008, the Milwaukie Planning Commission approved a land use application (land use file HR-07-02) to allow the demolition of Ardenwald Elementary School; and

WHEREAS, the proposed amendments to the City's zoning map and comprehensive plan would remove the designation of Ardenwald Elementary School as a historic resource from the zoning map, comprehensive plan map #4 (Historic Resources), and Appendix 1 of the comprehensive plan (Historic Resources Property List) to reflect the demolition of the historic resource at this location; and

WHEREAS, legal and public notices have been provided as required by law; and

WHEREAS, on September 9, 2008, the Milwaukie Planning Commission conducted a public hearing, as required by Zoning Ordinance Subsection 19.1011.5, evaluated the proposal against the applicable approval criteria, and adopted a motion in support of the amendment; and

WHEREAS, the Milwaukie City Council finds that the proposed amendments are in the public interest of the City of Milwaukie;

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

Section 1. Findings. Findings of fact in support of the proposed amendments are attached as Exhibit A.

Section 2. Zoning map and Comprehensive Plan. The zoning map is amended as shown in Exhibit B (revised zoning map). The comprehensive plan is amended as shown in Exhibit C (revised historic resources map) and Exhibit D (revised historic resources property list).

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

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jim Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis, LLP

Pat DuVal, City Recorder

City Attorney

EXHIBIT A

Recommended Findings in Support of Approval Casefile #s ZC-08-02 and CPA-08-02 (Map changes related to Ardenwald Elementary School demolition)

1. The City of Milwaukie, acting as applicant, has applied for approval to amend the zoning map, comprehensive plan map (hereafter referred to as “comp plan map”), and historic resources properties list to remove the “contributing” designation for 8950 SE 36th Avenue, Ardenwald Elementary School. The City proposes the following specific actions:
 - Remove the “contributing” historic resource designation from 8950 SE 36th Avenue (Ardenwald Elementary School) on the Milwaukie Zoning Map.
 - Remove the “contributing” historic resource designation from 8950 SE 36th Avenue (Ardenwald Elementary School) on Milwaukie Comprehensive Plan Map 4 (Historic Resources).
 - Remove 8950 SE 36th Avenue (Ardenwald Elementary School) from the City’s list of historic properties, found in Appendix 1 of the Milwaukie Comprehensive Plan
2. North Clackamas School District #12 (hereafter referred to as “the District”) received approval by the Planning Commission to replace the existing Ardenwald Elementary School with a new, larger building to accommodate an increased student population (land use file CSU-07-04). The District also received approval from the Planning Commission to demolish the existing school, a designated historic resource (land use file HR-07-02). The new school building will be constructed behind the existing school, which will be demolished to make room for parking and loading areas as well as ball fields and outdoor play areas.
3. The proposal is subject to the following provisions of the Zoning Ordinance, Title 19 of the Milwaukie Municipal Code (MMC), as follows:
 - MMC Chapter 19.900 Amendments
 - MMC Subsection 19.1011.4 Major Quasi-Judicial ReviewThe proposal is also subject to Milwaukie Comprehensive Plan Chapter 2, Plan Review and Amendment Process.

Sections of the Milwaukie Municipal Code and Comprehensive Plan not addressed in these findings are found to be not applicable to the decision on this application.
4. Public notice has been provided in accordance with MMC Subsection 19.1011.4, Major Quasi-Judicial Review, which includes notification to the State Department of Land Conservation and Development. These applications are associated with HR-07-02, which requires minor quasi-judicial review in accordance with MMC Subsection 19.1011.3. Public notice was sent to property owners within 400 feet of the subject property at least 20 days in advance of the required public hearing, which satisfies both the minor and major quasi-judicial notification requirements. The Planning Commission held a public hearing on September 9, 2008, as required by law. The City Council held a public hearing on October 7, 2008, as required by law.

5. The City Council finds that the proposed amendments are consistent with the following applicable State, Metro, and City policies, agreements, provisions, and regulations:

Milwaukie Municipal Code

Chapter 19.900 Amendments

MMC Section 19.903 states that proposals for zoning map amendments must provide evidence that all requirements of this title relative to the proposed use or uses are satisfied, in addition to addressing the following:

A. Applicable requirements of Section 19.1003;

MMC Section 19.1003 requires that applications be made on forms prescribed by the city. In this case, staff has determined that this narrative response and the accompanying exhibits are sufficient materials for this application.

B. Reasons for requesting the zoning map amendment;

The amendments to the zoning and comp plan maps are being proposed because of the imminent demolition of the existing Ardenwald Elementary School, which is a designated “contributing” historic resource. Once the existing building is demolished to make room for a larger school building, the designated “contributing” historic resource will no longer exist and should therefore no longer appear on the City’s zoning or comp plan maps. The requested amendments are intended to keep the City’s maps current.

C. Description of existing site conditions, including but not limited to topography, public facilities and service, natural hazards, natural areas or open space, historic sites, transportation, current uses of the subject site and current zoning of the subject site;

The subject property includes several existing buildings that comprise the Ardenwald Elementary School, as well as parking areas, playing fields, and at least 100 trees of various varieties, ages, and sizes. Efforts are underway to build a new school facility. Once the new building is completed, the existing school will be demolished and the final site improvements (including new parking areas and playing fields) will be completed. The underlying zoning of the site is residential R-7 and the school operates at the site as a community service use. The western two-thirds of the site have a comp plan land use designation of Public (P) and the eastern one-third has a comp plan land use designation of Low Density (LD).

D. Description of the intended use or uses;

The site will continue to be used for an elementary school, with playing fields and parking and loading areas.

E. Identification on a detailed site plan of public facilities both existing and proposed; existing and proposed structures and site development details, including display of setback and other zoning standards compliance information; and an indication of mitigation or other measures proposed for purposes of health, safety or welfare within the community.

Existing and proposed site plans were included in the original application.

F. The approval criteria of Section 19.905, which include the following:

- i. The proposed amendment must conform to applicable comprehensive plan goals, policies and objectives and be consistent with the provisions of city ordinances, Metro urban growth management functional plan and applicable regional policies.*

The historic resources element of the comprehensive plan is intended to preserve and protect significant historical and cultural sites and structures in the city. Once the old school is demolished, no historic structure will remain on the site. The proposed amendments will implement the Planning Commission's decision to allow the demolition of the historic structure by removing the "contributing" historic resource designation from the applicable maps.

- ii. *The anticipated development must meet the intent of the proposed zone, taking into consideration the following factors: site location and character of the area, the predominant land use pattern and density of the area, the potential for mitigation measures adequately addressing development effects, any expected changes in the development pattern for the area, the need for uses allowed by the proposed zone amendment, and the lack of suitable alternative sites already appropriately zoned for the intended use or uses. The planning commission and city council shall use its discretion to weigh these factors in determining the intent of the proposed zone.*

The proposed amendments will not change the underlying zoning of the subject property and do not contradict the recent approval (land use file CSU-07-04) for a new elementary school as a community service use on the site.

- iii. *The proposed amendment will meet or can be determined to reasonably meet applicable regional, state or federal regulations.*

The proposed amendments are intended to maintain the accuracy of the City's zoning and comp plan maps with respect to ongoing development in Milwaukie. Notice of the proposed amendments was provided to both Metro and the State Department of Land Conservation and Development.

- iv. *The proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.*

The school replacement project has already been reviewed as part of the approval process for CSU-07-04, which included conditions of approval to ensure that public facilities will be adequate to serve the new school.

- v. *The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact analysis may be required subject to the provisions of Chapter 19.1400.*

As noted above, the school replacement project was reviewed as part of the approval process for CSU-07-04, which included conditions of approval to ensure that the transportation system will be adequate to serve the new school.

Milwaukie Comprehensive Plan

Chapter 2 Plan Review and Amendment Process

Chapter 2 states that all amendments to the Comprehensive Plan, including map amendments associated with annexations, shall be evaluated based on the following criteria:

- A. *Conformance with the Comprehensive Plan, its goals, policies, and spirit.*

The historic resources element of the comprehensive plan is intended to preserve and protect significant historical and cultural sites and structures in the city. Once the old school is demolished, no historic structure will remain on the site. The proposed amendments will implement the Planning Commission's decision, which allowed for the

demolition of the historic structure, by removing the “contributing” historic resource designation from the applicable maps.

B. Public need for the change.

In May 2007, voters approved a school bond measure to fund facility expansion and improvement projects at public schools throughout the North Clackamas School District. Ardenwald Elementary School is one of the schools slated for expansion and will be redesigned to serve twice as many students, which involves demolishing the existing historic structure and replacing it with a larger building. It is necessary to remove the historic designation from the subject property on the comp plan map to reflect the demolition of the historic resource.

C. Public need is best satisfied by this particular change.

Once the existing school building is demolished, the designated “contributing” historic resource will no longer exist and therefore should not appear on the City’s zoning and comp plan maps. Given the actual change in the historic resources inventory, the public need is best served by the proposed amendments since they will keep the City’s maps current.

D. The change will not adversely affect the health, safety, and welfare of the community.

Removing the historic resource designation from the subject property will have no adverse impacts on public health, safety, or welfare.

E. The change is in conformance with applicable Statewide Planning Goals.

Statewide Planning Goal 2 deals with land use planning and emphasizes maintaining a comprehensive plan and zoning ordinance that are up to date and consistent with one another. Given that the proposed school development involves the approved demolition of a designated historic structure, the proposed amendments allow the City to ensure that both the zoning map and relevant comprehensive plan map accurately reflect the current status of historic properties in Milwaukie.

F. The change is consistent with Metro Growth Management Functional Plan and applicable regional policies.

The proposed amendments are consistent with the Metro Growth Management Functional Plan and applicable regional policies. An analysis demonstrating the consistency of the proposed amendments with the Metro Growth Management Functional Plan was provided to Metro at least 14 days before the final hearing for this application.

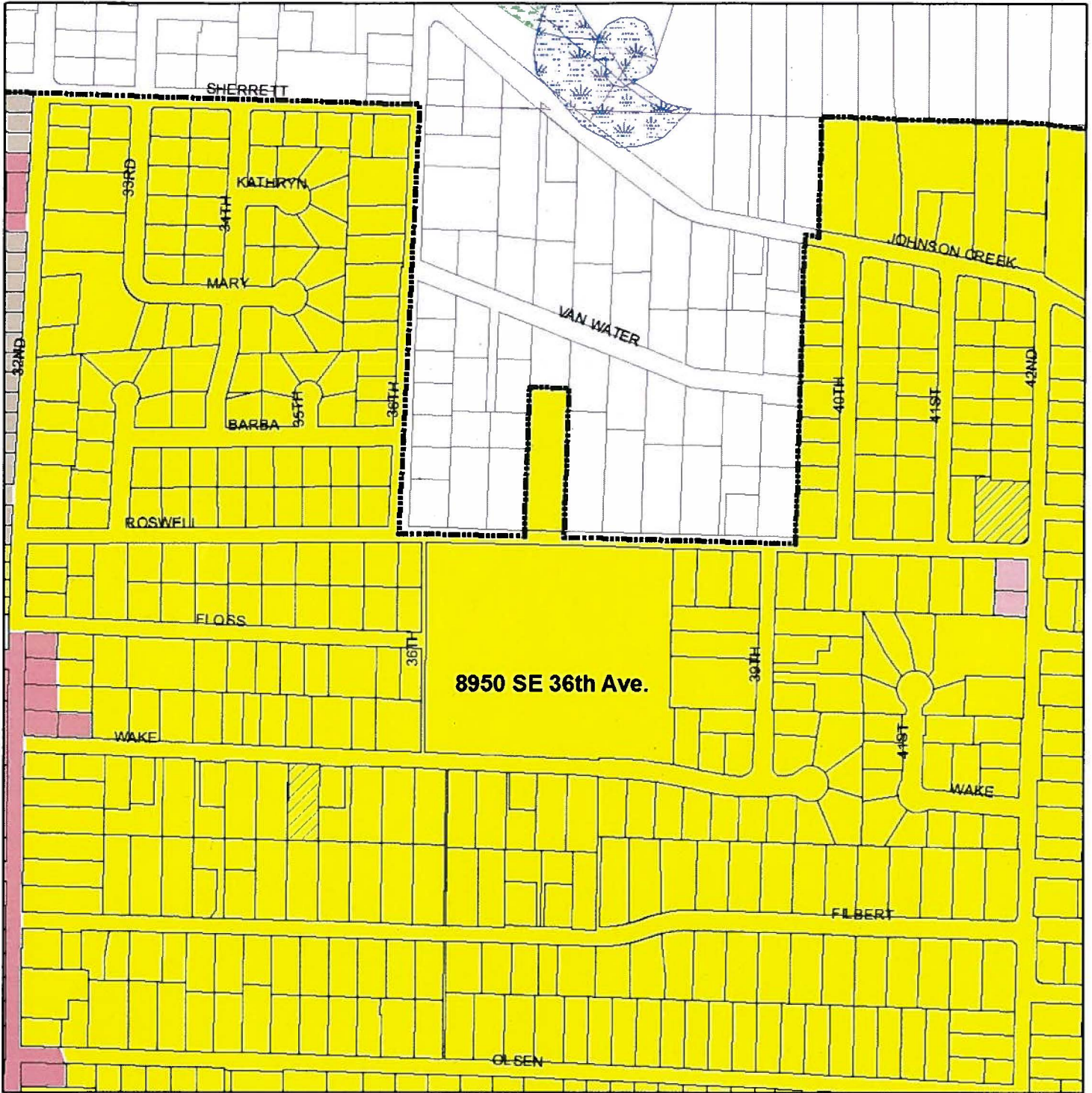
6. The application was referred to the following departments and agencies on August 1, 2008: Milwaukie Building Division, Milwaukie Engineering Department, Clackamas County Fire District #1, Ardenwald-Johnson Creek Neighborhood District Association Chairperson and Land Use Committee, and Design and Landmarks Committee. The comments received are summarized as follows:

- Tom Larsen, Building Official, City of Milwaukie: No comments.
- Zach Weigel, Civil Engineer, City of Milwaukie: No comments.
- Three members of the public made inquiries by phone about the proposed amendments, in response to the public notice that was mailed in advance of the hearing. All three callers asked for more information about how the zone change and comp plan map amendment applications would affect their properties. Staff answered

all their questions, noting that the proposed zone change and comp map amendment are specific to the school site and will not directly affect any of the surrounding properties. Staff answered calls from the following people:

- A. Katherine Cleveland, owner of 3443 SE Floss St.
- B. Jonathan Redman, grandson of the owner of 3023 SE Balfour St.
- C. Patricia Kenney, owner of 3724 SE Wake St.

EXHIBIT B



Proposed Zoning

8950 SE 36th Ave.
(Ardenwald Elementary School)

Legend

Zoning hist_resrc Water Resources  City Limit

ZONE HISTORIC TYPE










	CL		CONT		RIPARIAN
	CN		SIG		WETBUF
	R5		UNRK		
	R7				



EXHIBIT C



Proposed Historic Resources Map
(Milwaukie Comprehensive Plan Map 4)

8950 SE 36th Ave.
 (Ardenwald Elementary School)

Legend

- hist_resrc  City Limit
- HISTORIC**
-  CONT
-  SIG
-  UNRK



05000 200 300 400
 Feet

EXHIBIT D

Milwaukie Comprehensive Plan

Appendix 1 Historic Resources Property List (proposed)

<u>SITE NO./ADDRESS/(YEAR BUILT)***</u>	<u>TYPE</u>	<u>SCORE</u>
<u>“Significant” properties:</u>		
1 9712 SE Cambridge Lane (1941)*	House	56
2 9717 SE Cambridge Lane (1938)	House	52
3 9911 SE Cambridge Lane (1923)*	House	50
4 10200 SE Cambridge Lane (1915)*	House	45
5 2300 SE Harrison (1937)*	Milwaukie Jr. High School	60
6 3235 SE Harrison (1888)*	House	42
7 10636 SE Main (1925)*	Milwaukie Masonic Lodge	58
8 10722 SE Main (1938)*	Milwaukie City Hall	59
9 11008 SE Main (1905)*	Commercial Building	43
10 4217 SE Railroad (1885)*	House	38
11 3125 SE VanWater (1886)*	Ardenwald Cong. Church	62
12 1620 SE Waverly Dr. (1922)*	House	54
14 11300 SE 23rd (1925)*	Milwaukie High School	53
15 10399 SE 34th (1912)*	House	46
24 12006 SE McLoughlin**	House	32
34 11188 SE 27th**	House	52
45 8835 SE 42nd (1923)	House	67
46 9002 SE McLoughlin (1938)	Commercial Building	71
<u>“Contributing” properties:</u>		
13 2316 SE Wren St. (1922)*	House	32
16 2115 SE Adams**	House	19
17 9900 SE Cambridge Lane**	House	27
18 4141 SE King Rd.**	House	36
19 2515 SE Lake Rd.**	House	33
20 3182 SE Lake Rd.**	House	44
21 10914 SE Main**	Commercial Building	45
22 10999 SE Main**	Commercial Building	38
23 11073 SE Main**	Commercial Building	39
25 2526 SE Monroe**	House	33
26 12374 SE Oatfield**	House	35
27 12021 SE River Rd.**	House	33
28 1612 SE Waverly Dr.**	House	49
29 12671 SE Where Else Lane**	House	36

SITE NO./ADDRESS/(YEAR BUILT)***

TYPE

SCORE

30	11912 SE 19th**	House	38
31	10392 SE 23rd**	House	37
32	10565 SE 23rd	House	50
33	Deleted		
35	11630 SE 27th**	House	34
36	Deleted by Ord. _____	Ardenwald School	
37	9405 SE 42nd**	House	36
38	9908 SE Cambridge Lane	House	36

“Unrankable” properties:

39	2607 SE Monroe	House	?
40	2715 SE Monroe	House/First City Water Works	?
41	Pioneer Cemetery	Cemetery	?
42	Deleted by Ord. 1981		
43	3438 SE Wake St.	House	?
44	Deleted by Final Order of Council, April 3, 2007		?

* Has a rating score with at least two 10's from the Evaluation Worksheet.

** Has a rating score with at least one 10 from the Evaluation Worksheet.

*** Year built listed for significant structures only.

6.
OTHER BUSINESS



To: Mayor and City Council

Through: Mike Swanson, City Manager

**From: Kenneth Asher, Community Development/Public Works Director
Gary Parkin, Engineering Director
Alex Campbell, Resource and Economic Development Specialist**

Subject: Extension of Wastewater Collection System to "Dual Interest Area A"

Date: September 16, 2008 for the October 7, 2008 Regular Session

Action Requested

Staff seeks three actions to proceed with the Dual Interest Area wastewater sewer extension project, scheduled for construction in 2009:

- a. Authorize, via resolution, the City Manager to execute an Intergovernmental Agreement with Clackamas County Service District No. 1 (CCSD #1) for the preliminary design and environmental report, geotechnical report, final design and bidding services, construction support, and construction management services for the Dual Interest Area (DIA) "A" wastewater sewer extension project. City share of cost will be about \$400,000.
- b. Authorize application for a Clean Water State Revolving Fund low-interest loan for up to \$3.8 million for the City share of the engineering noted above and the construction of the wastewater sewer system for the Dual Interest Area "A".
- c. Direct city staff to develop engineering and outreach strategies to effectively communicate, engineer and construct wastewater collection service for the Dual Interest Area.

History of Prior Actions and Discussions

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. The lack of support of citizens in the area to annexation, but in support of receiving sewer service, most recently expressed at the March 20, 2008 open house, was noted. 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, or Dual Interest Area A, the agreement states:

"The City shall assume a lead role in providing urbanizing services, whenever possible and according to adopted capital improvement programs."

Background

As described in the staff report for the September 16, 2008 Work Session, the City is facing a critical decision as to whether to enact or modify policies described in the UGMA and the Comprehensive Plan regarding urban service provision in the DIA. If the City intends to adhere to policy and pursue the wastewater extension project, it should move forward now for several reasons:

- The opportunity to partner with the County on design avoids duplication of staff and design costs and promotes efficiency and effectiveness in the administration, service delivery and execution of the project.

- Clackamas County established an urban renewal district, the North Clackamas Revitalization Area (NCRA) in 2006 for a large unincorporated area that includes the DIA. The residents in the NCRA identified the need for public sewers as the district's highest priority. The County is actively working to provide a sewer collection system in the NCRA (outside the DIA), which will provide sewers to the largest remaining unsewered urban area in the state by 2011.
- The Oregon Department of Environmental Quality (DEQ), through the Clean Water State Revolving Fund (CWSRF) program, provides low interest loans across the state to fund water quality protection projects for wastewater treatment, nonpoint source pollution control and watershed and estuary management. The City submitted this project for CWSRF loan program eligibility last fall and DEQ determined that the project had significant enough impact to rank it #1 on the CWSRF funding priority list for this year.
- Securing the loan requires significant submittals, including an environmental review process. Clackamas County has undertaken some of this work on behalf of the City, given its own efforts to sewer the larger area and the expectation that the City would be following through on its commitment to sewer the DIA. DEQ has been awaiting the City's application for three months, also with the expectation that the City would be applying for the loan to do this work. Because of the cooperation of the County and State to date, Milwaukie can expect to apply for and receive the loan this fiscal year, if a decision to request the loan is made in a timely fashion. This timing would ensure funding availability this fiscal year, keeping the City on track with its adopted CIP.

At the September 16, 2008 Work Session, Council directed staff to return to City Council with additional information on the following issues:

- A. Compare the costs & benefits for both the City and DIA residents in a City-led project. Include a comparison of the differences, from a DIA resident perspective, between receiving sanitary sewer service from CCSD#1 or the City.
- B. What would be the necessary steps and policy implications of reconsidering the relevant over-arching policy goals embodied in the Comprehensive Plan and City-County UGMA?
- C. If the UGMA and Comprehensive Plan did not already provide policy direction on this issue, would the City still pursue this project, and, if so, why? Or, alternatively, what was the underlying rationale behind Chapter Six of the

Comprehensive Plan? Or, in plainer language, why force people into the City if they do not want to join the City?

- A. Compare the costs & benefits for both the City and DIA residents in a City-led project. Include a comparison of the differences, from a DIA resident perspective, between receiving sanitary sewer service from CCSD#1 or the City.

On the question of relative benefits and costs for the City and DIA residents if the City provides sewer services (as opposed to CCSD #1), i.e., benefits and costs of the project:

City benefits:

- City has more control over timing and design of the project.
- Additional utility customers/rate-payers join the system and can share fixed capital costs.

City costs:

- Some financial risk and use of City borrowing capacity. Staff estimates that the likely cumulative direct impact on sewer fund balances to be on the order of several hundred thousand dollars over the life of the loan to finance the project. Those costs could be recovered or reduced by extending the life of the reimbursement district and/or through aggressive enforcement against failed septic systems in the area.
- City staff time, particularly in the Engineering, Community Services, and Community Development departments as outreach is conducted and the project is designed and built.

Resident benefits:

- The North Clackamas Urban Renewal Area will be contributing \$2,100 per household to cover the System Development Charge (SDC), whether the resident connects to CCSD #1 or to the City of Milwaukie system. Because Milwaukie's SDC rate is lower, the difference could be applied to the overall cost of the project. This could reduce the total cost of connection by as much as \$1,200 for those that connect to the City of Milwaukie system.¹
- The City proposes financing the project through a reimbursement district, rather than a Local Improvement District (LID)-type approach. Under a reimbursement district, residents who do not wish to immediately connect can delay their capital

¹The current differential between the CCSD #1 SDC for this area (which has been frozen) and the City wastewater SDC is \$1,207. However, City of Milwaukie is currently conducting a wastewater master plan and will be considering an SDC increase over the next few years.

cost contribution until they connect. Under an LID, they would be assessed their share of capital cost upon completion of the project.

Resident costs:

- Capital costs and SDC costs will be largely the same under a City-led or a County-led project. Some quirks of calculation may marginally change the capital cost share, but these are not related to any inherent difference between City or County provision. See Attachment 3 for a detailed description of all residential customer costs.
- Monthly sewer rates are similar. Residences that consume less water would pay slightly less under the City rate structure; residents that use more water would be better off under CCSD #1. (See Attachment 3 for details.)

On the question of the City's and resident's relative benefits and costs of annexation that will result from the project:

City benefits:

- Incorporation of the area would lead to a more rational city boundary, allowing more efficient provision of services. (See discussion below.)
- Additional property tax and fee revenues.

City costs:

- Some additional demand on General Fund services (such as Community Services, Planning, Code Enforcement, Police), etc., above current levels.² Because the area is within an urban renewal district, new property tax revenues will be flat for at least 20 years, and are likely to fall behind increases in costs of service provision—at least until the district sunsets.
- Future annexations that would naturally flow from the project would require Planning staff time to process those annexations.

Resident benefits:

- Higher level of urban services, particularly public safety and community services. (See Attachment 2 and the response to Question C. below.)

Resident costs:

- Residents will pay additional property taxes. (Utility rates, property and other tax differences are detailed in Attachment 2.)
- Residents will pay a \$100 fee to apply for annexation.

² Milwaukie Police responded to 22 "assist outside agency" calls in the DIA area in the last 6 months. They were all requests for cover on in progress calls or traffic stops. In all instances, the County Sheriff's deputy was the primary investigator and MPD was there as back-up or to assist with containment.

B. What would be the necessary steps and policy implications of re-considering the relevant over-arching policy goals embodied in the Comprehensive Plan and City-County UGMA?

The City Growth element of the Comprehensive Plan could be revised -- either to support no physical expansion or to not support any policies which might lead to additional expansion – through a "PAPA" (post-acknowledgement plan amendment) or through upcoming Periodic Review. Procedurally, either approach is viable.

Reducing the City's planned area of expansion could impact the calculation of the City's buildable land supply required as an element of periodic review, which could in turn mean additional density within City limits to meet state planning goals. Staff is exploring whether this change would be in conflict in any way with the Metro functional plan.

In order to provide the area the opportunity to receive sanitary sewer in a timely fashion, the City would also seek to renegotiate the City-County UGMA to encourage County provision of urban services in the area. This would run counter to the position the City and the other cities in Clackamas County have historically taken, which is to more clearly differentiate urban services from countywide functions.

C. 1. If the UGMA and Comprehensive Plan did not already provide policy direction on this issue, would the City still pursue this project, and, if so, why?

The City would seek to pursue the project, assuming concurrence from the county, because the City is the most logical service provider, due to the geography. Dual Interest Area "A" is also a very logical place for the City to expand services because the existing City boundary is so uneven and would be more clear and coherent after this expansion.

2. What is the underlying rationale behind Chapter Six of the Comprehensive Plan?

To develop an efficient municipal form, i.e., the area within the UGMB is a logical social, economic, and geographic unit, which would be most efficiently served as a single urban entity. This efficiency is best understood not simply in terms of dollars per service unit provided, but with thought for the principles of governance, the responsiveness of government, and the ability of citizens to collectively plan for the future.

3. Why force people into the City if they do not want to join the City?

Because it is in the larger interest of the City, the county, the region, and the environment, particularly over the long term.

Staff believes that these three questions really go to the heart of the matter: On what basis might a City force annexation, or, as in the matter at hand, provide urban services in such a manner as to make annexation virtually inevitable?

The answer is at the very core of collective decision-making and the role and structure of local government: Democratically organized governmental bodies are endowed with the powers to coerce action in order to serve the public good. The public goods that are enabled by annexation are orderly planning, efficient supply of services, and the creation of logical and coherent local boundaries.

These are not idle or abstract notions. For instance, complex and inter-related issues such as water quality or environmental protection or transportation planning, in which local governments play a critical role, are not easily managed by a large number of different geographic entities. For this reason, clear and meaningful pre-existing geographic boundaries are frequently selected as jurisdictional boundaries and, generally speaking, urbanized areas are typically governed by consolidated service providers: cities.

In addition to the more pragmatic or technocratic arguments for service consolidation, there is a strong governance argument in favor of incorporation as well. Residents who face a multiplicity of service providers, each ultimately governed by one Board of County Commissioners, responsible for a myriad of issues related to the lives of 400,000 people, are inevitably less able to participate meaningfully in the public decisions that impact their lives. This is due both to scale and the organizational complexity involved. Centralizing the accountability for all of these services within one organization that is much smaller, flatter, and "closer" to the ground is a very sound method to improve government performance and democratic outcomes.

Concurrence

- County staff at all levels support the City extending sewer to this area, as called for in the UGMA.
- This project is incorporated in the current Wastewater Master Plan and Capital Improvement Plan.
- The CUAB supports extension of services to the City's entire Urban Growth Management Area and annexation of the DIA into the City.
- The Planning and Community Services Directors support moving forward with this project and are prepared to support efforts to do so.
- Finally, the Oregon DEQ strongly supports sewer extension in this area, and as soon as possible.

Fiscal Impact

By moving forward with the IGA to engineer the project, the City would be committing to spend as much as \$400,000. This amount could be paid for from the CWSRF loan. Loan payments would be made by the sanitary sewer fund and can be covered by the existing rate and payments made upon connection. The loan would be a low-interest loan. Annual payments on a loan of \$2.1 million (to design the entire project, and construct the first half) would be approximately \$170,000.

Work Load Impacts

This work is part of the Engineering work plan and Community Services has incorporated the outreach program into its work plan.

Alternatives

1. Council may direct staff to begin the steps necessary to alter Chapter 6 of the Comprehensive Plan in such a way as to minimize City expansion, or to prevent any annexations that would not be voluntary. In such a case, staff would then seek authority to clarify or amend as necessary the UGMA to allow CCSD #1 to annex and serve the unsewered portions of the DIA.
2. Council could direct staff to allow the County to proceed with sewerage this area, but withhold judgment on the larger policy questions at this time.
3. Council could initiate a comprehensive review of the effectiveness of the UGMA agreement with the county, and begin renegotiating the entire agreement to better describe city/county growth plans for the future. Any successful renegotiation would likely lead to an update of the Comprehensive Plan.
4. City Council might direct staff to develop a policy that allows extra-territorial service provision. Staff strongly believes that this is the worst option because it would further blur the city's boundaries.

Attachments

1. Staff Report for September 16, 2008, including key attachments
2. Sewer Project and Service Cost Comparison (City of Milwaukie vs. CCSD #1)
3. Service Provision Cost/Benefit Table (City of Milwaukie vs. Current Services as unincorporated area)
4. Resolution Authorizing City Manager to Sign IGA with Clackamas County to Cooperate on Engineering and Design

ATTACHMENT 1



To: Mayor and City Council

Through: Mike Swanson, City Manager

**From: Kenneth Asher, Community Development/Public Works Director
Gary Parkin, Engineering Director**

Subject: Extension of Wastewater Collection System to "Dual Interest Area A"

Date: August 12, 2008 for the September 16, 2008 Work Session

Action Requested

This item is presented for Council discussion. Due to several timing issues, staff seeks clear direction from Council on whether to proceed with this project. Specifically, staff is preparing to return to City Council on October 7 with a resolution seeking the following direction:

- a. Authorizing execution of an Intergovernmental Agreement with Clackamas County Service District No 1 (CCSD1) for the preliminary design and environmental report, geotechnical report, final design and bidding services, construction support, and construction management services for the Dual Interest Area "A" wastewater sewer extension project. City share of cost will be about \$270,000.
- b. Authorizing application for a Clean Water State Revolving Fund low-interest loan for up to \$3.8 million for the City share of the engineering noted above and the construction of the wastewater sewer system for the Dual Interest Area "A".
- c. Requesting city staff to develop engineering and outreach strategies to effectively communicate, engineer and construct wastewater collection service for the Dual Interest Area.

History of Prior Actions and Discussions

May 6, 2008: Work session to discuss the sewer extension project in light of City, County, State and intergovernmental requirements and policies. The lack of support of citizens in the area to annexation, but in support of receiving sewer service, most recently expressed at the March 20, 2008 open house, was noted. Staff presented information on relevant City and County policies, state law regarding annexation, and raised questions regarding service delivery and governance.

March 4 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.

Intermittently, over the past twenty years or more, staff and Council have discussed coordination of urban services in this part of unincorporated Clackamas County. These discussions were pegged to sewer service extensions, annexation plans, city/county coordination efforts and impacts from property tax measures or urban renewal efforts at the county. One outcome of these discussions was an agreement (Clackamas County Order No 90-726 dated July 5, 1990) establishing 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. Part of the UGMA designates two areas adjacent to the City, one generally north of King Road (shown in Attachment "1") and one generally south of Highway 224 as "Dual Interest Areas." In the northern Dual Interest Area, or Dual Interest Area A, the agreement states:

"The City shall assume a lead role in providing urbanizing services, whenever possible and according to adopted capital improvement programs."

Background

Until the spring of this year, when Council asked for additional time to discuss the effort, staff had been working on an adopted Capital Improvement Program project to provide wastewater collection services to properties within the DIA. The project is also included in the 2008 draft Wastewater Master Plan (still under review), which views this project

as a natural extension of the City's gravity system and a high priority based on the need of the area. The project would extend Milwaukie's wastewater collection system to the 170-acre DIA. Attachment 1 shows the proposed wastewater mains for the project.

In the UGMA, this area was called out as Milwaukie's responsibility because of its proximity to the existing city system. The City surrounds much of the area. The topography of this area allows it to connect to the city system as a gravity sewer, allowing the most efficient and cost-effective engineering solution.

This unincorporated urbanized area east of the City desperately needs a wastewater collection system. Although the area generally has a soil substrate that will support private septic systems, the density of the houses in the area and the high water table are not conducive to private septic systems. Environmental concerns continue to grow and there is a steady rate of septic system failures. County and City policies today discourage the use of septic systems and in fact county ordinances currently ban the replacement of septic systems should they fail (per State Statute ORS 340-071-0160). Unfortunately, the unavailability of sewers has made this a difficult policy for the County to enforce.

Clackamas County established an urban renewal district, the North Clackamas Revitalization Area (NCRA) in 2006 for a large unincorporated area that includes the DIA. The residents in the NCRA identified the need for public sewers as the district's highest priority. The County is actively working to provide a sewer collection system in the NCRA (outside the DIA), which will provide sewers to the largest remaining unsewered urban area in the state by 2011.

Partnering with the County on this project makes sense for Milwaukie as it avoids duplication of staff and design costs and promotes efficiency and effectiveness in the administration, service delivery and execution of the project.

The Oregon Department of Environmental Quality (DEQ), through the Clean Water State Revolving Fund (CWSRF) program, provides low interest loans across the state to fund water quality protection projects for wastewater treatment, nonpoint source pollution control and watershed and estuary management. The City submitted this project for CWSRF loan program eligibility last fall and DEQ determined that the project had significant enough impact to rank it #1 on the CWSRF funding priority list for this year.

Securing the loan requires significant submittals, including an environmental review process. Clackamas County has undertaken some of this work on behalf of the City, given its own efforts to sewer the larger area, and its expectation that the City would be following through on its commitment to sewer the DIA. DEQ has been awaiting the

City's application for 3 months, also with the expectation that the City would be applying for the loan to do this work. Because of the cooperation of the County and State to date, Milwaukie can expect to apply for and receive the loan should it act in September or October of 2008. This timing would ensure funding availability this fiscal year, keeping the City on track with its adopted CIP.

Also pending is an Intergovernmental Agreement (IGA) with Water Environment Services (WES) of Clackamas County that would enable the City to continue the loan application process and begin designing the project. As stated above, coordination with Clackamas County will ensure the most cost effective project, since the County has already mobilized a firm to conduct the environmental and engineering work for the larger area. The county expects to begin construction on the larger sewer project in April of 2009. The most recent schedule staff has received from the County for the County's project is attached (see Attachment 2).

The City's project would expand Milwaukie's collection system, adding 15,000 feet of sewer main to serve the 286 properties in the DIA. Attachment 3 shows a preliminary project design. It is anticipated that the sewer lines would be installed over a two-year period beginning as soon as June 2009. The project is likely to be divided into two parts and two phases, south and north of Johnson Creek. This would be done to lower the City's financial risk, demonstrate good service to the neighborhoods, and study connection rates. Staff expects to construct the first phase in 2009 and the second phase as early as 2010, subject to the connection rate and loan repayment performance. The order of the phasing (north or south section first) would be determined by the preference of the neighbors.

The project would be financed by a loan from the CWSRF, backed by wastewater utility revenues. Staff proposes establishing a reimbursement district (per City code chapter 13.30) where all the properties are allocated a share of the project cost. Residents would pay their share when they elect to connect to the sewer system¹. Residents would be under no obligation to connect to the new sewer system, once installed. The City is proposing this approach because residents have genuine concerns about the City "forcing" hookup or annexation. Although this is a less traditional approach to a capital improvement project of this kind, staff believes it is the right strategy and respectful of the neighbors' concerns. As properties voluntarily connect, residents would pay their allocated share of the project cost, plus interest. The City would apply these funds to the loan repayment.²

¹ City code requiring connection due the proximity of a City system is not applicable in the reimbursement district

² One exception to the voluntary connection would be if septic systems failed, in which case residents would be required to connect to the existing sewer and annex to the City.

Annexation would be required upon connection in accordance with the City's Comprehensive Plan (Chapter 6, Objective 3, Policy 4) to ensure sound urban development and the efficient provision of municipal services. Staff would direct the Council to Chapter 6 of the Comprehensive Plan entitled "City Growth and Governmental Relationships" for a complete set of City policies related to annexation, governance and the provision of city services to new properties.

Staff believes that continuing this project is supportable by state law, city/county agreements and the City's Comprehensive Plan, but recognizes the various concerns held by affected property owners, particularly in regards to annexation. These concerns include:

- Annexation, insofar as it effectively raises residents' property taxes
- Residents identify with being an unincorporated resident of the County and don't wish to be governed by Milwaukie's municipal code
- Annexation that might create irregular boundaries and divide neighborhoods – the West Fork area in particular, north of Johnson Creek Boulevard
- The possibility that new wastewater service might invite large-scale development

With City Council approval, staff envisions an outreach and public involvement effort would seek to address these attitudes and concerns, principally by meeting with neighbors on a street-by-street or block-by-block basis. These meetings would emphasize providing the rationale behind the City's designation as the service provider in the area and a clear account of the City's program and the costs involved. Key to these meetings is ascertaining who would hook up to sewer and when, as the residents will help determine which phase is constructed first.

Concurrence

Staff believes that the project implements City policy, County policy, state law and current best practices in the State of Oregon regarding delivery of urban services. The Chair of the County Board has communicated to city and county staff her commitment to see the County actively support the City's efforts on this project. County Administrator Jon Mantay has stated the County's commitment to support the City's role as service provider in this part of unincorporated Clackamas County (Dual Interest Area A). In recent months, City staff has noticed a stronger level of support from County staff, as evidenced by engineering assistance with the CWSRF loan design and environmental submittals, acknowledgement of the City's responsibility in the DIA by the County Development Agency in it's outreach to the NCRA community and by County staff's referral of DIA residents to the City's Information Coordinator for project updates.

This project is incorporated in the current Wastewater Master Plan and Capital Improvement Plan.

The CUAB supports extension of services to the DIA and annexation of the area into the City.

The Finance, Planning and Community Services Directors support moving forward with this project and are prepared to support efforts to do so.

Finally, the Oregon DEQ strongly supports sewer extension in this area, and as soon as possible.

Fiscal Impact

Fiscal impacts would be limited to the Wastewater operating fund. The capital improvement and capital maintenance portion of the operating fund receive about \$300,000 annually and comprise most of the discretionary funds in the budget. Two key factors which will determine the need for sewer revenues to contribute to loan repayments are the timing of connections and the total number of connections. If very few new customers connect in the first year or two, loan payments will be paid from sewer revenues. These payments can be recouped when customers do connect later. However a reimbursement district probably would not continue indefinitely. Therefore, some percentage of residents in the area may not ever pay their share of the project. There are environmental considerations that may accelerate the connection rates, possibly even requiring them before the end of the reimbursement district. Staff will continue to work with the Finance Director and Budget Officer to construct the optimal finance plan for the project.

Work Load Impacts

This work is part of the Engineering work plan and Community Services has incorporated the outreach program into its work plan.

Alternatives

Should Council elect to terminate the project, staff would return with a proposal to either renegotiate the UGMA agreement with Clackamas County or amend the Dual Interest Area components of that agreement, and to amend the City's Comprehensive Plan policies on City Growth and Government Relationships. This would cause all city departments to modify business practices for extra-territorial services that are either provided today, or requested by property owners near city limits. Finally, such an alternative course of action would cause the Engineering Department to modify the draft

Wastewater Master Plan and amend the recently adopted Capital Improvement Program.

Attachments

1. Map of DIA and the Wastewater System (11"x17"copy)
2. Preliminary project schedule
3. Preliminary project design (11"x17" copy)







ATTACHMENT 1

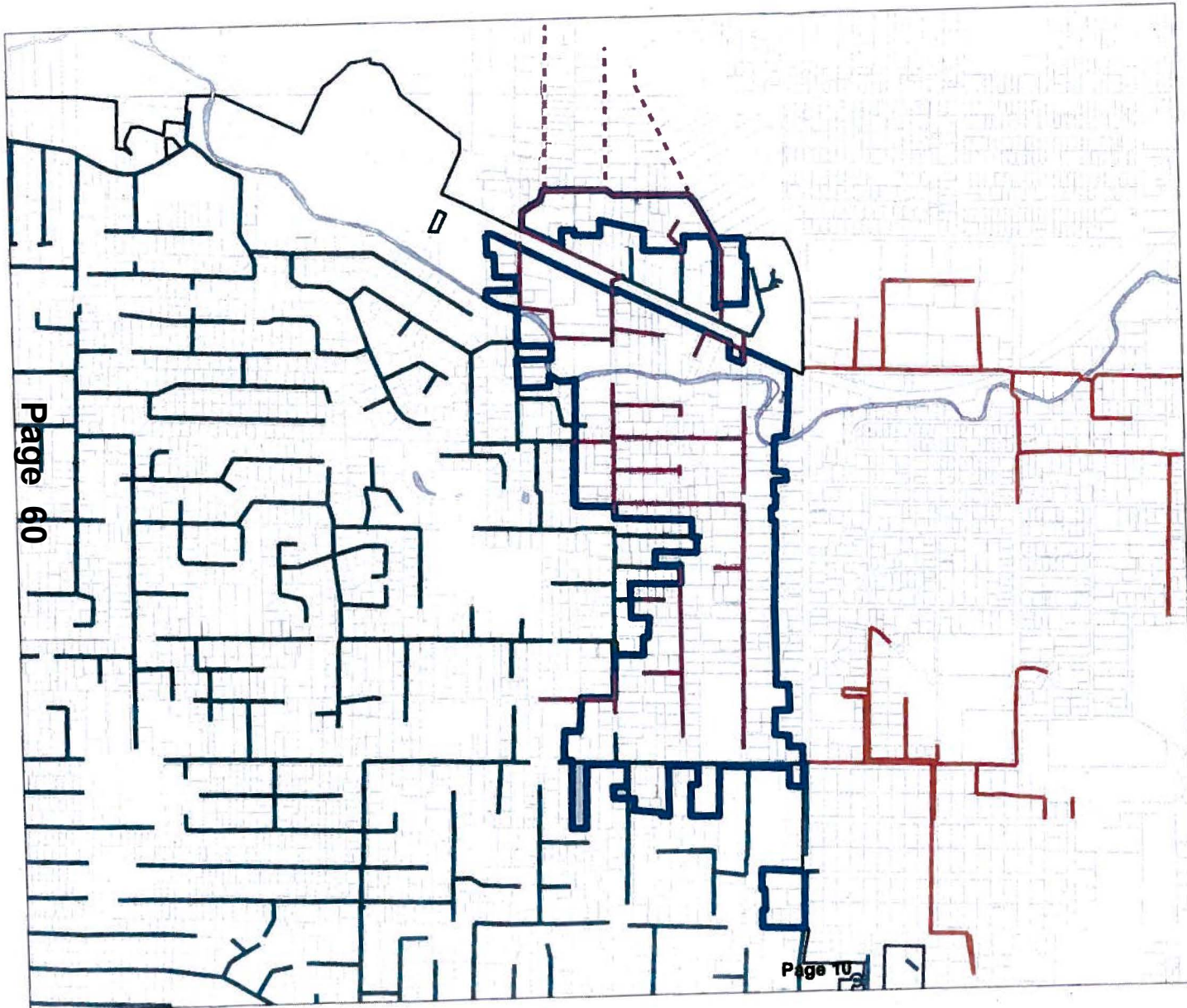
**Existing / Proposed
Sewer Lines
Dual Interest Area "A"**



0 250 500 1,000 1,500 2,000
Feet

Legend

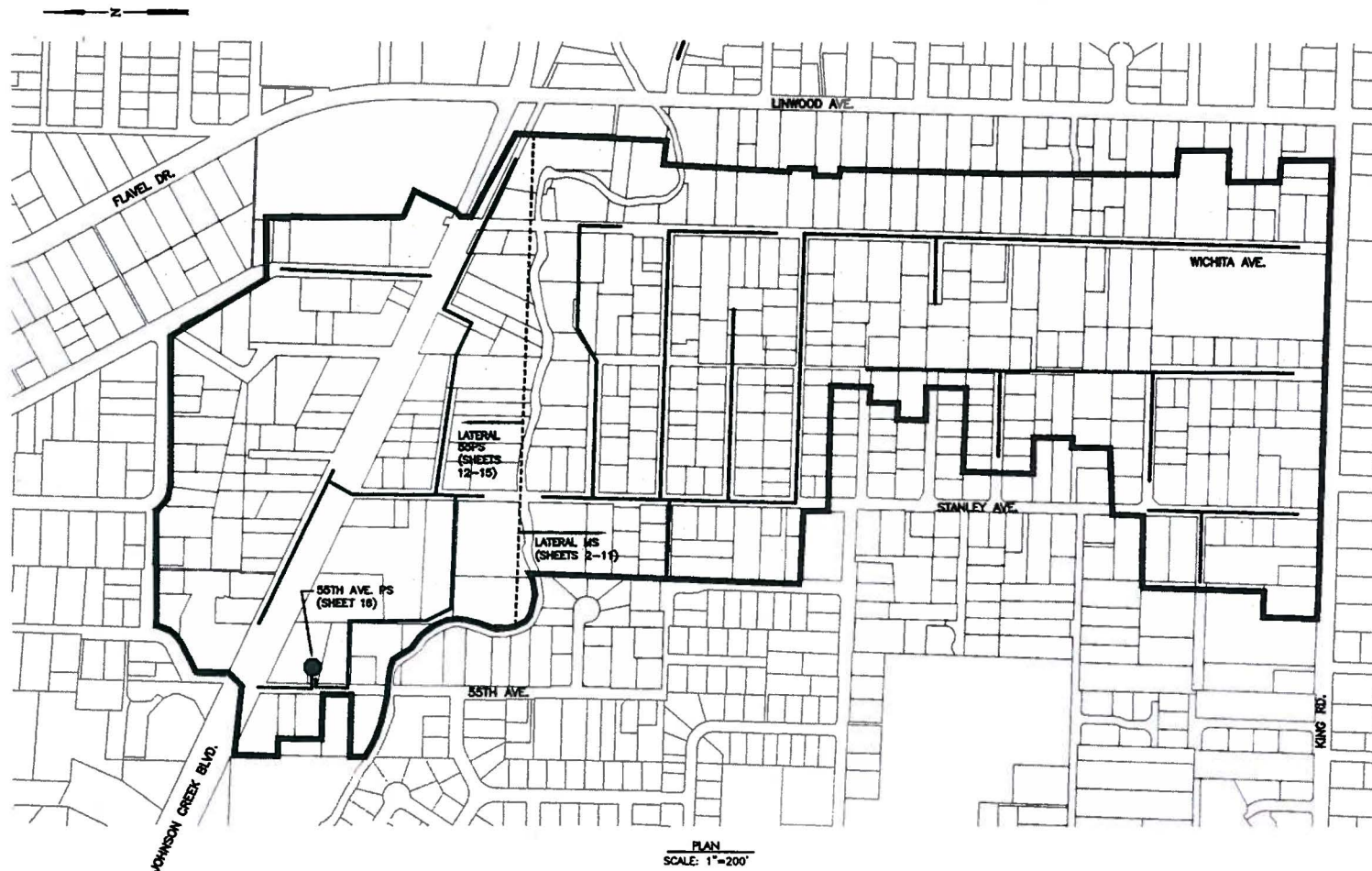
-  Dual Interest Area "A"
-  Bodies of Water
-  Milwaukee Sewer Main
-  CCSD Sewer Main
-  Unsewered Area Plan
-  Harvey Extension



LEGEND

- LIMITS OF DUAL INTEREST AREA "A"
- PRELIMINARY SANITARY SEWER LAYOUT
- PROPOSED PUMP STATION
- - - - - LIMITS OF NEW SANITARY SEWER LATERALS

Page 62



-DRAFT-



VERIFY SCALES
 BAR IS ONE INCH ON ORIGINAL DRAWING.
 IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY.

NO.	DATE	BY	APPR	REVISIONS



CENTURY WEST ENGINEERING CORPORATION
 6430 S.W. Railroad Lane, Suite 238
 Portland, Oregon 97224
 503-414-9130 phone • 503-437-2710 fax
 www.centurywest.com

DESIGNED BY: RW	DRAWN BY: SLK	CHECKED BY: RW	SCALE: AS SHOWN
DATE: AUGUST 2008		PROJECT NO: 40749028.01	

**NORTH CLACKAMAS REVITALIZATION AREA
 DUAL INTEREST AREA "A"**

LEGEND AND SHEET LAYOUT

DRAWING NO.

SHEET NO.
2 OF 16

ATTACHMENT 2

One-time Costs to Connect to Public Sanitary Sewer

	City of Milwaukie	CCSD #1
Inspection	\$70	\$75
System Development Charge (SDC) or "Connection Fee"	\$893	\$2,100
Share of Capital Cost**	\$10,000 to \$20,000	\$10,000 to \$20,000
Private lateral***	\$3,000 to \$10,000	\$3,000 to \$10,000
Decommission/disconnect existing septic***	Varies	Varies

* The North Clackamas Urban Renewal Area will be contributing \$2,100 to cover the CCSD #1 SDC cost, whether the resident connects to CCSD #1 or to City of Milwaukie. Because Milwaukie's SDC rate is lower, the difference could be applied to the overall cost of the project. This could reduce the total cost of connection by as much as \$1200 for those that connect to the City of Milwaukie system.

** Neither CCSD #1 nor City of Milwaukie have finalized their cost allocation method. Under most methods, larger lots pay a larger share of the total construction cost. It is possible that the per household cost of the total project could be marginally lower (or higher) within the DIA than in the area as a whole due to geographic differences, but it is likely to be similar.

***The service provider has no impact on the cost to construct the private lateral or decommission the existing septic system. The specifics of the site, however, can vary significantly and change the costs dramatically.

On-Going Service Costs

	City of Milwaukie	CCSD #1
<u>Monthly service charge</u>	\$8.94 (base rate) + \$2.53 per CCF (750 gallons) Total: \$34.24 (typical customer)	\$29.50 (flat rate)

Service Provision and Cost/Benefit Table

Service	Current Provider	Milwaukie Provider	Cost Difference	Service Comparison
Public Safety	Clackamas County	City of Milwaukie	See taxes (bottom row)	City of Milwaukie: 1.5 officers per 1,000 residents Clackamas County (Enhanced Law Enforcement): 1.2 officers per 1,000 residents
Code Enforcement	Clackamas County	City of Milwaukie	See taxes (bottom row)	City of Milwaukie: 2 officers for 20,500 residents & 4.8 sq. mi. Clackamas Co.: 4 officers for 175,000 residents & 1,803 sq. mi.
Traffic Enforcement	Clackamas County	City of Milwaukie	Not applicable	City of Milwaukie: 4.5 dedicated traffic enforcement officers Clackamas Co.: 6 motorcycle officers
Parks Operation & Maintenance	North Clackamas Parks & Rec.	North Clackamas Parks & Rec.	None	Both served by NCP, but City of Milwaukie provides additional support for local and neighborhood park initiatives.
Planning Services	Clackamas County	City of Milwaukie	None	Milwaukie Planning Commission (PC) provides opportunity for public involvement. Land use appeals in the County are decided by a hearings officer, rather than a Planning Commission.
Sewer	CCSD #1	City of Milwaukie	Varies	Milwaukie: \$20 to \$40 per month (per water consumption) CCSD No. 1: \$29.50 per month (flat rate)
Community Involvement	Clackamas County	City of Milwaukie	See taxes (bottom row)	City of Milwaukie: Lewelling NDA, population approx. 3,500. Clackamas Co.: Southgate CPO, population approx. 12,500.
Street Surface Maintenance Program	Clackamas County	City of Milwaukie	About \$50/year more with Milwaukie	City of Milwaukie providing additional local street maintenance. \$3.35 per month + 1.5% charge on PGE bill
Property Taxes	Clackamas County	City of Milwaukie	About \$375/year more with Milwaukie	City of Milwaukie: 18.8686/\$1,000 assessed value Clackamas Co.: 15.7100/\$1,000 assessed value

For solid waste collection (Mel Deines), water (Clackamas River Water), cable, gas, phone and other telecom franchises, customers would continue to pay the same rates to the same providers. However, under annexation, the City of Milwaukie would collect any applicable franchise fees.

Property tax estimate (\$375/year) is based on Assessed Value of \$120,000; tax rate figures are for the 2007 tax year,

ATTACHMENT 4

RESOLUTION NO. _____

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

WHEREAS, the unincorporated area east of the City of Milwaukie, identified as Dual Interest Area "A" in the City-County Urban Growth Management Agreement, is without a public wastewater sewer system; and

WHEREAS, the need for a public system in this area has been identified as a high priority by residents and the State, County, and City governments; and

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 Dual Interest Area "A"; and

WHEREAS, the City of Milwaukie and CCSD #1 will be constructing a public wastewater sewer system (project) in their respective areas of jurisdiction within the City's Urban Growth Management Area; and

WHEREAS, the City of Milwaukie and CCSD #1 agree that sharing resources to avoid unnecessary duplication of staff, design costs, and equipment will promote efficiency and effectiveness in the administration, delivery and execution of the project; and

WHEREAS, the City of Milwaukie will establish a reimbursement district in the area whereby residents will be required to pay a proportional share of the design and construction costs of the project upon connection;

NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to draft and execute an Intergovernmental Agreement with Clackamas County Sewer District No. 1 for the preliminary design and environmental report, geotechnical report, final design and bidding services, construction support, and construction management services for the Dual Interest Area "A" wastewater sewer extension project.

BE IT FURTHER RESOLVED that the City Manager is authorized to prepare and sign a loan agreement with DEQ for a loan from CWSRF in the amount of up to \$3.8 million to pay for the Dual Interest Area "A" wastewater sewer extension project, payments on interest and principal for such a loan are to be paid from reimbursement fees collected in the Dual Interest Area and wastewater rates.

BE IT FURTHER RESOLVED that City staff are directed to develop engineering and outreach strategies to effectively communicate with residents and engineer and construct wastewater collection service for the Dual Interest Area "A."

Introduced and adopted by the City Council on October 7, 2008.

This resolution is effective on October 8, 2008.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

7. INFORMATION

North Clackamas Parks and Recreation District
MILWAUKIE CENTER/COMMUNITY ADVISORY BOARD
Minutes of August 8, 2008

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

MEMBERS EXCUSED: Kim Buchholz, Chuck Petersen

STAFF PRESENT: Joan Young

GUESTS: None

CALL TO ORDER: Joan Staley called the meeting to order at 9:35 am. Eleanor made a motion to accept the minutes as printed and Molly seconded the motion. The minutes were approved unanimously.

CORRESPONDENCE: Joan Y shared with the board that NCPRD staff has forwarded a draft of the intergovernmental agreement (IGA) with the City of Milwaukie for their review. She provided copies of the C/CAB recommendations and the current draft to compare. The legal consultants for the City and the District have recommended placing the historical information in the beginning of the document. The only other change in the Milwaukie Center portion of the IGA is in section B.3., where it is suggested that capital improvement recommendations go to both the City of Milwaukie City Council and the DAB prior to the District Budget Committee and BCC. C/CAB members felt that there is an adequate process in place already and would like to have the process noted and not add the City Council as another step in the process. The C/CAB asked that staff revisit this section and bring either clarification or changes based upon their concerns back to their September 12 board meeting.

BOARD/COMMITTEE REPORTS

NC DISTRICT ADVISORY BOARD MEETING

There was a short meeting on July 30 at Barton Park. The board voted to approve Eleanor as the C/CAB representative. Eleanor shared some promotional information about the Tsunami Café at the Aquatic Park. There was also a joint meeting with the Clackamas County Park Board and the Board of County Commissioners. Eleanor noted that County Parks is acquiring Billy Goat Island outside Gladstone.

NC PARK STEWARDSHIP COMMITTEE

Eleanor stated that she was unable to attend the meeting.

It was noted again that Eleanor will no longer be able to serve on the Stewardship Committee since she will be on the District Advisory Board.

FRIENDS OF THE MILWAUKIE CENTER, INC.

Eleanor shared that the annual Lumberjack Breakfast was coming up on October 4th. The Resource Development position will be rehired soon. Board member Elaine Hermmens suffered a fire at her business, High Rocks Restaurant.

CENTER REPORT

Joan referred board members to the monthly report. The 3rd part of the Savor Your Health series will be held Tues, Aug. 19. The attendance at these events has been very positive. Staff is working on a Fitness Assessment to make available to folks, with the first efforts focused on the Keep on Trekkin' Walking Program. The annual Ice Cream Social and Beach Bum Day is today, Aug.8, with Wii demonstrations and Palm Reading.

INFORMATION/ANNOUNCEMENTS

Jane mentioned that the Center staff is pulling together a Nutrition Program Task Force to address the issues of providing nutrition options at the Center. Jane Hanno will be serving on the committee and they are looking for another board member to join.

ADJOURN

The board meeting was adjourned by Chair Joan Staley at 10:16 am.

Minutes prepared by: Joan Young
Minutes approved by: Carolyn Mills

North Clackamas Parks and Recreation District
Milwaukie Center
Monthly Report for August 2008

Programs/Services

The annual Ice Cream Social, sponsored by Health Net of Oregon, was a huge success and benefit for the Nutrition program. Center patron, Mary Lashbrook, provided palm reading during the event. Nintendo's Wii games were introduced to Milwaukie Center patrons during the event.

It was a busy month in Milwaukie Center's Travel Program with trips to the Willamette Shore Trolley, Willamette Jet Boats, the Great Vow Zen Monastery, and Busters. Upcoming trips include: Cannon Beach, the Portland Spirit and the famed Mystery Trip.

Volunteer blueberry pickers were hard to come by this year, but staff, spouses and several volunteers assisted in picking over 32 gallons of blueberries from the blueberry patch at Stringfield Family Park. The blueberries have been frozen for use throughout the year in the Nutrition Program meals.

Sixty-five participants attended the final "Savor Your Health" event on August 19. This was the last of three health events which were extremely popular with the Center's participants. Those who attended received healthy treats, free water bottles and other health related products. Every event included a health education topic plus blood pressure, glucose and cholesterol screenings.

Two Milwaukie Center social services staff members attended a presentation on memory screening at Providence Milwaukie Hospital. This informative presentation provided many good resources for coordinating future memory screenings at the Milwaukie Center.

Coming Up

Keep On Trekkin' Walking Program kick off for the 10-week fall program, September 9, 10 am, with the new Senior Fitness Assessment offerings!

Clackamas LIVE!, Sat. Sept. 13. Enjoy the "RedRubberShowdownKickball" Tournament, food, spirits, art vendors and great music.

"Farewell to Summer" Barbecue sponsored by Bob's Red Mill, Thu. Sept. 18, 12 pm – 1 pm. We're celebrating "National Senior Center Month" with great food and local dignitaries.

"Health Net Cup" Wii bowling tournament Thurs, Sept. 18, 12:45 pm. Gold, silver and bronze medals will be presented to the winners of these games.

Lumberjack Breakfast, Sat. Oct. 4, 8 am – 11 am. Join us for all-you-can-eat pancakes served with sausage, eggs, coffee, milk and juice.

"Best in the West" Bazaar, Fri. Oct. 17, and Sat. Oct. 18, 9 am – 4 pm. Sell or buy hand crafted items, baked goods or enjoy the deli snack bar.

Fall classes start the week of September 29 – sign up today!

**Park & Recreation Board
PARB
Tuesday, June 24, 2008
7:30AM
City Hall – Conference Room
10722 SE Main Street**

Item 7 B

Minutes

Type of meeting: Regular

Attendees: Sherri Dow, Ray Harris, Christie Schaeffer, Bob Cooper, Katie MacCready

Absent: Mart Hughes, Val Hubbard,

Staff: JoAnn Herrigel, Joan Young, Kevin Cayson

Minutes

May minutes were approved 5-0.

IGA review w/DAB

Herrigel reported that she had attended the June 12 District Advisory Board meeting to discuss the revisions to the Intergovernmental Agreement.

She said the DAB had had a few comments but were generally supportive and enthusiastic to move the IGA on to both City Council and the Board of County Commissioners. Herrigel said she had sent the IGA to the City Attorney for comments and the District staff had submitted it to their attorneys as well. Herrigel said she planned to take the IGA to Council on August 5th for approval.

Park Maintenance

Herrigel noted that effective July 1, all the parks in the City would be maintained by the Parks District and all other City facilities, such as the Library, the Pond House, the road medians, bulb-outs and wells throughout the City would be maintained by either City crews or a contractor working for the City. Herrigel said that any issues or concerns could be referred to her or Kevin Cayson directly. All other issues would go to Paul Shirey at the Public Works Department (503-786-7614).

What to Do next

Herrigel reminded the group that they had expressed interest in doing a tour of the natural areas in the City. The group was enthusiastic about doing this and asked that this be arranged for the July meeting (July 22, 7:30 am). Herrigel said that she would ask Mart Hughes to be sure to come so he could help interpret. Members should bring their cars and a caravan will be formed to get to sites.

Summer Schedule

The group agreed that they would meet in August. The August meeting is set for August 26th at 7:30am.

City Updates

Herrigel noted that the comment period for the SDEIS for the Portland to Milwaukie Light Rail project had ended June 23. She said Council would consider station locations at their next Council meeting. She also noted that at the July 14 and 15 Council meetings, Council would make a recommendation to Metro on the Locally Preferred Alternative (light rail alignment).

Harris reported that Lewelling Neighborhood Association would be having concerts in Lewelling Community Park at Stanley and Willow this summer. Herrigel said she would get details out to the group when they were available. It was also noted that Ardenwald NDA was having concerts in Ardenwald Park on Thursday evenings throughout the summer.

Harris also noted that the grass was very high along the Springwater Trail and obstructed vision of cars using intersections along Johnson Creek Blvd.

District Updates

- Rec Mobile started that week and will go for 10 weeks
- Century Park tennis courts and basketball court are done
- District bought the house next to Mill Park
- Stringfield Park under construction (curbing, sidewalks and playground underway)
- District maintenance staff mowed the Trolley Trail south of Park Ave
- District Advisory Board took action on the 162nd Street property at the June 12th meeting. It was decided that the property would be “sports focused” and the community center would go elsewhere. More details will go back to DAB at the July meeting
- There is a November vote for a County Library District offices will move in October
- Kristan Mitchell, from Happy Valley, was elected new Chair of the District Advisory Board at the June DAB meeting

Cooper motioned to adjourn. MacCready seconded and meeting adjourned (5-0).