

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
MAY 16, 2006**

**CALL TO ORDER**

**Mayor Bernard** called the 1982<sup>nd</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes	Joe Loomis
Carlotta Collette	Susan Stone

Staff present:

Gary Firestone, City Attorney	Les Hall, Code Compliance Coordinator
Kenny Asher, Community Development/Public Works Director	

**PLEDGE OF ALLEGIANCE**

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

**Mayor Bernard** read a proclamation naming May 22 – 27 as Poppy Days in the City of Milwaukie. Nadine Menke was present on behalf of the American Legion Auxiliary. Any donations to the organization would go to veterans and their families.

**Mayor Bernard** read a proclamation naming May 26, 2006 as Veterans Recognition Day.

**CONSENT AGENDA**

It was moved by Councilor Stone and seconded by Councilor Barnes to approve the Consent Agenda:

- A. City Council Minutes of April 18, 2006
- B. Resolution No. 17-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Scott Churchill to the Planning Commission
- C. Resolution No. 18-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Bob Cooper to the Milwaukie Park and Recreation Board
- D. Resolution No. 19-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Mart Hughes to the Milwaukie Park and Recreation Board
- E. Resolution No. 20-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Harold "Sonny" Newson to the Park and Recreation Board.

Motion passed unanimously.

## AUDIENCE PARTICIPATION

None.

## PUBLIC HEARING

### TriMet Park-and-Ride – Files A-06-01, CSO-05-04, and TPR-05-04

**Mayor Bernard** called the public hearing on the appeal of the Planning Commission's approval of a request for CSO-05-04 and TPR-05-04 for property located at 9600 SE Main Street is called to order at 7:09 p.m. The Council opened the hearing on this matter on April 18, 2006, and heard testimony from the appellant, the applicant, and several citizens. The Council continued the hearing to the date certain of May 16, 2006. The record was closed at the April 18, 2006 hearing. The remaining portions of the hearing were testimony in opposition to the appcal (in support of the applications), staff recommendation, appellant rebuttal, applicant rebuttal, and Council deliberation and decision.

The purpose of this hearing was to consider the appeal of the Milwaukie Planning Commission's approval of applications CSO-05-04 and TPR-05-04. This appeal was made by Mark Whitlow of Perkins Coie LLP on behalf of the Industrial District Property Owners. Mayor Bernard reviewed the appellants' reasons for denying the applications.

### Site Visits and Ex Parte Contacts

**Mayor Bernard** and **Councilors Loomis** and **Collette** had been at or near the site. There were no additional ex parte contacts declared since the April 18, 2006 meeting.

### Testimony of those opposed to the appeal and in support of the application

None.

### Neutral Testimony

- **Mike Stacey, 2740 SE Kelvin, Milwaukie**

**Mr. Stacey** reported his interest started while he was watching a Council work session, and several gentlemen testified about the increase in truck traffic and how this proposal would adversely affect them. They quoted some percentages of increased traffic, and when asked about the numbers they did not have them to offer. Mr. Stacey decided to go to the site and count trucks. He had the opportunity to go by that intersection frequently, and at no time had he seen what he considered a problem. He spent three hours in the morning from 6:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 7:00 p.m. on Monday April 17 and counted all the commercial traffic through the intersection. In the morning hours there were 83 commercial vehicles or approximately 27 per hour and 46 TriMet buses. In the evening there were only 29 commercial vehicles or about 10 per hour and 48 TriMet buses. He felt the only one to be adversely affected would be TriMet as the buses would compete with park-and-ride users. The morning hours would be more congested, but a TriMet lot user survey indicated that the largest percentage of the users would come from the south of Milwaukie via McLoughlin Boulevard. It was his interpretation that those vehicles would exit McLoughlin Boulevard at the off ramp by the dry cleaners. They would not even get to the intersection. They would get to the lot and be able to use it. In the evening hours it would be more of a problem for the people trying to get back onto McLoughlin Boulevard southbound. He was a commuter, and like any other commodity one tried to move, one took the path of least resistance. If it seemed like things were backing up at the intersection, he thought drivers would probably move into Milwaukie to access McLoughlin Boulevard.

**Councilor Barnes** asked Mr. Stacey why he decided he wanted to check it out as a citizen.

**Mr. Stacey** drove by the area and never saw a problem. When they could not produce the numbers when asked he wondered why and what those numbers were. He drove by that intersection at least twice daily going to and from work, and he had never seen a backup. The first part of this year for a couple of months he had the opportunity to travel through that area on a regular basis throughout the day and never saw a problem. It was a quick trip through, so he decided to take a count in case he had missed something.

**Councilor Stone** asked Mr. Stacey if he got a total number for larger trucks.

**Mr. Stacey** replied he had not separated them out. All he separated was commercial vehicles versus TriMet buses. Commercial vehicles were anything from a service van from Portland Mechanical to a semi-truck carrying multiple trailers.

**Mayor Bernard** asked if his truck had been counted.

**Mr. Stacey** said that it was. He added that the stop signs should be changed to 'hesitate' because no one stopped.

#### Staff Recommendation

**Ms. Rouyer**, 2100 SW River Parkway, Portland 97201 and **Mr. Weigel** provided the staff recommendation. Ms. Rouyer reported that by now the Council had heard a lot of testimony and reviewed a lot of paper. This was the point at which she would make the staff recommendation, the appellant would make his rebuttal, and the applicant's rebuttal. Procedurally the Council was being asked to determine the merits of the approval of the park-and-ride and the Planning Commission decision made on February 14. She reviewed the slides she used in her previous presentation to Council: a site overview, subject property at McLoughlin Boulevard/Milport/Main Street, a close-up of the property, the applicant's site plan, a summary of the appeal points, and the applicable criteria. She indicated she would put the slide of those criteria back up at the end of the rebuttal for Council information. She pointed out the community service overlay (CSO) requirements and notably the public benefits test, community service uses, and the general public interest, and that the benefits to the public outweighed the adverse impacts. Off-street parking and loading requirements were procedural requirements for minor quasi-judicial review and also section 1400 transportation planning design requirements and procedures. Under section 1400 with regard to the sidewalk the applicant was requesting an adjustment. In order to have an adjustment approved the applicant had to demonstrate compliance with those criteria which she reviewed on April 18.

**Ms. Rouyer** addressed certain points made during the April 18 appeal. Point #1 – the appellant made a statement that the parking demand would increase with the introduction of this park-and-ride. Staff concluded the parking demand would decrease with the introduction of this use. The original approved use on the site was the theater use, and there were 381 parking spaces. With this proposal there would be 329 spaces. Therefore, there was a decrease of overall parking demand on the site. Point #2 – Councilor Barnes asked if TriMet had an opportunity to respond to Ray Bryan's comments found on page 247 of the April 18 packet. Ms. Rouyer acknowledged that comment and reminded TriMet to address that in their testimony this evening. Point #3 – the point was made during the last hearing that this decision should be made as part of a larger planning process that involved discussion of the Milport/Main intersection improvements, traffic conditions, and other regional transit decisions. She reminded the Council that it was obligated to make the decision based on the criteria of the application and weighing whether the application met the applicable criteria. While

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those other issues were important to the community, this was an application before the Council with criteria attached to it. Point #4 – with all land use decisions in the state of Oregon there was a 120-day clock that would expire tomorrow.

Staff recommended that the Council uphold the February 14, 2006 Planning Commission approval of CSO-05-04, adopting the recommended findings and conditions in support of authorizing construction of a park-and-ride facility at 9600 SE Main Street.

**Councilor Loomis** had a question about the sidewalks and asked who would be responsible in the future for installing them if TriMet did not.

**Ms. Rouyer** replied the right-of-way would be dedicated with this proposal, but it would be the responsibility of whoever funded the street improvements at the time. It would not be the adjacent property owners; it would probably be a public entity.

**Mr. Firestone** clarified there was a possibility that there would be a future application by TriMet at the site and if so it could be imposed on TriMet at the time when there was a future land use application. Apart from that as Ms. Rouyer stated it would probably be a public cost.

**Councilor Loomis** asked who was responsible for maintaining the sidewalks and keeping them safe.

**Mr. Firestone** replied under the Municipal Code the adjoining property owners were responsible for sidewalks, so TriMet would be responsible for sidewalks that were there.

#### Appellants' Rebuttal

- **Mark Whitlow, Perkins Coie, 1120 NW Couch Street, 10<sup>th</sup> Floor, Portland 97209**

**Mr. Whitlow** submitted another letter raising the points of rebuttal. He reiterated that the property owners in the North Milwaukie Industrial area were not comfortable being in opposition to this application. It was inconsistent with their past and current desires. They had a history of working with the City both as a group and individually. That type of cooperative endeavor was in the NILUS Study and the Milwaukie Transit Center study in 2003 – 2004. They were serious when they said this was strange and uncomfortable for them. As he started with the letter of rebuttal they said they were not opposing the park-and-ride facility per se. They supported public transit in various ways and understood the importance of it including this portion of the community. But the fact remained that all the studies indicated this was not a good site for this type of transit facility.

**Mr. Whitlow** reviewed the points of the letter. Brian Ray, Kittleson Associates, who was part of both of the prior studies, and he presented broadly about the past of the North Milwaukie Industrial area and the decisions that have made that were a series of cuts that eliminated access not in a comprehensive way but in an ad hoc decision making way. A piece at a time things have changed; the nature of the facility on McLoughlin Boulevard had changed. It was converted to an expressway/highway segment of the Oregon Highway Plan that had a series of policy statements attached to it that included the removal of at-grade crossings. Milport at McLoughlin Boulevard under the Highway Plan would be grade separated at some point in the future. The point the appellant wanted to make was that they were being asked to look at this application in a vacuum of both the past decisions that rendered this area deficient from a transportation facility's capacity perspective and from the vacuum of the linkage of this application for future uses as the Working Group studied extensively when they looked at the transit center study and made a decision to move it to Kellogg Lake. The point was that if TriMet

invested in the site -- \$3 to \$5 million whatever the total was for acquisition and improvements – it would lock in the imperfect circumstances that were presented by this unconventional off ramp from Hwy 224 onto McLoughlin Boulevard. The intersections were stacked on both sides of McLoughlin Boulevard at Milport with frontage on the west and Main Street on the east. The studies that were done that he tabbed in the book he provided at the last meeting identified potential mitigation solutions to some of the problems, but the solutions required all or a part of the site to be used for the mitigations. That was one of the reasons the site was readily dismissed as not being a good one. The point was if this application was approved and this use was put into place, it would lock in and perpetuate the status quo, which was a negative.

The second point was that one could not get to the site. It was in the middle and second to some. Most people who would come and use the facility, some percentage on a daily basis would be strangers. It was not intuitive how to get there. If you were coming on McLoughlin Boulevard from either direction, the driver expectation would be to take a turn movement at Milport and access the site, but you can't. You don't find that out until you access the site. So one had to turn early either on Harrison to get onto Main or at Ochoco to get onto Frontage. It was the same thing coming from the southeast across Hwy 224. The expectation of the normal driver was to take the off ramp and go down to McLoughlin Boulevard to access the site. You can't do that. You have to turn around one way or another and backtrack. Or you go across McLoughlin Boulevard to 17<sup>th</sup> Avenue, take a right to Milport then take a right, then you have to go through both of those bad intersections at the worst time when trucks are present to access the site. It was common sense that this was not a good idea. It was not a good place; you can't get to it to place a parking facility that would require hundreds of cars a day to enter and exit. TriMet offered testimony that 50% of the projected people using the site would come along Harrison Street. That meant that 50% would not, and that was still a big problem.

The third point was that the Council heard testimony that it was losing opportunities and letting them slip through its fingers. People in the state and in the region were doing back flips trying to make areas like this happen. The City had one that was a very good one. There were comments that there was a lot of economic value there, and a report was provided that said that. Now the Council heard testimony from Oregon Transfer because of the uncertainty of the future of the area – was it going to be a light rail transit center? Was it going to be a transit center? The answer that if it was linked to a park-and-ride then probably yes. That was what TriMet said. The perfect linkage was to have all three facilities in one location, and that was why Kellogg Lake was selected. The worst thing was happening – you were having your businesses leave. Wilhelm had space available. You can ask yourself if this was a big shift in the economy, and should we just be done with the area. You heard repeatedly that the NILUS Study addressed that question, and the answer was no. There was a lot of useful life there, and it needed to be protected.

The next point was about section 19.502(b). The record was made on this that staff was contorting the reading of the code. TriMet admitted in its own testimony that a parking lot under section 500 with a nonconforming design was what they were talking about. Design of what? It had to be something. It was not just an ethereal design. It was the design of the structure and the use. To say opposite was again contortionism. Mr. Whillow disagreed with the recitation 19.500 and did not say anything about pre-existing uses. The Council should not use that as a tool in decision-making.

The final point was in its testimony TriMet did not dispute that there could be linkage between this use and the future South Corridor light rail project. There would be a new study placed into existence, and that would happen soon. A study was already done. It showed a park-and-ride linked with a transit center linked with light rail was the best one

could achieve from a transit perspective, and that was why this site was not picked. He was disappointed to see a memo from TriMet's working file suggesting that low and behold during this whole process they intended to put a park-and-ride there anyway. Mr. Whitlow assured the Council that none of the members of the Working Group from the North Industrial area knew that. They could only hope the City did not have the same mindset. It was disingenuous, in their minds, to sit for hours on committees talking about moving facilities to different areas and then to find a memo in the file which he referred to as a smoking gun that said they never intended to do anything except make the application they were now making. That was certainly not what the Working Group understood.

**Mr. Whitlow** thought the Council needed to look under all the circumstances present be they past circumstances that led to this tenuous position in the area and to the linkage of this use to future use. Unless the Council did that it had blinders on pretending that this was just an application for the use that had no relationship to the past or the future. That would be the wrong way to read the code. For all those reasons Mr. Whitlow urged the Council to think again and reconsider the decision of the Planning Commission and deny the application to preserve the industrial area for industrial uses.

**Councilor Stone** said when Mr. Whitlow mentioned it was difficult for cars to get into the site, what was he basing that on. It used to be a movie theater with 381 parking spots. She went to that movie theater and did not have any trouble getting in and out of there.

**Mr. Whitlow** went there too and recalled the first two times he was totally baffled. He did get used to it over time, but the movie theater closed. He thought that was because it did not work from any access point of view. One got used to a circumstances and got used the turning movements it took to access the site. The average driver was not so ...when he talked about access it was finding how to get into the site from one direction or the other, and one had to learn how to get there.

**Councilor Stone** did not know why the movie theater closed but thought it was presumptuous to say it was because of the traffic movements. Usually it was a business thing or maybe the location of that particular business. She asked Mr. Whitlow what his solution would be.

**Mr. Whitlow** replied the solution would be to step back and not make it any worse. Hold what you have until you find a replacement for Kellogg Lake.

**Councilor Stone** asked Mr. Whitlow what his replacement would be if he did not want it at Southgate. Where would it go?

**Mr. Whitlow** replied there was a deliberative process with a lot of well-minded, well-intended people that came up with a solution before. People only read the paper about that other location and the circumstances relative to it, which had apparently changed it as being available for the transit center and light rail station and the park-and-ride. He thought the Council had to go back through its process and re-engage the citizens to come up with a different solution. He could not hand the Council one. They could just hand the information that the lack of comprehensive thinking and planning led to poor decision-making. This would be another element of poor decision-making because it would be made without recognition of the past or the present or the future in terms of what this would lead to by implication – probably necessity. He was already reading the paper where the transit center would be moved to match the park-and-ride, and that would lock in the light rail alignment that was already decided – the locally preferred alternative – was not the preferred alternative. The message to Metro was lost, and all of that was in the documentation. The Council asked the citizens to spend a lot of time with it to double check and re-examine that and come up with a different place to put

this very use. It seemed like the City Council owed it to people to go back and look at it again. It was grabbing an element and pretending it did not have linkage. That was not fair or right.

**Councilor Collette** asked Mr. Whitlow if he had read in the paper they were going to put the transit center at that location as well.

**Mr. Whitlow** said that was his read of the article he saw -- that there was interest in moving the buses from downtown to the site. He may have misread the article, but that was his understanding of a recent newspaper article.

#### Applicants' Rebuttal

- **Phil Selinger**, TriMet Project Planning Director, 710 NE Holladay Street, Portland 97232

**Mr. Selinger** provided overview comments. TriMet appreciated the time and consideration of the Council regarding this important transit center project. It was one of the parts of a relatively ambitious improvement program for Milwaukie that they would continue to implement together. The CSO application was for a park-and-ride facility that would replace a former popular shared-use park-and-ride lot. It would remove an obsolete theater building and renovate an existing parking lot for that purpose. The project represented a moderate investment that started with the acquisition of the site in 2004. As previously noted the project would help reduce congestion on SE McLoughlin Boulevard by providing convenient access for Milwaukie and nearby residents. It would free up on-street parking spaces in adjacent neighborhoods and business districts. It would provide a safe environment for transit riders and be compatible with adjacent businesses. It would also make efficient use of transit capital and operating resources. As was presented to the Council and the Planning Commission, the benefits of this project far outweighed its impacts. TriMet was mindful of the impacts and would execute the project and mitigate those impacts. Advancement of this project was not a substitute for the greater transit and transportation planning efforts of TriMet, the City, Metro, and the South Corridor partners. TriMet recognized the City's priority for establishing a new off-street transit center that was part of the larger planning program. TriMet believed it had established its commitment to making that project also a reality. TriMet appreciated comments of Council and citizens including Ray Bryan proposing that a park-and-ride and transit center facility be combined on that site. Constructing a transit center would not satisfy the need for a park-and-ride lot and vice versa. The complexity and cost of locating a new transit center was beyond the scope of this project and the designation of federal funds assigned to this project was specifically for a park-and-ride lot. The need for the facility was immediate. TriMet indicated the facility could adapt as larger plans unfolded to meet transportation and development needs in the Milwaukie community. TriMet requested the approval of the project and looked forward to a continuing partnership in development the other elements of the transit development plan.

- **Steve Abel**, Counsel for the applicant, 900 SW 5<sup>th</sup> Avenue, Suite 2600, Portland

**Mr. Abel** expressed his appreciation to staff who worked hard on putting together the evidence. There were two or three hearings before the Planning Commission and the second before the City Council. There was a lot of material submitted in addition to the testimony, which had to be adequately weighed to determine if the criteria were satisfied. At the last hearing, the eight points of the appellants' appeal were discussed. There was a little newness to the appellants' rebuttal testimony, and Mr. Abel would

address the five points that were raised by the opponents in the rebuttal testimony and embodied in the letter that was delivered to the Council and TriMet at this hearing.

The first question was the adequacy of the transportation system. DKS Associates, professional transportation engineers, testified both before the Planning Commission and City Council and presented numerous studies about the adequacy of the transportation system. The studies were reviewed by ODOT and endorsed by ODOT as being adequate and correct. They were also given that same adequacy finding by the outside consultant David Evans as a specialist transportation engineer to represent the City. The City engineer said the reports were adequate to demonstrate that the transportation system was adequate and supported the proposed use. Mr. Abel thought that was overwhelming evidence on that particular point. Beyond that Mr. Ray's testimony was very global in nature. He did say the levels of service (LOS) for this particular facility were adequate. One would see that statement in the minutes approved this evening from the April 18 hearing.

Secondly was the question of access. This was a site that was a movie theater. Mr. Whitlow testified that he had trouble finding the site, by Mr. Abel doubted that was the right kind of testimony to say whether or not access was adequate. The real determining positions on adequate access were the transportation studies. The system was found to be adequate and was found to have adequate access. The character of the users of park-and-rides are repeat users, and humans did learn over time – where they can park and how to get to places. It seemed natural especially for this particular use that that pattern of learning behavior would make it very unlikely that access issues would arise.

The third point was the question of the economic values of the industrial neighborhood. TriMet had never taken the position that that was not a valuable resource to the City, to TriMet, and to the region. The reality was that the testimony did not tie that fact to this park-and-ride's doing any damage to the economic vitality of the area. The damage to the economic vitality that appeared to have been testified to was happening today without the park-and-ride; something else was happening to make a few of those businesses leave. There were other dynamics going on. Whether this was an appropriately located industrial area in a more regional setting was another questions. The fact was that it was not the park-and-ride that was already having some impact on this particular use. There was an interesting document in the record. Jerry Johnson was brought in as an economic consultant to the opponent group. There was a two or three page letter that talked about the value to the economic community, but it was remarkable in that it did not say that there was any consequence of the park-and-ride. Nothing in the letters said that. It just said this was a valuable economic resource, but there was not evidence.

The fourth issue of the nonconforming use question was not as muddy as it was laid out. TriMet was not applying for any nonconforming use status to allow the use. In fact the very process they were in today was as a CSO that allowed the use. The nonconforming element that existed was in the parking design standards. Section 500 said if there was a parking lot that was allowed by use, the CSO, that was nonconforming in its dimensional standards and design, the obligation was to bring it closer to conformance as to what was required. It did not have to be brought all the way. It could be brought to conformance as closely under a particular set of circumstances. That was what TriMet had done. It was not unlike the City of Portland code the recognized differences between nonconforming uses and nonconforming development. It was pretty simple, and Mr. Abel did not quite understand the confusion.

The final point was the global issue that was laced through this hearing and what was being asked. TriMet was asking for a park-and-ride based on the criteria for CSO used

in the code. The rest of the speculation about what else might happen elsewhere or at this location at a different time was just speculation. Those were his responses, and he and Mr. Selinger would be happy to answer questions. In addition to staff, Mr. Abel thanked Council for sitting through quite a bit of testimony.

**Councilor Collette** said Mr. Whitlow said he had read in the paper that the proposal was to add the transit center and asked Mr. Selinger to speak to that.

**Mr. Selinger** was embarrassed to say that was news to him. That did not come from TriMet, and it had been on this course for some time. There was the kick-off of the next phase in the environmental process for the greater corridor study. That had not made any early conclusions about what the transit improvements in Milwaukie would look like. Obviously the City, staff and Council, would be involved in that process.

**Councilor Stone** asked what the City could expect in terms of getting the transit center moved off the downtown streets in Milwaukie.

**Mr. Selinger** replied at this stage it awaited the larger environmental process that talked about high capacity transit improvements in the Corridor that would be revisited. The park-and-ride lot was somewhat of an independent facility. A transit center indeed would best be served by being planned and integrated with the high capacity transit scenario which up to this point was presumed to be light rail. There have been a couple of locations proposed for that transit center in the past – Safeway and Kellogg Lake. They were back to the drawing board, and that was a very extensive process to get to that point. TriMet did not have the resources outside of the environmental process to restart that. It needed to be efficient and part of the larger process.

**Councilor Stone** understood that was many years down the road.

**Mr. Selinger** replied hopefully not many more years. TriMet was as anxious as the City to move it forward.

**Mayor Bernard** thought the article Mr. Whitlow might have been referring to was about the struggles throughout the nation to raise money to build mass transit products. Basically it said to him that light rail may or may not happen. It was a long way off and people were out after the same dollars. Transit centers and park-and-rides were a lot cheaper than light rail. The potential was more likely in the near future.

**Mr. Selinger** interjected as proposed with the Kellogg Lake scenario such a facility might be built in phases so even if the light rail funding were not immediately available one could presumably find a workable scenario to advance a transit center.

**Mayor Bernard** said this was a good time to remind TriMet that phase 1 of light rail on I-205 was to relocate the Milwaukie transit center. He thought the Council would be pushing TriMet on that.

#### Questions from City Council to staff

**Councilor Collette** noted that Mr. Whitlow referred to locking in imperfect circumstances, and she thought he was alluding to the problems of the existing conditions. He asked staff to speak to whether or not putting the park-and-ride in prohibited them from continuing to look at and find solutions to some of the other problems.

**Mr. Asher** did not think any development that occurred in the industrial or downtown district necessarily locked the City into anything. This property being in the hands of a public entity and a partner of Milwaukie probably gave the City more flexibility over time to allow that site to evolve as development evolved around it or as mass transit happened around it. He was actually more comfortable that over time there would be more site control as long as TriMet was on the site. Even with transportation conditions

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that were there, even the traffic issues that did occur in some degree of severity were likewise not locked in. Staff was working with ODOT and property owners even today to see whether or not there were alternatives that could be introduced to mitigate some of what ailed the businesses and industrial property owners there, which the City did regard as serious.

#### Close public hearing

**Mayor Bernard** closed the public testimony portion of the hearing public hearing at 7:56 p.m.

#### Council discussion

**Mayor Bernard** loved the comment about the blinders. Probably in 1858 the founders of this community actually wanted every road to go to Milwaukie. They really had some blinders on back then. A great example was Hwy 224. He owned a business in downtown Milwaukie off Lake Road, and everyday a truck driver cannot find Lake Road because it was divided into six sections. He thought it was a mistake to think that problem would ever be resolved. He thought the Southgate site did have some potential opportunities. One was that just prior to this process ODOT and members of the Governor's Economic Development Team said they were committed to solving access problems in that area. When he ran for Mayor five years ago that was practically empty. Unisource left, and the whole warehousing district was empty. Mailwell closed, and another came in. The WWW Metal Fab building, which was now eight years old, was abandoned at that time. The uses were changing, and other types of trucks were accessing the site. He thought another great example was the riverfront. The sewage treatment plant might go away in 10 or 15 years, but would the City wait for that to go away before it did something? Or would it build the partnerships and raise the money today. He can go to the Joint Policy Advisory Committee on Transportation (JPACT) and beg all day long, but unless he had a partner he would not get it done. It was not until the City began developing those partnerships that the City got money for McLoughlin Boulevard and the North Main project. All of those things were impacting and making the need for a park-and-ride greater and greater. He thought the Council was looking at the long range. Thanks to the project, he thought all of the people would be at the table working out the details. He felt that although this Council would not solve the problem he was confident at least the parties were on a path toward some solution that would be reached only with partners.

**Councilor Stone** commented in fall 2004 the Working Group charge was to mitigate the potential negative impacts to north industrial businesses, and that never happened. She wanted to see that happen. The City needed to go back and look really hard at how it could help the businesses down there and still continue to have a park-and-ride site.

**Councilor Barnes** observed this was one of those situations in which there was a lot to discuss but which had nothing to do with the actual situation on which the Council was voting. She had two concerns. This Council did care about the North Industrial businesses and under Mr. Asher his department had met with many of the business representatives. Many of the Council members met with business representatives individually because they did care about the North Industrial because it was a strong economic base. This was not an issue about economic base. This was an issue about what was best for Milwaukie at this point and under these circumstances. As the City went through this situation she would like Oregon Transfer to stay. TriMet did bring up an interesting point about which she had not thought until it was raised at this meeting. You would not be moving out if there were not another problem. There were people here to help, and the Council would like the businesses to stay. It was not just about this one place. She had issues with the applicant down the line. Ms. Zimmerman

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testified before the Council, and she had legitimate concerns that needed to be addressed. Mr. Bryan's concern needed to be addressed. She knew TriMet had the strength to bring ODOT to the table to speak seriously with Milwaukie. Milwaukie had strength now, and with TriMet's help she thought the intersections could be fixed and fixed right. That was a concern of these people, so it should be taken care of.

**Councilor Loomis** said it met all the criteria. Spending all the time reading through all the material and trying hard to understand what was going on and what the point was. It seemed clear that the fear was light rail. It was a park-and-ride before, and it was a movie theater before, and it worked well. He knew a lot of citizens in the community that were parking all over town, and the City was busy putting up different signs to keep people from parking there because they had no other place to park to use TriMet. He was concerned about having to pay for the sidewalk at a later date. He wished there was some way to say if TriMet ever did charge for the park-and-ride that a portion of that money would be put in a fund to make improvements at that intersection or the sidewalk so the City was not stuck with the whole bill. He was concerned about that but would vote to deny the appeal. Addressing overall, long-range traffic issues was huge, but this was not the problem. He loved the 3-Bridges project, but that was transportation money. These were decisions that were made as a community and what the community wanted. He thought the warehouses needed to voice their opinions and organize and talk to people to let them know what the impact was on them. It was great that everyone got out of their cars, but there were people and businesses who needed to be able to get from point A to B. He could see this getting much worse, and he felt for them in that way. He knew Mr. Asher and others were trying to work on solutions, and Councilor Loomis would be happy to talk with them to determine if there was anything he could do to forward ideas or brainstorm. He did not see a problem with the park-and-ride.

**Councilor Collette** agreed with her fellow councilors. This in some ways was an appeal about light rail and the fear of light rail and what it could do to the North Industrial area. Tonight's decision was not about light rail and was not really about a transit center. She worked with many people from the North Industrial on the Working Group. They worked endlessly to try to mitigate the impacts that light rail and the transit center would have on the North Industrial area, and they could not. That needed to be re-addressed. They came up with an alternate site, but that failed. This was really not about any of that. This was about a park-and-ride which was there before, and she thought it would be improved by the new design and some of the conditions such as moving the access roads. The City was very committed to continuing to work with the North Industrial partners and to build that partnership and make that area a viable, accessible, working place. Milwaukie citizens worked there, and it was absolutely essential to the City of Milwaukie that that continue to thrive. It was also essential to the citizens that Milwaukie had accessible parking and access to public transportation. This site given how built out the City is was the best being considered. It was not perfect. As was stated it was an imperfect site, so she was concerned that the City not lock into that imperfection. She did not think it would be. It was not perfect – she had yet to see a perfect solution to a transportation issue, and she had been working in transportation for many years, so she was not holding her breath for perfection. She did want to uphold the Planning Commission's decision because this was a very good solution to the parking and transportation concerns.

**Mayor Bernard** said before he made a motion, he wanted to discuss security. He understood the security had to be installed in three years.

**Mr. Firestone** recalled it was as soon as feasible but not later than three years.

**Mayor Bernard** asked if was feasible to make it not more than two years from opening.

**Ms. Rouyer** replied it was a matter of coming up with the money and finding the money and being able to commit to it. That had been the applicant's concern in the past.

**Mr. Selinger** said the security system would cost \$275,000.

**Mr. Firestone** said the motion could be amended to state with the condition of approval relating to security amended so that the maximum period was two years.

**Ms. Rouyer** said condition #2 could be amended to say "closed circuit television surveillance shall be installed and operational as soon as reasonably feasible and in no event later than two (2) years following the opening of the park-and-ride.:

#### Council decision

**It was moved by Mayor Bernard and seconded by Councilor Barnes to deny appeal A-06-01, approving CSO-05-04 and TPR-05-04, adopting the findings in the staff report subject to the conditions of approval in the staff with the condition of approval #2 amended to say closed circuit television surveillance shall be installed and operational as soon as reasonably feasible and in no event later than two (2) years following the opening of the park-and-ride.**

**Mr. Firestone** added the motion should include authorization for the Mayor to sign an order reflecting the Council decision.

**Mayor Bernard** as the mover and Councilor Barnes as the seconder accepted that additional language amending the motion.

#### LUBA appeal information

Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights. If you have questions, please call the Planning Department staff.

## **OTHER BUSINESS**

### **A. Amend Title 8 of Municipal Code to Address Inoperable Vehicles on Private Property – Ordinance**

**Mr. Hall** sought City Council approval of a code amendment that addressed storage of inoperable vehicles on private property. The proposed ordinance would amend § 8.04.070(B) to include inoperable vehicles. The current city code addressed junk or dismantled vehicles and recreational vehicles but not those parked on properties for extended periods of time and not dismantled. After researching other jurisdictions staff found other ordinances addressing inoperable vehicles on private property, and staff used those as models for the amendment before the Council at this meeting. Code staff receives complaints about vehicles parked in front yards or those that have been dismantled, and the current code addresses those situations. Many of the complaints received in regards to vehicles were those parked for months or years and were not dismantled. These were the cars that did not move. They had flat tires, broken windows, and moss growing on them. In short they were eyesores and neighbors were tired of looking at them. If the vehicles are moved to the driveway area, they were basically safe, and nothing could be done if they were on an approved parking surface. The neighborhood continued to suffer from the visual blight. By amending Title 8 and adding inoperable vehicles along with the appropriate definition a loophole would be closed that was being used and improve overall neighborhood livability. It would not affect the current regulations as to where and when vehicles were parked on private property. The ordinance would apply to all vehicles as defined in ORS and would

include school buses, trailers, and other similar vehicles. There was current code that addressed recreational vehicles parked on private property. Code enforcement staff understood cars sometimes broke down and that it might take time to get them repaired, so they were always willing to work with citizens since the ultimate goal was compliance and not necessarily a citation. After talking with the City Attorney it was determined vehicles could stay on a property for 15 days after which point they could be declared nuisances. Code enforcement staff always has the discretion to work with the property owner once the notice was sent and they contacted the City. If the property owner had circumstances and agreed to meet a reasonable timeline, then staff would work with them. The complaints would not be about cars that had been parked there for a couple of weeks or even those being restored or even those in violation but were stored neatly on the property. It was about the eyesores that have been parked for extended periods of time and looked terrible. If this ordinance was passed Mr. Hall did not anticipate actively seeking out vehicles as code enforcement had a backlog. Passage of this ordinance would give the opportunity that when staff went to the property for other violations and there were inoperable vehicles then the entire property could be addressed at one time and the vehicles completely removed or repaired. This amendment would not prohibit any vehicles if they were in an enclosed structure to include those that were fixer-uppers or any business that had been approved for storage of inoperable vehicles.

**Mayor Bernard** said for record Council received letters of support for the proposed amendment from Lewelling and Island Station Neighborhoods.

**Councilor Loomis** commented he and Mr. Hall had numerous conversations about this, and it was a tough call for him. He saw the need in some instances but to him it was where the line was drawn. He appreciated how the code enforcement staff was discretionary and how they applied it, but he had a problem with making an ordinance and making it discretionary. It seemed an issue was being made for one certain problem when others were in violation, and it was really not a problem. There would always be irresponsible people, and people who complained all of the time. He was having a hard time about where the line was drawn. Did the City adopt an ordinance every time there was a problem to address one person? There were issues about junk in the front yard, and most of those issues had been addressed. When he drove around he did not see the problem. He was not getting the calls. If he opened his eyes a little harder he could probably see them. He would vote no on the ordinance.

**Mayor Bernard** thought those were great comments. He did have problems with signs placed on utility poles, but there was only so much money to send crews out to remove them. He thought the City might think about citing those people.

**Councilor Stone** asked if the proposed ordinance would be on a complaint basis – would it be generated by someone calling to complain about a dismantled or junk car?

**Mr. Hall** replied that was correct for the most part. There were already a lot of complaints on file, so there was a backlog code enforcement would have to deal with. The proposed ordinance cleaned up the code language, and typically that vehicle was not the only issue.

**Councilor Stone** understood this addressed one issue, and that the code addressed nuisance properties as well. There were ordinances already in place, and the proposed amendment clarified the code. She asked if cars had to be visible from the street and what if people had a bunch of cars in their back yard?

**Mr. Hall** said it could be anywhere on the property, but the main concern was that it not be in view.

- **David Aschenbrenner, 11505 SE Home Avenue, Hector Campbell Neighborhood Association Chair**

**Mr. Aschenbrenner** had a discussion on the proposed ordinance but did not take a formal vote. There was no visible opposition at the meeting. This code amendment would give code enforcement the tools needed to do the job. The same thing happened to him today. He was working on a project and did not have the tool he needed to do the job so had to go out and get it. This was the same thing. He trusted code enforcement to work with people and not hunting down and staking out places to cite them. It was one more tool to go into a nuisance property and solve the whole problem and not just apply a Band-Aid.

- **Lisa Batey, 11912 SE 19<sup>th</sup> Avenue, Island Station Neighborhood Chair**

**Ms. Batey** said the Neighborhood Association voted and all present but one vote in support of the code amendment. She added she would be happy to help Councilor Loomis find some of the problems. There were a half dozen in Island Station and some vehicles had not moved for three years and some longer than that – probably decades. Some people were junk collectors, but sometimes these code violations were ways to address more harmful problems such as the Heckmann property. It was not the suspected criminal activity but rather the code violations that remediated a big neighborhood problem. She thought there were examples of both situations in Island Station. Some people were just junk collectors who needed Goodwill. She noted there were some who just loaded trailers with junk and let them sit with flat tires for a number of years. Cars were one aspect of the problem, and this was a great start. On the issue of code enforcement discretion she said that was the nature of all law enforcement. There was the idea of prosecutorial discretion from the cop who decided whether to give a ticket or a warning for speeding. Discretion was an important part of any law enforcement, and she felt it should be a relief that the staff could help people work through problems and that a fine was not the initial result. Island Station did have a big problem, and she would be happy to walk anyone around to view the problem. She encouraged the Council to adopt the ordinance.

- **Jeff Klein, 4479 SE Logus Road, Lewelling Neighborhood Chair**

**Mr. Klein** said the Neighborhood Association also discussed this matter and voted 15:1 in support. The members thought it was very important for the neighborhood and Milwaukie as a whole. There were a lot of new people moving into Milwaukie, and when they drove through the neighborhoods, this was the first thing they were seeing. This was a deciding factor for people looking to purchase a house. The City can go one route with Sanford and Son, or go another route and have a livable community. People looked at these things. There were first time buyers coming to the area, and Mr. Klein thought it was important to set a good example. This was a good step forward, and he would like to see more.

**It was moved by Councilor Barnes and seconded by Councilor Stone for the first and second reading and adoption of an ordinance amending Title 8 of the Municipal Code to include inoperable vehicles as a nuisance.**

**Councilor Barnes** noted that if there was a backlog of calls on this matter, then it should be taken care of as soon as possible.

**Mr. Swanson** said the Charter allowed him to participate in discussion which he rarely did. Two things were brought to mind. One was that when he started in September 2000 the City had more acute budget problems. One of the things the City did was to hire a code enforcement officer. Milwaukie did not delete, as some local governments like Clackamas County did, but added a second person to deal with code enforcement.

Even then when Mr. Hall talks about a backlog this was complaint-driven, and Mr. Swanson authorized the staff to proceed on things they saw. The City still acted largely out of a complaint-driven process, and that was with additional staff. As the City did some interesting and exciting things, one of the things it did was to pay attention to that particular area. Even during times of difficult budgets, the Council and Budget Committee decided to go a different way. When he started out as a young county attorney dealing with these same issues inoperable vehicles was probably his biggest caseload. He guessed it was a problem in almost every community. People were willing to work with code enforcement, and in some instances it provided the impetus to get rid of the junker or license it and give it some use. They did not immediately swoop in and take people to task. Sometimes it was just having the ability to act and notify people about changing their behavior to change the look and feel of the neighborhood. Code enforcement staff worked with people before they did anything and attempted to solve problems.

**Councilor Collette** was always very concerned about restricting people's use of private property. It was the most expensive thing people owned and their most valued resource. On the other hand the community as a whole was so much in need of this type of control. She drives and walks by a lot of dead cars in the Ardenwald Neighborhood. She herself had a project boat in her driveway until it almost became mulch, and it was good for her spirit to turn it over to someone who could actually repair it. She would support the proposed code amendment as it was an additional tool and send the message that Milwaukie wanted the community to be a good and beautiful place to live.

**Councilor Loomis** thought Milwaukie was already a beautiful and special place to live right now. He thought Mr. Hall did a good job with code enforcement, but in his opinion it was a matter of drawing the line. If the City adopted an ordinance, then it should be enforced. Although he liked the idea it was complaint driven he was glad he did not live next to Ms. Batey.

**Motion passed 4 – 1 with the following vote: Mayor Bernard and Councilors Barnes, Collette, and Stone 'aye' and Councilor Loomis 'no.'**

The City Manager read the ordinance one time by title only.

Mayor Bernard announced the second reading of the ordinance would be set for June 6, 2006.

## **B. Council Reports**

**Councilor Collette** announced the Artrain events.

**Councilor Stone** urged people to attend the Ardenwald Secret Garden Tour with proceeds going to Ardenwald Elementary.

## **ADJOURNMENT**

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

**Mayor Bernard** adjourned the regular session at 8:38 p.m.

*Pat DuVal*

Pat DuVal, Recorder

# AGENDA

## MILWAUKIE CITY COUNCIL MAY 16, 2006

**MILWAUKIE CITY HALL**  
10722 SE Main Street

**1982<sup>nd</sup> MEETING**

### REGULAR SESSION – 7:00 p.m.

- I. **CALL TO ORDER**  
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
  - A. **Poppy Days Proclamation**
  - B. **Veterans Recognition Day Proclamation**
  - C. **Milwaukie High School Student of the Month**
3. **CONSENT AGENDA** *(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.)*
  - A. **City Council Minutes of April 18, 2006**
  - B. **Appoint Scott Churchill to Planning Commission – Resolution**
  - C. **Appoint Bob Cooper to Milwaukie Park and Recreation Board – Resolution**
  - D. **Appoint Mart Hughes to Milwaukie Park and Recreation Board – Resolution**
  - E. **Appoint Harold "Sonny" Newson to Milwaukie Park and Recreation Board – Resolution**
4. **AUDIENCE PARTICIPATION** *(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.)*

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

**Tri-Met Park and Ride – Files A-06-01, CSO-05-04, TPR-05-04, continued from April 18, 2006 (Gary Firestone)**

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. **Amend Title 8 of Municipal Code to Address Inoperable Vehicles on Private Property – Ordinance (Les Hall)**
- B. **Advisory Board Appointments**
- C. **Council Reports**

7. **INFORMATION**

**Public Safety Advisory Committee Minutes April 27, 2006**

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.

## **PROCLAMATION**

**WHEREAS**, America is the land of freedom, preserved and proclaimed willingly and freely by citizen soldiers;

**WHEREAS**, Millions who have answered the call to arms have died on the field of battle; and

**WHEREAS**, A nation must be reminded of the price of war and the debt owed to those who have died in war; and

**WHEREAS**, The red poppy has been designated as a symbol of the sacrifice of lives in all wars; and

**WHEREAS**, The American Legion Auxiliary has pledged to remind America annually of this debt through the distribution of the memorial flower.

**NOW, THEREFORE**, be it resolved that I, James Bernard, Mayor of the City of Milwaukie, Oregon, do hereby proclaim May 22 through May 27, 2006 as:

### ***POPPY DAYS***

In the City of Milwaukie and ask all our citizens, government agencies, public and private institutions, and businesses to pay tribute to those who have made the Ultimate Sacrifice in the name of freedom by wearing the Memorial Poppy on these days.

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James Bernard, Mayor

ATTEST:

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Pat DuVal, City Recorder

## **PROCLAMATION**

**WHEREAS**, On May 26, 2006 The Dignity Memorial Vietnam Wall – a traveling, three-quarter-scale replica of the Vietnam Veterans Memorial – will be on display in Portland; and

**WHEREAS**, The exhibition is a community-sponsored event and features the support and assistance of local veterans groups, civic organizations and countless community champions, supporters and volunteers; and

**WHEREAS**, The traveling replica is dedicated to all Americans who served in Vietnam and honors all veterans of the U.S. military, having been created as a service to those who might never travel to the nation's capital to experience "The Wall" firsthand; and

**WHEREAS**, The replica contains the names of more than 58,000 Americans who died or are missing in Vietnam. It has helped veterans heal and younger generations understand, while also serving as a communal focal point of patriotism; and

**WHEREAS**, During the exhibition, the community will have the opportunity to pay their respects, especially to those who made the ultimate sacrifice while answering their country's call to arms.

**NOW, THEREFORE**, be it resolved that I, James Bernard, Mayor of the City of Milwaukie, Oregon, do hereby proclaim May 26, 2006 as:

### ***VETERANS RECOGNITION DAY***

In the City of Milwaukie and ask all our citizens, government agencies, public and private institutions, and businesses to honor all veterans of the U.S. military.

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James Bernard, Mayor

ATTEST:

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Pat DuVal, City Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
APRIL 18, 2006**

**CALL TO ORDER**

**Mayor Bernard** called the 1979<sup>th</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Carlotta Collette

Joe Loomis

Staff present:

Mike Swanson,  
City Manager

Katie Mangle,  
Planning Director

Gary Firestone,  
City Attorney

JoAnn Herrigel,  
Community Services Director

Paul Shirey,  
Engineering Director

Les Hall,  
Code Enforcement Coordinator

**PLEDGE OF ALLEGIANCE**

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

The Council recognized Amanda Keele as the Milwaukie High School Student of the Month for April 2006.

**CONSENT AGENDA**

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

**A. City Council Minutes of:**

1. March 7, 2006 work session
2. March 7, 2006 regular session
3. March 21, 2006 work session
4. March 21, 2006 regular session

- B. Resolution 14-2006: A Resolution of the City Council of the City of Milwaukie, Oregon, to Adopt a Resolution Awarding a Contract in the Amount of \$29,300 to Selectron for the Upgrade of the Existing Security System. The amount of the Contract Award Is Provided by the Department of Homeland Security as a Grant Award to the Milwaukie Police Department.**

**AUDIENCE PARTICIPATION**

None.

## **PUBLIC HEARING**

### **A. Measure 37 Claims Submitted by LeRoy and Chelsea Hummel (applicant) for the Properties Located at 4791 King Road**

**Mayor Bernard** called the hearing order. The matter was continued from April 4, 2006 on the Measure 37 claims of Leroy and Chelsea Hummel for property located at 4791 and 4813 King Road. It was continued to allow the claimants additional time to discuss development options with the planning staff. The purpose of this hearing was to establish if the Hummels had a legitimate Measure 37 claim regarding their property and, if so, whether to provide compensation or waive otherwise applicable land use regulations. Because the two properties were acquired at different times, each property is being discussed separately. This was not a land use proceeding, and the rules applicable to land use hearings did not apply.

Site Visits: All had walked by or driven by the site.

Ex Parte Contacts: None.

Conflicts of interest: None.

Challenges: None.

**Councilors Barnes** and **Stone** had reviewed the April 4 Council meeting tape and felt they could make a decision on the matter.

Staff Report: **Ms. Mangle** reported staff met Mr. Hummel and his son Paul Hummel on April 11 along with Art Ball of the Lewelling Neighborhood to discuss options. At the end of the meeting, Mr. Hummel agreed with Ms. Mangle's assessment that the prior miscommunications had been remedied. The current regulations did not prevent the Hummels from developing their property with up to eight units on the site. Options included flaglots, and a new private street, and different subdivision configurations. She provided copies of sketches that provided an idea of what could be done on the property. At the end all parties felt good about the process and that Mr. Hummel's concerns were more directly addressed. When the Hummels were ready to move forward on the project, staff would be pleased to work with them in a more formal application process. Staff requested denial of the Measure 37 claim and hoped that the work had addressed issues that came up at the earlier meeting.

Questions from Council: None.

Claimants' Presentation: **LeRoy Hummel, 4813 SE King Road.**

**Mr. Hummel** met with Ms. Mangle to discuss several items. He had no reason he should be entitled to greater consideration than his neighbors, but he felt he should be able to do similar things that his neighbors had in the past. They were no all brought up at that meeting. He would meet with Ms. Mangle again as his ideas developed. They said the City had to build a road into the property, but he did not get a cost estimate on that or the other utilities. He would let it go until they got together more. He felt the reason he filed a Measure 37 claim was the fact that he felt he should be entitled to the same consideration as his neighbors.

Questions from Council: None.

Public Comment: None

Claimants' Rebuttal: None.

Questions from Council:

**Mayor Bernard** closed the public testimony portion of the hearing at 7:16 p.m.

Council Deliberations:

**It was moved by Councilor Collette and seconded by Councilor Loomis to deny the Measure 37 claim as to tax lot 5300. Motion passed unanimously. [5:0]**

**It was moved by Councilor Barnes and seconded by Councilor Stone to deny the Measure 37 claim as to tax lot 5100. Motion passed unanimously. [5:0]**

**Councilor Loomis** understood at the last meeting that Mr. Hummel was frustrated. He believed something could be built on small parcels and thanked the planning staff for meeting and working on a solution.

**Councilor Stone** said from reviewing the tape and reading the literature that it looked like it was not a clear Measure 37 claim. She suggested that having land use regulations actually increased the value of property and protected people from having the land around them developed that could actually devalue ones property. Mr. Hummel was certainly not being prohibited from developing his land, and she appreciated planning staff's help.

**B. System Development Charge (SDC) Amendments for Water and Stormwater Utilities and Initiation of Inflation Indexing for SDC Rates -- Resolutions**

**Mayor Bernard** called the public hearing on the proposed resolutions amending stormwater and water utility system development charged to order at 7:19 p.m.

The purpose of the hearing was to consider public comment on the proposed rates.

Staff Report: **Mr. Firestone** pointed out corrections to the proposed resolutions. Section 3 of the stormwater system development charges (SDC) should be \$1,104 per ESU. Section 3 of the water utility SDC resolution should read \$971 per M.E., and the reference to the table was subject to Table 3-3 found in Exhibit A.

**Mr. Shirey** said periodic updates to SDC rates were necessary to stay current with the status of the capital demands for each of the utilities. The water and stormwater SDCs have not been adjusted since the late 1990's. If approved, the rates would take effect immediately. There was a transportation SDC amendment brought forward last year, and wastewater was not included in what was a trio of updates because the master plan had been set aside pending countywide treatment issues. Rates had not been adjusted annually for inflation although the law allowed that without special notice. The proposed resolutions incorporated language to allow those adjustments to occur over time. The water SDC rate went down slightly because several capital projects were built and the needs have been reduced. When the water master plan is updated in two years, there may be more needs and the SDC rates would be adjusted accordingly.

**Mr. Ghilarducci**, FCS Group, began by providing general background information on SDCs in general and then go into the numerical calculations for the water and

**CITY COUNCIL REGULAR SESSION – APRIL18, 2006**

**DRAFT MINUTES**

**Page 3 of 40**

stormwater SDC being recommended. An SDC is a one-time charge paid at the time of development and is not an ongoing rate. Properties already developed do not pay these charges unless they were redeveloped and added demand on the systems. SDCs could be used on capital only. There was a future component that looked at projects to be constructed and an existing component that looked at the unused capacity already in the ground. Finally, SDCs were for general facilities.

There were two components to an SDC. The fair share of existing capacity was called a reimbursement fee, and the improvement fee was the fair share of future planned capacity. Together those made up the SDC.

The objectives of this study were to update the charges with current information. To do that, Mr. Ghilarducci used the latest master plans and used those for the project list. The second objective was to identify the growth-related facilities in those project lists and allocate the costs to the improvement fee. That was done in both the water and stormwater lists to determine the growth share in each project.

**Mr. Ghilarducci** discussed the calculations. To calculate the cost of the reimbursement fee the cost of unused capacity in the existing system was divided by anticipated growth in system demand. For the improvement fee, he looked at the planned future project list and identified the portions of projects that would increase capacity to increase growth and divided by system demand. Together those were intended to represent a share of capacity that was needed to serve each next customer or each next increment of growth.

The different original costs of the system assets was compiled. There were about \$12.8 million worth of existing water system assets. Of that about 34% was identified as unused capacity in the existing system. The major exceptions were sources and storage where there was no unused capacity in those parts of the system. Debt was deducted because customers would pay debt service in their monthly rates. If debt funded facilities were left in the reimbursement fee basis, then people would be paying twice. Contributed assets were also taken out because they were free to the City. The result of those calculations was \$3.5 million of unused capacity in the existing system of about a \$12.8 million system.

The improvement fee costs basis was forward looking. The total project list was about \$7.3 million, and \$2.9 million was identified growth-related capacity increasing improvements. The existing customer base was 9,111 meter equivalents (ME) that were taking the entire customer base and equating them to a  $5/8 \times 3/4$  residential meter by flow capacity. Milwaukie was expected to grow to a full build out of 16,000 ME. The 7,114 was the denominator in the charge calculation so the reimbursement fee was \$492, the improvement fee was \$409, and the administrative cost recovery factor of 7.66% was \$69 for a total of \$971 per ME.

**Councilor Stone** asked Mr. Ghilarducci how he came up with the projected growth figure.

**Mr. Ghilarducci** replied the capacity of system according to the most recent plan was about 3.9 million gallons per day. Currently the City used between 2.1 and 2.2 million gallons per day, so there was that much room left in the system. That same proportion

was applied to the same customer base to determine how much growth was available in the system.

**Councilor Collette** understood both the storage and source had zero capacity and asked if that was an issue. Should the City be looking at building storage and finding sources?

**Mr. Ghilarducci** said one of the things it means is that there should be projects addressing those needs on the project list, and there were a couple on the list including a storage tank. If the City is at capacity, then it should be adding more. Those projects on the list were accounted for in the calculations. The \$971 SDC charge was applied according to meter size, and he noted the maximum flow capacity of each meter size. The charges went up according to the size of the meter.

**Mr. Ghilarducci** discussed the stormwater utility. It was a smaller asset in the amount of \$6.1 million with contributions in the amount of almost \$2 million. There was no outstanding debt, so that did not have to be deducted. There was only about 10% unused capacity in the stormwater system, so the resulting dollar amount was \$40,000. The improvement fee cost basis was summarized from the master plan that was about one-year old. The total project costs were about \$10.3 million of which about \$1.2 million was identified as capacity increasing to meet the needs of growth. One of the reasons there was less growth projected in stormwater was because it had an impervious surface area basis. There was also a lot of impervious surface area in the City, so redevelopment would not necessarily increase that area yet there may be a greater demand for water. He briefly reviewed the stormwater project list. The existing customer base was about 14,000 equivalent service units (ESU) based on the average amount of impervious surface area for a single family residence. The projected growth was 1,564 for a total customer base of 15,550 ESU. The resulting reimbursement fee was \$267, and the improvement fee was \$759 for a total SDC with administrative costs of \$1,104 per ESU.

**Councilor Stone** referred to page 3 of the staff report and the Lake Road waterline project being funded with SDC revenue. She asked Mr. Shirey if he knew the cost off the top of his head.

**Mr. Shirey** replied it was on the project list, and he would have to look it up. She asked the cost of that project.

**Councilor Stone** addressed the alternatives and the impact on the stormwater fund, which was obviously going up a lot more in terms of SDC charges. The impact on that fund would be felt sooner because the capital needs were greater than the water fund. What did sooner mean? Was it five years, ten years, or immediately?

**Mr. Shirey** replied assuming the Council approved the resolutions, the new charges would go into effect immediately. The funds would accumulate more rapidly. In response to Councilor Stone's earlier question 40% of the Well #8 rehabilitation costs were capacity related and for which SDC funds could be used.

**Mayor Bernard** understood notices of the proposed SDC changes were sent to the various interested parties including the building community and lending institutions. He asked if there had been any correspondence on the matter.

Correspondence: None.

Audience Testimony: None.

Close Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 7:39 p.m.

Discussion and Decision:

It was moved by Councilor Barnes and seconded by Councilor Collette to approve the resolution amending stormwater utility system development charges. Motion passed unanimously. [5:0]

**RESOLUTION NO. 15-2006:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING STORMWATER UTILITY SYSTEM DEVELOPMENT CHARGES.**

It was moved by Councilor Stone and seconded by Councilor Loomis to approve the resolution amending water utility system development charges. Motion passed unanimously. [5:0]

**RESOLUTION NO. 16-2006:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING WATER UTILITY SYSTEM DEVELOPMENT CHARGES.**

**Mayor Bernard** called for a brief recess.

**C. Appeal (A-06-01) of Applications CSO-05-04 and TPR-05-04 for a Public Transit Facility at 9600 SE Main**

**Mayor Bernard** called the public hearing on the appeal of the Planning Commission's approval of a request for CSO-05-04 and TPR-05-04 for property located at 9600 SE Main to order at 7:50 p.m.

The hearing was limited to the issues raised in the appellant's notice of appeal. All persons wishing to speak on these issues were recognized by the Council to speak. The testimony Council would be used by the City Council in coming to a decision on the application.

The purpose of this hearing was to consider the appeal of the Milwaukie Planning Commission's approval of applications CSO-05-04 and TPR-05-04. The appeal as made by Mark Whitlow of Perkins Coie LLP on behalf of the Industrial District Property Owners. The appellant requested that the application be denied for these reasons:

1. The application was for new development and cannot rely on non-conforming status of the existing parking lot.
2. If the park-and-ride was a nonconforming use or structure, TriMet must comply with the nonconforming situation provisions of Milwaukie Municipal Code Section 19.800.

3. Applying the CSO is a map amendment that requires compliance with Statewide Planning Goals and the Transportation Planning Rule.
4. The park-and-ride is not a “public transit facility” and the Planning Commission failed to make a finding regarding the use.
5. The application does not satisfy City transportation standards under Code Chapter 19.1400.
6. The requested adjustment to sidewalk width standards should be denied.
7. The benefits of the park-and-ride facility do not outweigh the adverse impacts.

The applicable standards to be considered were:

- 1102 – Time limit and appeal from ruling of Planning Commission
- 321 – Community Service Overlay
- 500 – Off-street parking and loading
- 1011.3 – minor quasi-judicial appeal.

**Mayor Bernard** reviewed the order of business. The applicant had the burden of proving that the application complied with all relevant criteria of the Comprehensive Plan and Zoning Ordinance. The appellant would have to demonstrate that the Planning Commission erred in its decision in the alleged particulars. The City is in receipt of the appeal, which identified the issues and the reasons for the appeal.

All testimony and evidence was to be directed toward the applicable substantive criteria. Failure to address a criterion precluded an appeal based on that criterion. Failure to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response would preclude 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 (LUBA) according to the rules adopted by that Board. Persons with standing were those who testified or signed the City Council attendance sign-up sheet.

Site visits: All Council members had visited the site.

Ex parte contacts:

**Councilor Collette** had two conversations with Ed Zumwalt on the issue. The first one was over a month ago and really regarded the transit center. She told him it was not relevant to this hearing. Today Mr. Zumwalt called her and started to talk about it, and Councilor Collette said she did not wish to hear anything more about it and cut him off. She also got a call from Bill Munson, the owner of the building that housed Iridio who does photos for Fred Meyer. He wanted to know what was happening and expressed concern that this might be the camel nose under the tent. She told him that was not part of this decision. Mr. Munson said he was okay with the park-and-ride, and that was the gist of the conversation. She did not think any of those conversations would influence or affect her ability to make a decision.

**Mayor Bernard** had a similar conversation with Mr. Zumwalt yesterday or the day before regarding future light rail or transit center. He told Mr. Zumwalt this was not part

of the decision, and he did not wish to talk about it anymore. He also saw Mr. Anderson at Texaco demolition, and he told Mayor Bernard that his wife was very ill. He said he would not attend the hearing and whatever happened happened. He spoke with Howard Dietrich about this property many times over the years regarding potential future use, who was currently in the property, and Mr. Dietrich's concerns a long time ago about – before Mayor Bernard even saw the plan – about the effect of a park-and-ride in this area.

**Councilor Loomis** spoke with Mr. Zumwalt regarding light rail in general.

**Councilor Stone** noted Mr. Zumwalt had been busy, but she just cut him off. She told him she could not talk about it until after the hearing. She asked Mr. Firestone if ex parte contacts included conversations with business people and contributions to campaign funds.

**Mr. Firestone** replied only if the contribution was in some way tied or there was a discussion relating to the subject. Hypothetically if someone said they would contribute \$100 to a campaign if the candidate listened to comments about the park-and-ride, then the issue would be about the application before the City.

**Councilor Stone** understood that would specifically have to be said at the time the campaign contribution was given. She wondered in terms of influencing a decision and voting.

**Mr. Firestone** explained an ex parte contact was a contact between a decision-maker and someone who was not staff that related to the subject matter of the application.

**Councilor Stone** asked if it would be a conflict of interest.

**Mr. Firestone** replied if someone who was interested in a particular outcome of a matter made a contribution that was not an ex parte contact. If there was somehow an understanding that the contribution was in return for a position on some issue, then that could be considered a conflict of interest.

**Councilor Stone** added or a potential conflict of interest.

**Mayor Bernard** added Council and staff recently went to businesses in the North Industrial area, and at one point someone brought up the transit center. Mayor Bernard suggested that there was going to be a meeting and that the City Council should not talk about it. He indicated the City would do everything in the future to resolve transportation issues existing in the North Industrial area. Also present were staff, ODOT, Metro, Clackamas County, and DLCD.

**Mr. Firestone** added there was also a timing issue related to conflict of interest. The decision itself would have to affect the financial interest of the decision maker or, the decision-makers family or business. Things that occurred in the past would not create the conflict of interest. It would have to be that the decision would result in a benefit or a detriment after the decision.

**Councilor Loomis** had been on a walk with Community Services Director JoAnn Herrigel on Monday through Riverfront Park, 17<sup>th</sup> Avenue, and came back by the site. There was a citizen there he knew and said “hi” who was counting vehicles. He just said, “Hi, how are you doing.” The citizen was Mike Stacey.

**Mayor Bernard** said it was clear this had been going on for some time, and people had been to the site many times.

Audience challenge: None.

Jurisdictional issues: None.

Staff Report: **Alice Rouyer, David Evans & Associates, 2100 SW River Park Way joined by Milwaukie Civil Engineer Zach Weigel and Milwaukie Planning Commission Chair Donald Hammang.**

**Ms. Rouyer** noted the City Council had a lot of paper in front of it today, and a part of which she and other staff had put together over the months since this application came in. The Council was involved in policy-related decisions, and this matter was all over the map. This was a very detail-oriented request before the Council. It was an appeal, and there was a lot of information that would be put before the Council. Ms. Rouyer's goal was to make the issues as clear as possible so the Council could decipher it. She welcomed questions on process or anything that came up, and all the professionals behind her would do the same. If there was any part that was confusing, she encouraged the Council to ask. She would read her presentation to ensure that all points were covered. As much as she wished to be dynamic and exciting – she may have been that way in the past – her hope for the Council was that she was clear and concise and got the information across. She hoped those who followed her were more exciting and dynamic than she.

The request before the Council was for a community service overlay (CSO) and transportation plan review (TPR). It was an appeal to the decision made by the Planning Commission on February 14, 2006 to authorize the placement of a public transit facility at 9600 SE Main Street. The request included the demolition of a 20,000 square foot former movie theater, the Southgate Theater, reduction of an existing parking lot by 52 spaces from 381 spaces to 329, installation of parking lot landscaping and parking lot improvements, and dedication of 11 feet of right-of-way to accommodate a future sidewalk. Ms. Rouyer indicated the subject property on a map.

**Councilor Stone** asked the exact location of the park-and-ride boundaries.

**Ms. Rouyer** indicated those on the map and provided a drawing.

**Ms. Rouyer** addressed the applicable code. There were two important parts to tonight's hearing. There were code criteria that this park-and-ride request was being filtered through and there were also the points of the appeal that had been raised by the appellant. The Council would hear a presentation by the appellant going through those appeal points. The code criteria that this park-and-ride needed to comply with was the first the CSO requirements outlined in Section 19.321. The notable requirement was the public benefits test and that the community service use was in the general public interest and that the benefits of that use outweighed the possible adverse impacts of the use. Second were the off-street parking and loading requirements. This was a pre-existing parking lot, and there was lots of redevelopment in Milwaukie. Most of the pre-existing parking lots did not comply with today's standards. They were section 19.502.B and required that the applicant attempt to bring the parking lot and loading area more into compliance with today's standards. The procedure requirements for the code in

minor quasi-judicial review were in 19.1011.3 having to do with notice requirements and procedures related to this type of hearing. Section 19.1400 was the transportation planning and design standards. The notable section for this particular application was for an adjustment related to the sidewalk width. There was a slide relating to the requirements that would be available during deliberation and discussion.

**Ms. Rouyer** provided a summary of the eight points of the appeal. The first was that the application was for new development and could not rely on nonconforming status of the existing parking lot. The appellant made the claim that the staff report and the materials submitted yesterday – a packet was delivered to the Council members’ homes – she would speak both to those materials submitted originally with the appeal on March 2 and also the materials that came yesterday. The applicant made the claim that this development cannot rely on nonconforming use status. There was a section in the code, 19.800, that dealt with nonconforming uses. Staff agreed with the appellant in this case that the application did not rely on nonconforming use status. The fact remained that the existing parking lot was developed 20 to 30 years ago. The parking lot was still there in its nonconforming state even though the theater use had gone away. The parking lot was nonconforming as to parking lot design standards contained in Section 19.500. 19.502.B required that applicants make an attempt to bring parking and loading areas into more conformity with the existing standards when remodeling or change of use occurred. This application did just that. Staff found that the parking area was significantly closer to standards found in Section 19.500 with paving, curb cuts aisles, connections, lighting, drainage, and landscaping. Those areas were all significantly more in conformity with today’s standards than the existing parking lot which was largely an impervious surface with some landscaping islands.

The second point was that if the park-and-ride was a nonconforming use or structure, TriMet must comply with the nonconforming situation provisions of Milwaukie Municipal Code (MMC) Section 19.800. This application was not relying on a nonconforming use status; therefore, this section did not apply. Both submittals from the appellant went into a lot of detail how the previous use was never recognized or legally established and therefore should not be able to use the nonconforming use standards. On this staff agreed with the applicant. The nonconforming use standards found in section 19.800 simply did not apply. The nonconforming on the site was the existing parking lot design that did not conform to the current design standards.

Point three was that applying the CSO was a map amendment that required compliance with Statewide Planning Goals and the Transportation Planning Rule (TPR). The appellant made the case that this application was a map amendment or a zoning amendment that required compliance with the TPR and transportation planning goals. Staff did not agree with the appellant. The CSO was a process that was most like a conditional use permit like in other zones. These were uses such as institution, utilities, recreation facilities which were allowed all over the City providing they met certain standards most notably the public benefits test. It was most like a conditional use. In the particular CSO standards Section 321 there was no reference to zoning or rezoning.

Point number four was that the park-and-ride was not a “public transit facility” and the Planning Commission failed to make a finding regarding that use. In yesterday’s submittal the appellant claimed that Code Section 19.321.2.B.10 required that a finding

be made by the Planning Commission that the site was a public transit facility. Staff did not read the code section that way. This section applied to other uses that were not listed in the CSO section. Since the public transit facility was listed in the CSO section, this was not a requirement, and the Planning Commission did not need to make a finding. However, staff did recommend findings that the Council conclude that the proposed park-and-ride was indeed a public transit facility, which was reflected in the staff report as well as the findings. She referred to page 5 of the staff report that detailed that analysis, and the accompanying finding was also in attachment 1.

In point number five the appellant claimed the application did not satisfy City transportation standards under Chapter 19.1400. The appellant said the applicant's analysis was incomplete for two reasons. The failures were not providing a queuing analysis and not providing the TPR analysis. Staff found the traffic analysis to be compliant with Section 1400. The traffic study showed that the intersections in the area would continue to function at acceptable levels of service as outlined in Section 1400. The applicant did provide a queuing analysis and deemed to be in compliance with Section 1400.

**Mr. Weigel** confirmed there were queue lanes provided with the original traffic study that was submitted with the application. The traffic consultant, David Evans & Associates reviewed the traffic study and agreed with the applicant on finding that the intersections operated within the level of service (LOS) standards required by the City and ODOT.

**Ms. Rouyer** added that a TPR analysis was not required because the CSO regulations did not constitute a rezone of the property.

In point number six the appellant claimed the requested adjustment to sidewalk width standards should be denied. The applicant requested to continue using the 5-foot curb tight sidewalk. The code required an 8-foot sidewalk with a 5-foot planter strip separating the street from the sidewalk. The applicant requested this through an adjustment. The engineering director may make a finding that the adjustment criteria are met. Staff found that the adjustment request was appropriate and was making it on a finding that it was consistent Chapter 19.1400 and the Milwaukie Transportation System Plan (TSP). Staff further believed that strict compliance was infeasible in this situation, and that the existing transportation facilities serving the site were adequately sized and were usable and in a safe condition.

**Ms. Rouyer** said the intersection, as the Council would hear, did not meet today's standards. It was a frontage road, and there was a quirky intersection design at Milport and McLoughlin Boulevard and Main Street. The placement of the building prevented the long-term extension of the sidewalk in a compliant way. She went to the site about the same time Mr. Stacey was there and paced the area. It was about 10-feet or less from the sidewalk to the front of the building. Staff analysis was that the 5-foot sidewalk would meet the needs of the site. Having a sidewalk that was compliant would require in the short-term that it taper back because there was no way it could comply without butting into the building. The applicant agreed to dedicate the 11-feet to allow for future development of a compliant sidewalk if the roadway was ever brought up to standard and the intersection improvements were made. The dedication was there and available.

There might be redevelopment in the future that would allow for a long-term extension of that sidewalk.

**Councilor Stone** asked how long the sidewalk was and where did it extend.

**Ms. Rouyer** replied it went from Hwy 224 and indicated the extent on a map. It appeared to be consistently 5-foot wide. It extended along Main Street and was a curb-tight sidewalk.

**Councilor Stone** understood in order to have a sidewalk and planting strip that we would have to go into the roadway or eliminate a building. That was basically what would have to happen.

**Ms. Rouyer** replied into the future. If it were designed today, it would have to taper back, so it would go back into its present alignment. It was staff's and Planning Commission's finding that the 5-foot sidewalk was adequate and feasible. Strict compliance with the letter of the code was deemed infeasible. There was one facility in place today that was noncompliant. The final point was that existing transportation facilities were adequately sized and were in usable and safe condition.

**Councilor Stone** liked a sidewalk that had that buffer strip because it offered protection and separated traffic from pedestrians on the sidewalk. If the City could get something in there she really liked to see that design if at all possible.

**Ms. Rouyer** addressed point number 7 that the benefits of the park-and-ride facility did not outweigh the adverse impacts. She referred to pages 9 and 10 of the staff report that was a list of staff and Planning Commission of the public benefits of this application and the adverse impacts. The Council was being asked to make that test. Community service use was in the general public interest and that the benefits to the public outweighed the possible adverse impacts of the use. The analysis had been done, which was in the staff report. Many of the appellant's issues raised in yesterday's submittal referred back to the community Working Group that was tasked with locating a transit center. That group did a lot of work in 2003 and 2004. There was no direct linkage from that work to this request. The reason was this was a park-and-ride facility and a public transit facility park-and-ride. It was not a transit center. It was apples and oranges. The appellant summarized the economic value of the North Industrial area, and that information was included in the original packet. The appellant's written statement continued, however, to fall short of stating that a park-and-ride would cause any business in the area to move, reduce employees, shut down, or reduce operations. There was a lot of evidence presented about the value of the North Industrial area, so that was not in question. The appellant had not stated how this particular use would have an adverse impact on the existing businesses in place today from an economic standpoint.

The last point was siting the TriMet facility in the Southgate location was premature given the status of the City's transportation systems planning. The appellant claims siting the TriMet facility in the Southgate location was premature given the status of the City's transportation systems planning. This was an application for a public transit facility and must be reviewed against the criteria outlined in the CSO application. This application did not request approval of any activities relating to light rail or a future

transit center. The Council was obligated to make a decision based on the facts presented in the application.

Staff and Planning Commission found this met the code criteria outlined in the presentation. There were extensive findings listed on pages 13 through 52. These were probably longer than the Council had reviewed before, and they had been expanded from those reviewed by the Planning Commission. That was done to include the full text of the applicable criteria for Council consideration. It added clarity but also extended the length. The conditions were on page 52 of the report. Except for conditions 1, 16, and 17, these were the same conditions that were approved by the Planning Commission. She requested that Mr. Hammang speak to the Planning Commission decision.

- **Donald Hammang, Planning Commission Chair.**

On the balance, the Planning Commission found that the park-and-ride was consistent with the CSO public benefits test. Public benefits would outweigh any adverse effects. Among the things the Planning Commission discussed was that the amount of new traffic to the site seemed reasonable considering the service, the community good that this transit would provide. There had been a park-and-ride on the site before with little public objection to it. It was fulfilling a community need. It would help move traffic through Milwaukie and add 300 commuter parking spaces in the park-and-ride. It would help free up commuter parking spaces in the downtown and allow those spaces to be used for new uses as the downtown redeveloped. When the Main Street project came on line, parking would be needed. People have spoken and given testimony that the loss of the previous park-and-ride had impeded their ability to use mass transit. Others spoke that it would allow them for the first time to start using mass transit from Milwaukie. The Planning Commission did express the concern that there were larger transit issues afoot in Milwaukie – light rail, transit centers – but those would need to be addressed in another venue. That was not directly related to this hearing.

**Mayor Bernard** asked if Mr. Hammang's notes were available because there were a couple of comments that he did not recall being addressed in the Planning Commission record.

**Mr. Firestone** replied the statement was part of the record.

Correspondence: **Ms. Rouyer** noted that the appellant had submitted additional information dated April 17 that was not in the original packet.

Appellant Presentation:

**Mayor Bernard** announced that the appellant was given 60 minutes for his presentation.

**Mark Whitlow** asked for a couple of second to address procedural matters before his time started. There was more paper that the appellant wished to submit. He requested that the record be held open for that purpose. He referenced copies of old codes that he had not had time to go through with staff to distinguish one version from another. They also had a copy of the North Industrial Land Use Study (NILUS) he wished to submit. He could give the Council what he could tonight, and he understood there was a potential to have the hearing continued. If that was the case, he was not sure of the

Council's schedule for that, but he would request an open record that would anticipate the continuance. He would still produce the information so many days in advance of the continued hearing. That was a procedural question.

**Mr. Whitlow** spoke on behalf of numerous owners of property in the North Milwaukie Industrial area. He was a land use attorney with Perkins Coie. He thanked staff. He had worked with Ms. Rouyer before a number of times. They enjoyed working together, and he respected her work as well as that of the City. They had a good working relationship with the City, as did the property owners. They were there on appeal feeling a little curious in that position. They were there out of respect for the good of the community and particularly that of the North Industrial area. What he wanted to talk about was not necessarily on the eight points of the appeal. He thought the Council would want to hear from the owners of businesses and the traffic consultant regarding the traffic issues related to the North Industrial area and how the proposed use short-term or long-term would impact truck access to the area and have negative impacts on the ability to continue to do business there, which would be detrimental to the general economy of the area. This was prime industrial land on the backbone of the major transportation system of the state. He offered copies of HB 2011 that showed the state's interest in creating that kind of land and protecting it. There was a study from the economic revitalization team that showed the importance of not converting prime industrial to non-industrial uses. He knew the City was proud of the area, and he recognized that the people here had taken part in the studies. In 2003, the NILUS was done on these very issues. How do we look forward to the future in a way that made good sense for land use and transportation planning? How were those done in conjunction with each other? Mr. Ray from Kittelson would go back over some of that work for the Council. Of note in part of the NILUS work were salient comments that the North Industrial area was a viable location for existing businesses, but changes to the area's streets could be adverse if access was not protected. That was in terms of trucks. Transportation issues were key to the success of any business location in the study area. Care must be taken not to degrade future access. He believed the application would do just that both short-term and long-term. The work that was referred to in the submittals about the transit center and its relocation and all of the alternatives that were studied he thought was very relevant to the Council's obligation to balance benefits against impacts. The Council needs to look backwards in terms of what happened to the area because it suffered a series of cuts. It has not had good comprehensive planning either from a land use or a transportation perspective. It suffered greatly from that and was in a delicate balance. The proverbial straw was about to be dropped on it by the approval of this application if that was what the Council felt it must do. Beyond that he did have some code comments he wished to make. This was tantamount to a zone change. It allowed uses that were very intensive in any of the zones without measuring any of the transportation impacts. That violated the basic principles of proper planning under state statute. He insisted that before the Council engaged in zone changes like this that it study the longer term impacts as envisioned by the TPR and look at appropriate mitigation. That had not been done. He also took issue with calling a parking lot neither a use or structure as defined in the code. He heard staff use the term pre-existing use for the first time at this meeting. He did not believe that was part of the staff report. He was not sure if that meant anything in terms

of future findings, but he took issue with that. The parking lot was clearly related to a use that was nonconforming that was no longer there. It did not mean anything, and it had no legal status. It could not be used to justify or bootstrap an application for a new parking facility that should at least adhere to the code, which it did not. But he digressed.

**Mr. Whitlow** returned to the transit center and the studies. He was baffled by the fact that many people spent more than two years working on a study that showed with specific findings adopted by the Planning Commission and City Council that the light rail alignment on Main and any of the 1 alternatives were not good. The Southgate center could not tolerate light rail or transit center or park-and-ride in any combination. He felt it would be abhorrent to any of the people who participated at great length and personal sacrifice in that process to find that notwithstanding the decision to put the transit center and the park-and-ride and the light rail station at a different location and that it was intended that the whole time this site was to be used as a park-and-ride surface lots. That certainly was not their understanding. It certainly was made clear during that study that there was specific linkage between the location of the park-and-ride, the transit center, and the light rail station. It was incumbent on the City Council to view those things together. There was linkage. That was part of the Council's job. If it did not consider the issues being raised, then the Council was engaging in error. He did that out of respect and care for the community and care for the district and that area and all the studies that had been engaged in where the Council decided not to have that kind of use in that location.

- **Brian Ray, Kittelson Associates, 610 SW Alder, Portland 97205.**

**Mr. Ray** said it was a pleasure coming to Milwaukie. He generally enjoyed the City. His father was born and raised here and his earliest memories were going to have barbeque at Mac's Pit. His role was to provide some insights to tie the near term with the long term. He had the pleasure to work with the City and the landowners a number of years ago in taking a look at access and circulation in the North Industrial area. He wanted to provide a bigger picture context related to access and circulation needs. Often as one became involved in projects things came down to very small points and a very definite focus. He appreciated Ms. Rouyer's description of the Milport/Main intersection as being quirky. It reminded him of what one might expect in a Woody Allen movie. In fact the Milport/Main intersection did not meet driver expectations. It was inconsistent with contemporary roadway design and traffic operations. The mix of traffic volumes and speed were inconsistent with objectives for safety and performance. One would also agree two intersections should not be so close together. He made a note of how the current proposals tied to the future. What he really wanted to reflect was that traffic engineering was as much of an art as it was a science. Often anyone with a driver's license became a very qualified traffic engineer. Traffic engineering, traffic level of service and traffic operations as they were reported in the document did not really tell the whole story. What he wanted to reflect was that when reports described LOS A, B, or C, they did not really tell the whole story. What he wanted to highlight was that the LOS was quite good. The way LOS was reflected was with a weighted average. The ODOT facilities that carried so much traffic because ODOT allocated so much time to its roadway facilities and the high volume of traffic was really

weighted toward the ODOT element. That good LOS of A and B was much more reflective of the ODOT facilities. If one actually looked at the traffic report, the asterisk was that the side streets actually experienced delays of 40 seconds. If one thought a little about the Milport/Main intersection, the ODOT intersection was close to the ODOT intersection. Forty seconds of delay while those vehicles queued could create a tremendous amount of influence.

While traffic engineers could convert these to passenger car equivalents with one truck being two or three passenger cars that did not really reflect the design and operational characteristics of trucks. Trucks were big, slow, and took up a lot of space. When one thought about those closely spaced intersections and the tight geometry, those were not the types of things reflected in what really happened in real life. It was also important that the LOS did not reflect the potential safety issues with the Milport and 99E intersection. The high speed ramp, the freeway-like characteristics coming down to an at-grade intersection whether it was at Milport or Ochoco were inconsistent with the regional traffic demand that was going to take more of a burden when the sunrise corridor was developed. He wanted to highlight the improvements in the area did not reflect the needs that if one thought about regional transportation, the ODOT designation of 99E and 224 as an expressway they did not reflect the need of that regional transportation aspect. When one thought about the Sunrise Corridor and these intersections there were some long-term needs.

**Mr. Ray** referred the Council to a presentation that had been made a number of times. What one would see were a number of continuing themes. This area was a gem. The industrial land use reflected in the NILUS report and reflected in so many of the qualities of family wage jobs was a gem. It was a gem that had tremendous transportation. It had two wonderful state highways, railroad linkages, close proximity to the Port of Portland. Also what he found was over the last 40 to 50 years that every time there was a transportation improvement to 99E there was another nick and cut that occurred to the access and circulation of the area. Those who had been around for a long time could reflect on what that roadway used to be like. How did we used to get in and out of that area? Now one notes restricted turns, restricted movements, and slip ramps that were added or taken out over time the continuing nick and cut. What was lacking was a long-term look at regional transportation needs, a long-term look that addressed those long-range needs but that was broken down into smaller pieces that could be implemented incrementally that could address the safety and operations on a step-by-step basis that was building toward that longer-range plan.

He encouraged the Council to consider the current proposal in the light of the larger regional needs. The study was a real pleasure to look at in the land use and transportation context and to look at the history. It was looking at a range of frameworks or alternatives that might ultimately have to be considered to meet the regional transportation needs

**Mr. Ray** addressed observations and discussions. This document was meant to pull people together. He had the opportunity to work with TriMet and the City and the landowners, so it was quite a pleasure. The purpose was to review the access and circulation from a City and stakeholder perspective. This was really looked at to consider ODOT and TriMet objectives. One could see it was written in 2003. What they

were recognizing was that the study itself might identify future land use evaluations and look at the optimal long-range plan -- maybe to build on the NILUS work. Also to reflect that more detailed access and circulation should be evaluated. For example, the NILUS study investigated and looked at isolated intersections and did not take that bigger look. Much like some of the challenges today, they were looking at the intersection in isolation and perhaps not taking that bigger look. The City had been extremely successful with its transportation growth management projects. The wonderful Main Street project downtown, the NILUS study and others were a testament to the City's good work. He thought his might create the means for getting into more detail to investigate some of these measures. Unfortunately, things did not work out that way, and future studies had not investigated some of the details. As he looked at the context, the area was a gem. It was vital and vibrant with great warehousing, distributing, and manufacturing. There were really some wonderful linkages with the railroad, good proximity to state highways, good buffering between the areas, which was a challenge in many of the industrial zones. They were stuck in an area where they were constantly under pressure. With the railroad, the hillside, and the highway itself it was a nice buffered area, and that was a rare piece. There was good proximity to downtown core that was vibrant and on the up turn. It was glorious to have a piece of land use with that kind of history so close. He found the negative context. They worked with former staff to pull out historic photos some of which went back to the 1930's when 99E was a two-lane road. When it was actually four lanes stuck between the large trees. When it was moved up and modified again and again. Many of those who had been in the area would recall those changes that occurred over time. what happened and what they looked at from those photos which spoke a thousand words was that over time there was a continual nicking and cutting. Access was restricted. Movements were changed. Drivers had been forced into unconventional types of movements. It left an inconsistent series of design features. It violated drivers' expectations. They don't know that they cannot get to Milport without using Ochoco. It was inconsistent operational characteristics. That was probably something that was most important to analyze. When he talked about operational characteristics, he was not just talking about LOS and things like that. What he wanted to think about what drivers experienced in the area. He indicated an area around Sellwood Park. It was essentially a divided highway. Those who drive it all the time know that the traffic moved along and there were pedestrians in that area. As one got to Tacoma there was a real mix. There was a freeway-style barrier the that restricted access across it so it looked freeway-like. The Tacoma intersection was an interchange so there was grade separation. There were driveways and accesses to those businesses. At one point high speeds were being promoted and giving drivers the expectation of a higher-type facility yet there were driveways where movements were made slowly. As one moved past Ochoco, there were two signalized intersections. Those were lodged between a freeway-like interchange of 224 and the freeway-like characteristics as one moved toward Tacoma. Drivers were getting mixed messages. If one thought about that with the qualities it was a mixing and matching that could affect safety performance

**Mr. Ray** wanted to look at the long range and the regional transportation with 224 and 99 designated as expressways their function was to move regional traffic and move the larger demand. If one were to look at the letter of the intent of a expressway

designation one would look for either removing access to create a free flow type condition. That might mean interchanges. Essentially from 224 into matching the section at Sellwood Park would be a high type facility that would be inconsistent with what was there today. What was nice with the downtown area and the wonderful projects occurring some of those Main Street elements could be picked up. It was a pleasure to see that happening. When one thinks about the future and what was being proposed today one had to investigate what was going on. If one did not investigate what was happening in the long-range plan, the one would continue to nick and cut the area the City had worked so hard to preserve. There were a variety of ways to get there. But part of what he was looking for was a transition between facility types. If one thought about the highway or limited access near Sellwood Park what one really needed to do was figure out a way to transition from that higher type roadway down to the Main Street with increased pedestrian access, bike facilities, and wonderful sidewalks that were going in. He would really look for how to transition in the area of Tacoma – how to step the facility down so that drivers were changing from the higher-speed, free flow conditions, down to slower speed ultimately to get a person to Main Street. He thought it was intuitive from the way it was today from the mixed shape, the mixed message, the mixed operations to something that was smoother.

They also wanted to investigate how the TriMet alternative fit in. They clearly agreed that was as the land use was important LRT and transit were critical for our future. He was very proud of the transit system and a proud transit rider. They also found the plain truth that physically the LRT alignment was right next to 99. It was already a very tight area with the buildings and so on. The LRT alignment – he made a value judgment – was simply another constraint right in that tight spot. The question was would it limit future access or circulation? Would it eventually create additional constraints? He could not necessarily answer those questions but the idea was would be are there opportunities to enhance that? He thought actually some of that really did lead to the working group meetings, and he thought those were some fantastic sessions. He indicated a line that was the LRT in schematic form as it existed in some of the environmental documentation. The observation was that being right next to the roadway, being right next to and in between the buildings simply created another tight area for all to consider. If one looked ahead to regional transportation needs – looking ahead to the regional needs for OR 99 as an expressway and 224 as an expressway – were we building ourselves into a box?

**Mr. Ray** discussed how to get to that RTP. That was a very high-level investigation as there was not a lot of time or money. When they really investigated the move toward that mobility they could probably look at solutions that would meet the RTP – if one necessarily wanted to do that or not was a different question. What they really identified was that it was so expensive and so impacting and the community was so tight for money and the state was so tight for money that it was probably a long-range plan. It was probably a 50-year plan just to give that sense of scale. What they did find was even with the best of money and the best of intent it was so constrained with existing roadways and all of the land use that it would still create a less than ideal network. While reflecting that one may not get to the long-range plan or what he considered the RTP plan what might be some ways to squeeze out a little bit better traffic operations. How might we transition from the Main Street of downtown through 99 into the area of

Sellwood Park? He found that some things could be done at grade that were contemporary in terms of design. Those were still impacting, and those were not consistent with the long-range plan. What he also really wanted to identify what could be done today. And probably the biggest issue was the very close spacing between Milport and Main and the Milport and 99 intersections. Those were literally right on top of each other – right next to each other. The curb return of one was the curb return of the other. What they looked for was there something they could do immediately that might provide some increased life span. How long would it last? Who would pay for it? The bigger question was if one did something now could that be used later on or was it something being done in the short term that may have to be thrown away?

He would not bother the Council with the details, but he would be happy to provide a copy of the presentation. He showed six broad concepts each of which was two concepts each for that RTP plan. How might the higher mobility needs actually be achieved and to the best of our ability provide access and circulation to that area? Everything in orange reflected the need to improvement that traffic flow between 99 and 224 and bring that middle section up to the consistency of expressway designation and its travel demand. Also one might see a lot of orange around the 3 Bridges Project or the need to make connections to Tacoma. As one eliminated access on 99 consistent with the RTP and consistent with the expressway plan, additional access and circulation into the area would be vital. You cannot get people in and out of that area – distribution, trucking it dies. In just another variation – ways to skin a cat – just simply reflecting again that the orange reflected the need to have internal site access and circulation and looking perhaps for ways to make those connections back to 99 and reflecting upon over the years each time 99 was fixed, a little nick occurred. What he suggested was the need to step back with a longer plan that would work toward that.

Those plans were very large and very impacting. They also investigated ways just to buy some time. It was still expensive. There was a lot of orange around Ochoco. That was really to take that configuration that might also be called quirky and convert it to something that was a little higher capacity, more consistent with drivers, a little more contemporary design. Also Milport and Main, one of the biggest objectives would be to separate Milport and Main from Milport and 99. The idea would be to try and stretch that out. That again was part of the big problems and unfortunately was not what a lot of the traffic analysis tools investigated. He provided a different version of the long-range plan and a different way to address the Milport/Main issue. In this case it was pulling Main Street well away from its current alignment to increase that space between 99 and the new Milport/Main intersection. Tie it back into the middle and quite a bit of work over at Ochoco and the importance of the connections to the north.

**Mr. Ray** recognized those were big and expensive. They looked at ways to do near term improvements. Let's make sure the near term improvements of separating out that Milport and Main intersection are compatible. If one took that concept of separating those with a little bit of realignment of Main, one would find those compatible with some of these plans. Here was a short-term plan that could fit into this longer-range plan. The idea was you have a long-range plan but you break it into small pieces. What did this really come to? What did one really observe? Really that the RTP concepts – those longer-frame needs – that were in the Regional Transportation Plan required

significant access and circulation improvements. It was a big issue – it was a big apple to bite. That the RTP concepts if one were to get there were very expensive and very impacting. Even with the money one might spend, they created less than ideal geometrics. The plans were also expensive and not much better. They were still very impacting and would be challenging to implement. The good news was that some components of the long-range plan of the RTP could be put in a 20-year plan. Some of those could be carried forward to the near terms. It was clear that the near term improvements being looked at – those near term improvements were more extensive than the improvement that were proposed today. Even then those were just temporary. Even then they were not addressing the long-term need. Even then enhancement was inevitable.

**Mr. Ray** said they identified that light rail was a great concept. The line itself appeared to create some new constraints. It appeared to create additional issues that really tightened and constrained everyone's abilities to get to a longer-range plan. Some of the questions that came out of the discussion to prime the pump for the City and community to work together to try and look at how to address this. What was the optimal range of land uses in the area? Did it need to change? Did we need to shift away from the industrial? Did we need to plan on that? If so what were the transportation pieces that went with it? How important was continued access and circulation to the economic vitality of the region? If it was going stay? Prime land use was not prime land use if you cannot get to it or from it. How did that work together? What kind of choices might be made in terms of those sacrifices? Was the RTP concept the best plan? We were always rethinking how we were doing business. Was that the best plan? Should we investigate making changes to the RTP where the community would look at changes to the RTP for something that might be more fitting for the City and community needs? The near term improvements just bought time. How did one best use the time? Just a little more improvement. A little bit more safety. If we buy time and don't do anything with it, we waste our time and we waste our money. The LRT alignment and stations were a significant improvement and significant infrastructure. They were glorious, but once they were in place you could not do anything with them. If they were in place, then at least investigate long-term how those improvements may or may not limit abilities to move ahead. What one might look for in a perfect world was a way to address regional mobility through transit and other mode options. But also reflecting the need that freight mobility, access in and out of the area was critical. We need to have a way to pull those pieces together. Finally, the biggest question are you ready to tackle this issue? Are your ready to take this big apple? Are we all ready to look at it? You as a community – you as a City, all of the organizations TriMet, ODOT, Metro. He was sorry to say that since this was prepared June 11, 2003 a lot of work had continued on and a lot of good work by the agencies, but he was afraid some of the focus just had not been in there to address these very ominous questions. As one looked ahead, he would ask the City Council to reflect upon was simply are we making choices now that were just the same kind of choices we made in the past? Are we not taking on the bigger issues? The bigger questions? And thinking we are not making that choice are we in fact making a choice for the status quo? Are we making a choice to let this area stagnate and die? Those were big questions. As the City Council deliberated he urged the members to think about the importance of transit. It was

important to look at that long range and understand how these choices made today fit with the future.

- **Gary Hunt, Chief Financial Officer Oregon Transfer Company, 9304 SE Main Street.**

**Mr. Hunt** said it had been 23 years since he testified before this Council regarding the Southgate site. He thought that after months and months of participation with the Milwaukie Transit Center Working Group and the hours and hours of the Planning Commission and the City Council testimony and deliberation that Southgate as a location for transit use was a dead issue. Unfortunately he was wrong. Oregon Transfer Company was a corporate citizen of Milwaukie for over 40 years. The Company owned and operated in excess of 300,000 square feet of warehouse space in the North Industrial area serving local and regional distribution needs. Logistics was a service that operated somewhat below the surface, but everything in this room spent some time in a truck and most likely spent some time in a warehouse.

Oregon Transfer provided about 115 family wage jobs in the metropolitan area with almost half of its employees having worked or been headquartered in Milwaukie. Approximately 30 employees lived in Clackamas County. The Company paid over \$157,000 in Clackamas County property taxes last year. One may notice some of the fact he cited were in the past tense. Even though there was some discussion that there was no evidence that the traffic issues in this area had no impact on businesses, unfortunately his Company embarked on a plan to move most of its Milwaukie operations out of the North Industrial area. Those 50-plus jobs would soon shrink to a dozen or so. As they reviewed their options there were reasons to stay in Milwaukie but more reasons to move. Some of those reasons were operations issues over which the Council had no control or influence. However, among the issues considered were the local transportation challenges particularly those related to access to the area. Ingress and egress already presented problems. For example a review of the records recently indicated that before the Company began to pull out of the Milwaukie facility that there was in excess of 14,000 truck movements in and out of its warehouses per year. Oregon Transfer was just one of the distribution-related companies in the area. Concerns about the current transportation mobility challenges increased because of the probability of the nearby park-and-ride. Possibilities that a transit center and light rail would follow underscored those worries. Given those concerns and uncertainty, he could not in good conscience recommend spending significant dollars for any major building improvements to the Company's board of directors. Further, the buildings had been for sale or lease possibly for a couple of years. It was in a race with its broker to see if it could be filled with operating businesses or not. There was one major opportunity that slipped away because in fact they were concerned about the traffic impacts of potential light rail and those kinds of things. The Milwaukie Transit Center Working Group was created in the first place because of concerns over the use of the Southgate site as a transit center concluded this was not a good location for a transit center and park-and-ride lot. It would seem obvious adding traffic to an already-substandard intersection would just make a bad situation worse. The safety and mobility concerns involved in creating more traffic at the Milport/McLoughlin Boulevard intersection had been discussed before and often. Everyone involved in the Working

Group, neighborhood leaders, Milwaukie staff, TriMet, ODOT, Metro all agreed the intersection was already problematic. The December 2003 memo prepared by the representatives of TriMet, Metro, and ODOT that evaluated the various options regarding the siting of the park-and-ride, transit center, and light rail alignment referred to the Milport intersection at least half a dozen times either saying the option was promising because it avoided the intersection or it was not an option that was being supported by those individuals and organizations at least in part because of the negative impacts in the intersection. That intersection at the Southgate site was known in the group as the “dirty diaper.” Now without any mitigation there were those who contended that the diaper was clean. Besides the current issues of safety and mobility as they related to park-and-ride was a concern that if the parking lot was at Southgate relocating the transit center might become a future site resulting in further exacerbation of traffic problems in the area. This suggestion seemed to be creeping into the Planning Commission discussion. He knew that came from neighborhood people and not staff, but that was real and people were aware. It was of further concern that if the site became a park-and-ride that likelihood of a Main Street alignment for light rail increased almost to a point of certainty. Such a reversal of the recommended Tillamook Branch alignment would be devastating to the businesses in the North Industrial area. Providing a parking lot possibly for commuters from other communities at the expense of maintaining and growing the taxpaying, job providing businesses in the North Industrial area did not appear to be a good tradeoff. Oregon Transfer urged the Council to consider carefully the past counsel of the Working Group, current testimony of the corporate citizens of the North Industrial area, and the Council’s own decision of two years ago and to deny the current application before the Council. Oregon Transfer would consolidate all of its operations in the Rivergate area in Portland.

- **Mark Hendricks, General Manager Rudie Wilhelm Warehouse Company**

**Mr. Hendricks** indicated the Company location on a map. The two Oregon Transfer buildings behind Rudie Wilhelm have been on the market for two years in a very good real estate environment, and they have not sold. That was a canary in the mine to him regarding what was going on in that neighborhood. It was significant in terms of the evaluation of transportation patterns in that neighborhood. He wanted to amplify that point. You were looking for some sort of an economic impact. There were a couple hundred thousand square feet of very good, high ceiling clear industrial building that was not being sold in a very good commercial real estate environment. Why was that? It was well maintained. They were perfectly good buildings that he saw out his window every day. What was the problem? Rudie Wilhelm Warehouse Company while a smaller company than Oregon Transfer had more operations in Milwaukie. It had dozens of customers in its warehouse with names people would recognize including grocery products and general warehousing compatible with grocery products. He said to many people that Rudie Wilhelm was not opposed in concept to tearing down the old Southgate Theater – it was an eyesore. He was not even opposed in concept to the establishment of a park-and-ride lot at the site. This was not news. He had testified to that and told everyone who asked that it was in the area’s interest to clean it up and make it look better. To create a more functional intersection, though, in the process. That had always been the caveat. To do that was fine, but it needed to be a more functional intersection. He would use a stronger word than quirky to describe its impact

on drivers in that area. He thought that could be done. He thought the case had been represented well during the locally preferred alternatives (LPA) process. Representatives of the neighborhood group who he felt did not really trust the motives understood after a while that they were not just trying to protect their own businesses. They were trying to make Milwaukie a better place in this process. They talked about how fragile the transportation system was in the neighborhood. At the end of that lengthy process a vast majority of the people involved in the LPA process saw it that way and decided to move it off the Southgate site. Would a park-and-ride at Southgate destroy their business? He heard there were not exact numbers to put on businesses like Rudie Wilhelm to put on what the impact of such a thing would be. Probably it would not in and of itself destroy the business. It would cause delays in truck movements, and of that he was certain. It would put more pressure on the transportation network in that neighborhood but would probably not put Rudie Wilhelm under – it would not go out of business next week. That was the good news because they provided family wage jobs and \$250,000 in property tax revenue to the County in the past year. It would be one more disappointment for those still trying to make a go of warehousing and distribution in what once was the region's preeminent public warehousing district. It was another incremental step toward making that very valuable district functionally obsolete. He wanted to describe what it was like in the mornings. Go for a walk at 4 a.m. sometime because it was packed with trucks. All of the streets around there with long-haul vehicles bringing products in and waiting for a door appointment in the morning, or they were waiting for an assignment from will call for a first appointment at 6 a.m. or 7 a.m. They generally got loaded about the same time. There were 29 doors. They all hit the intersection at Milport and Main at about 7:45 a.m. When a theater was there it did not attract many patrons at 7:45 in the morning. When a park-and-ride lot was there, it did not attract very many cars. The assumption was that this would attract quite a few because it would be more attractive and have some kind of system for guiding cars to it that was better than what was there in the past. The concern was that the studies he had seen have not looked at that specific hour of the day and the problems that would result from all of that vehicular traffic – buses and trucks leaving from the distribution centers all hitting that at the same time. They was not just in the warehouse business, they were in the real estate business. They owned 10-acres of buildings in the North Industrial area. They had seen this death by a thousand tiny cuts over time and were very concerned about their future. They were committed to staying in Milwaukie, and they did not have any plans to leave town. This scared them to death especially because there had been no attempt to fix what was identified for months as a very problematic intersection. He thanked staff for coming out and taking the time to understand problems. He had a number of conversations that had frankly not occurred in the past regarding the businesses and their needs. He wished a better job could have been done in taking care of this problem while solving the region's perceived transportation needs.

**Mayor Bernard** used to live in Westmoreland and drove McLoughlin Boulevard during the entire process of building the last phase along with every other phase. He would be interested in reading some more material about what kind of involvement the North Industrial area had in the development of that design as it currently existed. He was not as involved with the City at the time. He assumed ODOT had to go through the same

process everyone did and went to the Planning Commission or went through some sort of public process. He would like to hear about the involvement at that time. He saw a change.

**Councilor Loomis** called a point of order as the Council comments were eating into the appellant's time.

**Mayor Bernard** would stop and restart the clock. He asked Mr. Hendricks to describe the process.

**Mr. Hendricks** would have to find out corporately what had been done because Rudie Wilhelm had been a significant landowner since 1959. The first phase was built in 1959 and the subsequent phases were built through 1967. There would be that kind of institutional memory. Mr. Wilhelm just passed away and would have been the logical resource. He wrote down the question and would ask some of the long-term employees.

**Councilor Barnes** asked when majority of trucks were in the area in and out.

**Mr. Hendricks** said a majority of the trucks were there in the morning. The morning hours were significant because the grocery houses wanted their loads early. What also happened was that within that warehouse products were staged the night before. Trucks would back in as soon as they got a door assignment. The will call person would say the load was ready. The real crunch time was about 7:45 a.m. They tried to space things out through an appointment system the inbounds and outbounds through the rest of the day. Everybody would like to get their loads to their destinations throughout the northwest and off load it, and then the driver went home. That was why the early time was particularly difficult.

**Councilor Barnes** asked if there was an afternoon rush.

**Mr. Hendricks** replied there was one paper customer that required the warehouse to stay open until 6:00 p.m. They wanted to send orders until 4:00 p.m. and get those out the door by 5:30 p.m. There were not that many appointments after 5:30 p.m. but there was a rush at the end of the day as well.

- **Libby Agosti, Shareholder and Board Chair of Holman Distribution Center of Oregon, 2300 SE Beta.**

**Ms. Agosti** indicated the business location on a map. The family business had been headquartered here since mid-1980s and served hundreds of local, regional, and national accounts in public warehousing, which is storage handling and freight transport. This was a 200,000 square foot facility with 60 jobs. Many if not most family wage jobs. This company generated approximately \$100,000 in County property tax. She wanted to thank the City staff for its interest. She reiterated a message she tried to convey to them. It was a general message. The issue for her company and its industrial neighbors was one that this application did not address. The underlying industrial zoning designation was arguably designed to protect the need for flexibility over time of these warehouse and distribution operations. Even accurate snapshot queuing and traffic analyses did not address the impacts to businesses that were characterized by changing accounts, inventories, and shipping patterns over time. The Milwaukie facility had demonstrated that kind of change over time. The truck staging activity could

accelerate or relax in a matter of months with changes in warehouse accounts and tenants. The building functioned for many years for food storage and handling, and the servicing of those accounts often occupied most of the 40 truck bays daily with up to 100 daily outbound shipments at peak daytime hours not to mention inbound freight. The nearby Clackamas facility currently serviced large food storage accounts with accompanying active truck staging and high traffic patterns. Presently the Milwaukie account and tenant mix differed and produced different traffic patterns, but Ms. Agosti emphasized that that could change. The business depended on the flexibility to allow for that change. The underlying industrial zoning designation validated the need for and protected that flexibility. It was her concern that rezoning by way of CSO mechanisms compromised it.

The appeal materials set out the rationale that this decision justified a more comprehensive planning process, one that looked at longer term transportation impacts and that hopefully included or substituted mitigating improvements for these two intersections at Ochoco and Milport. The concerns intensified with the prospect that siting this park-and-ride at Southgate anchored future bus transit center and light rail alignments there as well. This prospect arguably justified broadening the analysis on this project especially in view of Mr. Selinger's remarks in the *Clackamas Review* on March 1 where he stated, "Lacking any new investigation the locally preferred alternative points to this property for those facilities," referring in context of that article to bus transit center and light rail in the wake of the Kellogg Lake plan foreclosure. The North Milwaukie Industrial neighbors welcomed a new investigation and were reasonably concerned over such consequences that this park-and-ride siting logically invited and which were not addressed in the application. It was reasonable to consider those consequences, the possibilities of light rail alignment and bus transit center because they were arguably part of any Southgate park-and-ride proposal. For those reasons they argued that this decision should be made as part of a larger planning process. Ms. Agosti entered her written comments into the record.

**Mayor Bernard** asked how long the business had been in that location.

**Ms. Agosti** replied the facilities were constructed in the 1960's.

**Mayor Bernard** said after touring that area 5-1/2 years ago the entire area was almost abandoned. A lot of the buildings were empty. He asked if there had been a change in warehousing. When he talked to people during the tour of Ms. Agosti's building he asked about the height. A lot of the buildings were transitioning to other types of facilities. He asked Ms. Agosti if she felt the area was transitioning or did she see the need for future flexibility.

**Ms. Agosti** said the business had been conducted with a focus on flexibility and ability to change with changing types of clients. The building was built mainly to service food clients, but she thought her father was longer-range in his thinking. She did not believe Mayor Bernard would have seen the Holman Distribution Center as being abandoned five years ago, although the use of that 200,000 square foot facility had changed over time. For lengthy periods the building operated as public warehousing. For portions of the time portions of the building were leased to tenants. That can and may change in 18 months. That kind of change was what they built their facilities to accommodate and part of the way they conducted their business.

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- **Mark Burnham, Operations Manager, American Medical Response, 9800 SE McBrod**

**Mr. Burnham** reported American Medical Response (AMR) was the County ambulance service provider. He came at this from a different angle. AMR was not opposed to park-and-rides, and the company thought they were a great thing. He was concerned in that area about the ability to respond to emergencies in a timely manner. He thought the foremost issue was public safety. AMR went through a great deal of research to move to the current location. They actually combined two operating units into one unit at this location basically to be able to serve the non-emergency clients and critical care patients in the area. This was a great location at 9800 SE McBrod, so there was access in all directions. They were able to get in and out. There was that quirky corner that everyone talked about which the AMR paramedics and EMTs call the ridiculous corner that caused some issue. One of the things AMR was looking at was how it would all tie into what was called the system status plan. The plan was how AMR operated. It operated from a central location where the ambulances started and stopped. Then they went to posting locations throughout the County. The ambulances may park in front of houses that were rented or in front of storefronts. There was a central location which was the McBrod address where people come for shift changes. Those times coincide most likely the majority of them during the peak travel times. The peak travel times were also the times when there were the majority of emergency responses. Rush hour traffic and things like that were where AMR found its major response times. AMR was concerned about some of the confusion that might go on with the access of getting to the park-and-ride. It was one of those things where you can't get there from here. As people came off the expressway, you didn't just zip across right there. That was the main issue. It was going to be bringing people down off the expressway onto 17<sup>th</sup> and dropping down McBrod or Ochoco. When they looked at that location the reasons it was not an issue was because there was not a lot of traffic coming in and out of there. The trucks were all stationed on one side loading and unloading. They had access back and forth to there. So the only concern was the people who may come down and take that clear shot and cut through McBrod. That was a little bit of an issue to AMR. Gridlock was a concern. The increased traffic but also maybe a little bit in the beginning just the concern of how to get to there. He was not opposed to the park-and-ride as a concept, but they were concerned about how that would impact that intersection. If one had been there before, it was quirky but it was an intersection where it was hard for people to understand what to do. There was an intersection, an intersection, and then you go out to the middle. AMR had a policy to train its people on how to approach that intersection. When they come to work they tell them they go to that intersection – it may be a little annoying to people – they stop at that intersection to make sure they are not hit. It was a big deal especially lights and sirens. Lots of people say what's the big problem there if you have lights and sirens you can get anywhere quickly. In a condensed area like that you start going down those streets with lights and sirens it gets very confusing. Even on the way her tonight a friend who came here with him was amazed as they were going down the road – they were watching an ambulance going down the road with three cars in front of it with its lights and sirens and blowing the horn, and everyone just stayed there. That was just a little bit of a concern. He wanted

to bring that angle to it and bring up concerns about public safety and how to negotiate that.

**Mayor Bernard** had toured all those facilities and had been to AMR. He understood that was a place where they do shift changes and then go to posting locations. The first comment was that he was concerned about his ability to respond to emergency needs. He did not see how that related to a park-and-ride or that area's transportation issues.

**Mr. Burnham** in the system status plan they may have people who come to that location and start. When an ambulance call went down then these cars all shifted. In a system status plan the ambulance moved and then another ambulance moved to shift and cover. At any time there could be ambulances here responding to emergency calls because it was sort of the hub. The hub was where the ambulances were sitting at the time. If an ambulance responded and was picking up a patient and going to Providence Milwaukie, then ambulances would come from this location to backfill those locations. Then they would be responding from that location to backfill. In a system status plan everyone rotated and the plan rotated. That was how response times were kept at a level.

**Councilor Collette** heard Mr. Hendricks say that things needed to be repaired at the Milport intersection as part of any project. The old park-and-ride had two accesses. Would closing the north one help the situation?

**Mr. Hendricks** said that would be very helpful. They were very concerned. That was a concern he raised early on in the discussions and thanked those who heard him in that regard. TriMet did not offer a fix to the problematic intersection, but closing the north access was a step.

**Mr. Ray** had tried to emphasize in terms of level of service was this did not reflect as McLoughlin Boulevard. The traffic analysis tools were actually pretty primitive. With the two intersections so close, the tools did not cover that. The LOS reported reflected that all of the traffic was on 99 compared to the traffic on the side street. The traffic on the side street was delayed. All of the traffic on that side was held up because of the ODOT signal. That was the plain and simple fact of that. All of this was moved. What he wanted to highlight was that on the site basis, yes it was great to get rid of the conflict. That was a great attribute. What he really wanted to re-emphasize was that what the Council was looking at in terms of LOS do not be misled by what can be reported in terms of LOS between what can really operate. Just plain and simple if one saw two closely spaced intersections, that was really a big issue. He wanted to highlight the differences between site circulation and ODOT circulation.

**Mayor Bernard** asked if staff had gotten the additional material that was provided. He believed that was coming from Mr. Whitlow. Was there additional material that TriMet and staff had not seen yet?

**Mr. Whitlow** alluded in the letter of yesterday that he had wanted to tender copies of old codes going back to the establishment of the theater in 1972. Whenever the ML zone changed or zoning changed from ML to M and what rules were with each change in those ordinances for conditional uses and nonconforming uses as part of the record he wanted to establish. He had copies but were not sure of the year and effective dates. The better practice to make the record was to have him agree with the attorneys so that

they stipulated this document was the effective code on a certain date. He had not been able to do that.

Mr. Swanson understood the video tape needed to be changed and suggested a short break.

**Mr. Whitlow** would like to have one more point made by Mr. Ray from Kittelson which he felt was important after the break.

**Mr. Firestone** suggested continuing with the appellant's comments.

**Mr. Whitlow** said most of the traffic anticipated to use that facility would come from the southeast. Heading westbound on 224 he thought the driver expectation was to first of all take the off ramp down to McLoughlin Boulevard not realizing that one could not take a right on Milport. That was likely mistake number one based on just standard driver expectations. That needed to be a learned event. The problem was that when the learning occurred the traffic then came across 224 to 17<sup>th</sup> took a right and then took a right on Milport. On the west side of McLoughlin Boulevard you had the other dirty diaper. So with the frontage road with Americold the traffic from it from the OLCC distribution center trying to get out. At that intersection with no signal control taking a left at the same juncture where you had the morning rush hour traffic heading eastbound on Milport, so that was one problem right there. Then crossing McLoughlin Boulevard to the other dirty diaper intersection. He did not know what percentage but a large percentage of the anticipated customers for this park-and-ride were going to have to go through those machinations across two terrible intersections -- not just one but two. There had been no study done on the other side, the west side. We were putting all our cards on a traditional level of service study at an intersection where the intersections should not actually be allowed to exist because they were unsafe. If there was an accident history there then the highway department was likely to close it.

**Mr. Ray** said what Mr. Whitlow highlighted was what he was trying to emphasize. The decisions that were being made now were a very focused point and at a very focused location. He appreciated the analysis, and as a traffic consultant he did this kind of work all the time. He understood the business. The point he wanted to make was the larger issue. The aspect Mr. Whitlow highlighted of the need to get to the site. It was the fact that before coming in from the south on 99 – the little slip ramp. Did it meet your expectations? Did you anticipate to get to the intersection that you had to turn some 500 to 600 feet in advance for it? No it didn't. It was much like the Ochoco intersection. That did not meet one's expectation of needing to turn to Ochoco to get to the Milport intersection. He wanted to highlight that a LOS analysis and traffic analyses could be very good tools. They were a very important part of the practice and a very important part of the profession; however, they did not tell the whole story. He wanted the Council to be aware while it was making short-term choices that they had a significant impact on the larger issues. The choice made now could definitely influence what was going to happen in the future. The Council may be making choices now that it ended up fixing or having to address again at some time in the future. He just wanted to emphasize that.

**Mr. Hunt** followed up on the question to Ms. Agosti and the area being in transition. He alluded a little bit to that in a comment when he said he could not in good judgment go

to his board and say spend a lot of money to retrofit the buildings. One of the things he was finding with his customers and they were virtually all food or beverage companies was that more and more they were looking for temperature control. It was very expensive to put in refrigeration equipment. They just spent over \$400,000 in one of the other facilities. One of the Milwaukie facilities would have worked just fine for that in terms of ceiling heights and all those kinds of things. Given all the uncertainty that was rolling around and all the nicks and cuts that have hurt the company in the 40 years it had been there, they decided it was not the place to make that kind of investment. There were transitions in the business. Ms. Agosti said the business can change. The company still owned 300,000 square feet and hopefully would not own 100,000 of that soon. They were working on some big deals. They may be back, so that was why he was still interested in the City.

**Mr. Whitlow** added it was fair to say that the old park-and-ride was underutilized as opposed to what was anticipated for the new one. It was a casual relationship. He did believe it was advertised or promoted heavily. This one would be because it was based upon new money coming to the site which was not the case with the theater operation. They saw information from TriMet saying quite proudly that they planned to increase the lines of service. There would be receipt of several lines that would have 15-minute service around the clock that would add to intensity and demand to the turnover in parking. There were two things to look at – the number of spaces and the turn of those spaces which had not been addressed. He also pointed out that clearly the numbers Council heard about in the application were wrong. He produced a copy of a license between Eastgate Theater and TriMet. They were only entitled to use approximately 300 of the 400 spaces. By any estimate, they were increasing the number of spaces and the number of turns and the intensity of use. It was a much different story than was told in the application, and the Council needed to know that as it balanced benefits against impact. He wanted to make sure that all matters that were submitted to the Planning Commission – because Americold actually came and testified they could not be here tonight – were in the record as this matter went forward if it did.

**Councilor Loomis** said that was the second time it was referenced that the park-and-ride was underutilized. He read it was used when it was Southgate Theater the use was about 250 cars per day. When the new owner took over it dropped to 25 to 30 because there was a charge. If TriMet or planning was listening, he suggested they address that.

**Mayor Bernard** asked Mr. Zumwalt as he had written “in between but not neutral.” He needed to place Mr. Zumwalt on the agenda so asked if he supported the appeal or neutral or in opposition to the appeal.

**Mayor Bernard** recessed the meeting at 9:47 p.m. and reconvened the meeting at 9:57 p.m.

- **Judy Zimmerman, 12236 SE 31<sup>st</sup> Place #77**

**Ms. Zimmerman** had been with the park-and-ride in Milwaukie for about 10 years. One of the reasons she started paying was because there was vandalism to her car in Southgate lot. Because there was no security and no cameras that was why she moved over. She referred to staff report page 52 under the conditions of approval.

Number 2 was closed circuit television surveillance shall be installed and operational as soon as reasonably feasible, and in no event later than three years following the opening of the park-and-ride. She thought that was unacceptable. If that was going to go through it should be immediate. She would like to know if it was going to be tied in some way to a police station where it could be monitored. One of the things not addressed on park-and-ride was the drop off on opposite side. She thought if there were going to be improvements on the actual site of the park-and-ride that a drop off improvement should be considered because sometimes there were two and three buses at one time. She thought they would have to figure out a way to get those people off. She did not think the sidewalk was acceptable at this point. She wanted to know if most of the paid parking lived in Milwaukie by zip code because that would solve the issues about a lot of people who were coming to the park-and-ride. The traffic and which direction it was coming from. For herself and others who did actually pay to park-and-ride they would be very much in favor of still continuing to pay if they had reserved spots. There would be income and perhaps half of it could be free spots. She worked downtown at Meier and Frank, and her hours were not always 7 to 4 or 8 to 5. She worked night and weekends and would like to continue to use the park-and-ride because it was expensive to park downtown. If she did not have parking because she went to the park-and-ride and all of the 300 plus spots were taken, then she did not have an option and would have to find something. She would prefer to have a reserved spot. The gentleman who talked about more frequency of buses – she did not see there would be a greater frequency of buses coming that way. The buses that went now were much the same thing. The first bus stopped in Milwaukie at 4:57 a.m. and that was #33. She thought they should look at the bus schedule because there was also a limited number of buses that went downtown after the rush hours. She thought #33 was the only one that went along that street and went into the park-and-ride. She thought #41 went across McLoughlin Boulevard. She thought the bus schedules would not be an issue. People come into that park-and-ride and stay there all day. When she used the park-and-ride there were times when she was there for the 4:57 bus – frequently during times of Christmas and inventory she was there for the 5:29 a.m. bus, and she was usually the first one in the lot. She suggested looking at what time people were actually coming and leaving. It was not all day in and out.

**Councilor Loomis** asked Ms. Zimmerman if her car was vandalized at Southgate.

**Ms. Zimmerman** replied that was correct. She had not had any problems since she was in the paid parking. Usually she was there early enough to park in the city hall lot. She did come home in the dark, on the bus. Lighting was an issue at Southgate and at some of the other lots. She would be forced to park downtown so she would know she was safe.

**Mayor Bernard** said there was a provision in the code that said the Council meeting would adjourn at 11 p.m. He understood the applicant could get it done in less.

#### Applicant's Testimony

- **Steve Abel, Stoel Rives LLP, 900 SW 5<sup>th</sup> Avenue, Suite 2600, Portland 97204**
- **Phil Selinger, Project Planning Director, 710 NE Holladay, Portland 97232.**

**Mr. Abel** said the applicant would not ask for a continuance. There had been some new evidence. He was not going to ask for a continuance and would not ask for the record to be held open. He thought there might have been a request for the record to be held open by the appellant; however, the applicant was not submitting any new evidence. There was no basis for the record to be held open. He thought the testimony could be completed at this meeting.

**Mr. Abel** indicated the applicant testimony would be about a half hour. Mr. Selinger would talk and Randy McCourt, DKS, would speak about transportation issues, and he would summarize in that half hour time frame.

**Mr. Selinger** said the applicant, staff, community, and other public partners had been working for a long time together on the whole McLoughlin Boulevard corridor to plan and implement a whole series of transit improvements that everyone wanted very much to serve the community. TriMet requested that the Milwaukie City Council sustain the unanimous decision of the Milwaukie Planning Commission to approve this CSO application for a park-and-ride lot to be restored at 9600 SE Main Street in accordance with the Milwaukie Municipal Code CSO provisions. At this point he felt that the Council all felt like transit experts, but he provided clarification as some of the terms could quickly become confused.

A park-and-ride lot was a public transit facility that benefited transit users who may not live on a bus route. It allowed those persons to make a short drive to access transit which they would then use for the majority of the trip. It should not be confused with a transit center, which was also a public transit facility but was one where buses came together to facilitate rider connections among bus routes to provide schedule recovery for routes terminating at the transit center and to provide a rest area for the operators.

The objectives of the project before the Council were five. These were to reduce congestion on principal travel corridors such as McLoughlin Boulevard by providing accessible and convenient travel options for commuters; to free up general purpose on street parking spaces in neighborhoods and business districts which might otherwise be pre-empted by those commuters; and to provide a convenient and safe environment for transit users to be compatible with adjacent neighborhoods and businesses and to make efficient use of capital and operating public transit resources.

**Mr. Selinger** provided some project background most of which the Council probably already knew. The McLoughlin Boulevard operated at .81 volume to capacity ratio. Its importance warranted a full range of traffic management and traffic demand strategies. Since before 1983 when the first formal agreement was signed, the theater site was a popular and consistently full shared-use park-and-ride lot providing for over 300 corridor commuters. The agreement, just to clarify some earlier comments, varied over time because the movie theater changed hands a number of times between 317 allowed spaces and 285 allowed spaces. Up until the theater was sold, basically the entire lot was used for a period of about one year. That was 381 spaces. Enforcement of the allotment of spaces was always very difficult, so even it was a 300-space lot, it was consistently used well beyond that allotment. TriMet's shared use of the site continued through April 2000 when the site was sold. At that point it became a private, fee-based park-and-ride lot – not a TriMet lot. The use of the lot declined dramatically as a result. The site worked well for park-and-ride purposes given its location at the confluence of

McLoughlin Boulevard and Hwy 224 and its ability to draw would-be, on-street parkers off central Milwaukie streets.

A 1998 survey of park-and-ride users, which he had illustrated, showed that over half of the users would access the site from the south. These users would use Harrison Street for southbound movements predominantly or the slip lane between and McLoughlin Boulevard and Main Street for northbound trips to get to and from the park-and-ride lot by way of McLoughlin Boulevard. Therefore, it would present minimal impact for those users to the operation of the Main/Milport intersection. Also as background, TriMet used re-programmed federal grants to acquire title to the site in October 2004. Those funds were originally intended for an off-street transit facility on the former Safeway market site, but they have since been obligated and cannot again be re-programmed without literally an act of Congress. They must be expended by September 2007. The clock was ticking on those as they have been moved around. TriMet was locked in now, and the funds needed to be used up.

The project would renovate the former Southgate Theater site as a TriMet-owned park-and-ride lot providing 329 spaces on 4.46 acres versus the 381 existing spaces. It preserved a truck access easement with the STX business to the south. That effectively displaced 43 would be parking spaces for the park-and-ride. That accommodation was made. It replaced the former movie theater building with parking spaces and landscaping. It landscaped the full frontage of the site and included a public art element. It closed the north entrance limiting access only to the south entrance furthest from the Milport/Main intersection and the associated truck movements. It also improved the existing bus stops on both sides of the street in front of the park-and-ride lot. That would continue to be served by the five bus routes serving it today. The design also addressed public safety. It would be lighted to TriMet standards. Landscaping would preserve generous sight lines to the lot from the street as well as for vehicles existing. Demolition of the building would remove an attractive nuisance and improve sight lines to the rear of the adjacent Rudie Wilhelm warehouse operations. Consistent with TriMet design standards and coordinated with the Milwaukie police department CCTV would be installed, but budget pressures at this point have TriMet requesting that that be deferred for three years. The budget program for this project was very tight.

The project would renovate a former shared-use park-and-ride lot as a dedicated facility for that same purpose. It would not function as a transit center, which at this point in time would remain outside City Hall until TriMet could find a home for that operation. The project provided relief for displaced parkers from the former theater park-and-ride lot and the former Safeway parking lot now displaced by the North Main project. It would also remove most commuter parking on downtown streets. TriMet property may be integrated into a future light rail line to Milwaukie to be revisited in the South Corridor Study Draft Environmental Process that would resume in the next month and which would reassess both the locally preferred alternative and the derailed Working Group recommendation. The near term need for the park-and-ride lot to support existing bus service stood on its own merits with or without inclusion of a potential future light rail project. With or without a future light rail project, the park-and-ride site could be used to address a difficult intersection configuration at Main/Milport. That purpose would be

more readily fulfilled in the future with the site in public ownership as it was today. The public benefits of the project were numerous and far outweighed adverse impacts to the public. The proposed project preserved options for addressing future public transit, commercial, and general-purpose transportation needs in north Milwaukie. The need for the facility was immediate, and TriMet acknowledged the findings and conditions of approval presented in the staff report. He requested the Council's sustained approval of the application.

**Mayor Bernard** did not see anything in the designs that addressed across the street.

**Mr. Selinger** replied improvements were made as part of the day-to-day on street maintenance of the bus stops. The bus stop today was paved on that side of the street, and pavement was recently installed. There was an ADA ramp and marked crosswalk. No significant improvements were needed on that side but it would be reviewed. TriMet did not believe a shelter was needed because most people were getting off the bus at that location rather than getting on.

- **Randy McCourt, DKS Associates, 1400 SW 5<sup>th</sup> Avenue, Suite 900, Portland.**

**Mr. McCourt** reviewed the information that went to the Planning Commission that provided a complete and extensive representation of the transportation analysis for this park-and-ride lot. The application was prepared according to professional standards and according to the City of Milwaukie's code and met those requirements. This analysis was done numerous times over the past five years – in 2001, 2003, and 2005. The separate analysis due to the scheduling of the project was moved forward as new information was acquired allowing them to do sensitivity tests at each point to determine the applicability of this project to the City's code. In each case the analysis looked at a variety of impacts from the site in terms of greater or lesser amount of park-and-ride spaces compared to the application. The proposal was one that had over 300 stalls – 329 – which generated about 250 a.m. peak trips and about 200 p.m. peak trips. That compared to the theater site that was in place before the site closed in the early 2001 timeframe was about 178 to 210 p.m. peak hour trips. He looked at all the modes of transportation, pedestrian transit, freight, bicycle, and auto in this assessment. The key intersections looked at were specified by the City and were updated to 2005 conditions just recently in the winter time 2005 providing new and updated a.m. and p.m. data. Those analyses found the same findings that were found in the 2001 and 2003 analyses that were conducted. Each time it met the LOS requirements set forth in the City of Milwaukie's code and ODOT's requirements for this area. The City reviewed the information and found it to be complete. Prior to these analyses in 1990 an analysis was conducted when the site was open as a theater and a park-and-ride. At that time it also found that the conditions in those settings were acceptable in terms of LOS. When one talked about LOS, that included isolated intersections. While he felt it was more science than represented tonight, he thought it was very important to understand the detailed analysis that was done was beyond intersection level analysis. Simulation was done. Synchros evaluated to look at the signal timing and the impacts of the signalized intersection at Milport and McLoughlin Boulevard and its associated impacts at the stop sign intersection at Main and Milport. In each of the analyses the looked at queue operations – the backups caused associated with the signal and the situation associated with the signal timing that was in pace by ODOT. In no case did they find

unusual situations of levels service, queuing or operations that would indicate in the criteria set by the code that this project would not meet the requirements. A single access was identified to the site to the south of Milport and Main. It met and conformed to the City's access spacing criteria and met it entirely. In addition a substantial amount of analysis was conducted for trucks in that area. Detailed data were collected over the 2001 to 2005 time frame. In that timeframe they were able to evaluate seasonal variations including each season of the year – spring, winter, summer, fall. In each of these cases they were looking at different truck activities and the variety of truck activities. For example when the transit center work was being done for TriMet just a few years ago they looked at the patterns of trucks and analyzed in detail on Milport and Main and specifically the patterns of travel to Ochoco and Milport. The principal route used by trucks was to Ochoco. That was the greatest number and was documented in the record before the City Council. In addition the amount of trucks that went in and out of that area while they were significant in aggregate in total over the year or the week represented over a time period generally on average approximately one truck every two minutes. He looked at patterns of use over the time of the day and how that conflicted with the park-and-ride site. They used actual park-and-ride data to provide a pattern for park-and-ride sites. They used actual data on Milport and Main to determine when the patterns of trucks arrived and when they came in. They found the park-and-ride peak in the evening was offset from the evening of truck activity. In the morning while there was alignment the actual LOS were such that they operated acceptably principally because the traffic coming in from south got off at the slip lane at McLoughlin Boulevard, proceeded up Main, and then turned into the site without ever reaching Milport and Main and without conflicting with activities at that intersection. Those patterns were looked at in detail and looked at in detail by the Planning Commission and reviewed in detail in its review of the process. Beyond the freight and the motor vehicle side they also looked at pedestrian and bike activity needs and requirements. Mr. Selinger mentioned earlier that they looked at the pedestrian crossings and needs for the site to ensure the pedestrians had an ample path and ADA accessibility to get from their parking stalls to the transit access. The bike lanes in going through the Planning Commission review were developed and re-stripped onto the street to accommodate on the frontage of the site adequate bicycle facilities. He thought what was really important after hearing testimony tonight was that it was very important to understand the codes of the City of Milwaukie did not hold that an individual project must clarify and correct every inconsistency that existed on the surface street system and met every RTP requirement for the next 20 years as it came before them. No land use application was held to that standard. This application met all the transportation requirements reviewed by the City and ODOT and found to be acceptable.

**Councilor Stone** had a question about the funding. Mr. Selinger mentioned that the dollars needed to be used by September 2007. She asked the amount.

**Mr. Selinger** replied the original grants cobbled together were \$3.1 million. So far \$2 million was spent on the acquisition and a couple \$100,000 on the design and the current process. The project would be built largely with TriMet general funds dollars because it was way over program at this point. For TriMet at this point without the CCTV was \$750,000. The camera surveillance would add an additional \$120,000.

**Mr. Abel** referred back to the staff presentation based on the eight appeal points made by Mr. Whitlow on behalf of his clients. He walked through those because they had been what the applicant looked at in terms of preparing for this particular hearing. Those were the points of disagreement with the Planning Commission's unanimous decision. The points of disagreement raised by the industrial neighbors. He took them a little out of order but identified each of the allegations.

First this was a public transit facility. Staff showed that. The code allowed for public transit facilities as the kinds of uses allowed in a CSO. They were appropriate for that CSO and appropriate where the CSO criteria were satisfied. The interpretation as to whether this was a public transit facility was in the Council's power and could say this particular park-and-ride was a public transit facility. In fact, if one turned that question around it would be hard to say this was not a public transit facility. Each one of the words were satisfied by this particular park-and-ride. That was the fourth allegation.

The third allegation that was raised by the appellant group was that this was a map amendment or zone change or something higher than just a CSO approval as an overlay. The staff discussed by analogy how this particular approval was analogous to CSO in any of the zones in the City. He thought the important point was yes this was an overlay, and the base zone remained industrial. It did not change because of this particular request. It was an overlay just like a CSO might be an approval on top of a residential zone or on top of another industrial zone. It was not a zone change or a map amendment of any type. As such none of the information that was presented about whether the Council had to comply with the TPR, whether this fairly amorphous state process of industrial lands applied none of the statewide planning goals applied. The code governed this particular request as a CSO request. It was the City code. The five or six criteria under the CSO were applicable to this particular request. That was what the Council looked at for the purposes of making a decision.

Part of the clouding about reliance on nonconforming use of the site – the Council was absolutely not relying upon a nonconforming use status. In fact the application was for something other than a nonconforming use. It was for a CSO. As a CSO allowed in this particular zone if one read the criteria had nothing to do with nonconforming use. The sole limited question about nonconforming design or development on the site had to do with the City's provisions in section 500 that talked about what a parking lot looked like. If one met the criteria of taking a parking lot that was nonconforming in its design or development and improving upon that condition and making it more conforming that was what the code required with respect to the parking lot.

The fifth allegation was addressed extensively by Mr. McCourt. The particular question of what studies were done to prove the adequacy of the transportation system pursuant to the code provisions in Section 1400. The applicant felt it had done an exhaustive amount of work and submitted actual reports about those conditions at the site and the adequacy of the transportation system. Staff analyzed those. The outside consultant from DEA analyzed those along with the inside engineers. All concurred with the conclusions of Mr. McCourt. As the adjustment for the sidewalk and the frontage, the City engineer had the authority and the Council had the review authority to grant an adjustment in those circumstances identified by the staff when there were conditions on the site that required adjustment and the same mode of conveyance still there and not a

decrease in the mode of conveyance for that sidewalk. That was in Sections 4 and 5 of the code regarding conditions of adjustments

As to allegation seven – the question of balancing of benefits was something the City Council would have to consider in looking at the benefits of this particular proposal as opposed to any of the adverse impacts. It appeared to Mr. Abel the major concern about impact had circled around transportation question. There seemed to be a disagreement about that transportation result. Mr. McCourt's evidence clearly showed there was an adequate transportation system that continued to support this use and other uses in the vicinity. He thought with that evidence that was the best evidence that showed there was no adverse impact driven by the transportation system.

There was in the record also remarkably a study prepared by Jerry Johnson on behalf of the appellants that talked about the value of industrial to the City through employment and through the tax base and through other factors. TriMet had no disagreement about the value of the industrial area to the City and to the state. What that letter did not do was to conclude there was any damage to the industrial area. No adverse impacts to the industrial area. He found that remarkable in its absence.

The final allegation was the allegation using words like "de facto" something else and this was "tantamount" to something else. The fact was that this was an application for a CSO for a park-and-ride on one site governed by the City code. The code had the criteria for this particular application. What was before the Council was that application. No more no less. Anything else was mere speculation.

The Planning Commission unanimously approved this particular application with a series of conditions that the applicant agreed to. The uses allowed in the industrial zone – the applicant met the criteria and asked that the City Council affirm the Planning Commission decision.

**Councilor Collette** had questions related to issues brought up at this meeting. She thought somewhere in all the material the issue of the lighting timing was addressed. The timing coming off Milport onto McLoughlin Boulevard. She asked if TriMet would approach ODOT about correcting that to solve some of the access issues.

**Mr. Selinger** thought that was outside TriMet's jurisdiction. That was really a traffic management issue the City could take that up with ODOT. ODOT did have rights, he believed, over the operation of that intersection.

**Councilor Collette** said there was also an issue of people coming off 224 or having to make that down 17<sup>th</sup> and around. Would TriMet provide signage to make it clear that people using the park-and-ride should stay on that little line that went to 99

**Mr. Selinger** said that was a good point, and TriMet would work with ODOT to make that happen. Again ODOT would control the signage, but TriMet would try to do that.

**Councilor Collette** said Ms. Zimmerman made a good point. If there were some paid reserved parking spaces there might be more people willing to pay for that. Had TriMet considered that?

**Mr. Selinger** replied that was a very strategic and policy-directed decision on TriMet's part, and they had not gotten to that stage. It was a bigger question that applied to a lot

of other locations. TriMet did not have paid parking on the radar at this time anywhere. At Gateway and Sunset, two popular park-and-rides, there was short-term paid parking to allow spaces to be freed up for mid-day users. There were a select number of spaces. That was a dozen spaces at each of those lots.

**Councilor Barnes** said part of the information given to Council -- Ray Bryan who was with the Historic Neighborhood Association wrote a letter to Mr. Gessner at the end of October. She never got an answer as to whether his question was answered. She thought it was a legitimate concern and wanted to bring it forward. He said he was opposed to the design of the Southgate park-and-ride. She asked if TriMet had worked with him as representative of that Neighborhood with those concerns when those were brought forward.

**Mr. Selinger** replied that meeting had not taken place. He just recently learned that was addressed to the City but the letter had not made its way to TriMet, but they would be happy to do that.

**Councilor Barnes** said the second question, which was brought up by Ms. Zimmerman, and she wanted to echo Councilor Collette's concerns. There were opportunities outside of surveillance cameras to make sure the park-and-ride was as safe as it could be and could cost less money. In the interim before there was funding available for CCTV could TriMet find other alternatives that may still take care of that problem without costing \$120,00?

**Mr. Selinger** said regardless of CCTV there were random patrols of security or even police patrols of all the park-and-ride lots. That was pretty much what they did. Otherwise they kept them lighted and designed so there was passive security and visibility into the lot.

**Councilor Barnes** asked if there could be a focus on security at the beginning so there was a clear sign that this was an important issue in the region.

**Mr. Selinger** suggested a partnership with the Milwaukie police department as they did share in the agreement to provide transit police security.

**Councilor Barnes** understood TriMet had a lot of clout in working with the City to go to ODOT and say there were compromises that needed to be worked on to make this good for all parties involved. Would TriMet be willing to go to the table to be part of that group to see if those kinds of things could be discussed and worked through?

**Mr. Selinger** replied absolutely. He complimented the City staff on starting that discussion with ODOT, and TriMet had been a part of some of those discussions. Certainly the process going forward related to light rail or any other transit center would be folding in those long-term solutions for general-purpose traffic.

**Councilor Loomis** had no questions.

**Councilor Stone** asked for clarification of the size of the area. Was it correct that it was 4.4 acres?

**Mr. Selinger** confirmed that it was 4.46 acres.

**Councilor Stone** understood that included the building coming down, and the park-and-ride facility covered how much of that acreage?

**CITY COUNCIL REGULAR SESSION – APRIL 18, 2006**

**DRAFT MINUTES**

**Page 37 of 40**

**Mr. Selinger** replied 15% was devoted to landscaping to be compliant with the code. That pretty much used up the site. There was a little bit for the sidewalk but not much more than that. There were no structures on the site.

#### Neutral Testimony

- **Ed Zumwalt 10888 SE 29<sup>th</sup> Avenue.**

**Mr. Zumwalt** did not know what he was doing there with all the engineers, lawyers, transportation experts, but maybe he could give a little bit of a gut feeling from the neighborhood. Three years ago after a two-year comprehensive study including TriMet, Metro, Clackamas County, City of Milwaukie, merchants, and neighborhood associations, the Southgate site was selected as Milwaukie's Locally Preferred Alternative (LPA) as a transit center. Shortly thereafter, about the time the South Corridor Committee elected to send light rail down I-205 instead of into Milwaukie the North Industrial businesses brought forward objections that resulted in a Working Group being formed with instructions from Council to mitigate the Southgate problems making the site acceptable to all. Instead the group slid the transit center to Kellogg Lake and we all know what happened to that. Now we are faced with the prospect of TriMet installing a park-and-ride at the site without having solved any of the problems brought up by the North Industrial businesses in the first place. Our neighborhood was strongly against this. It was time to return to the original decision that if Southgate was to be a park-and-ride or transit center or a combination the site must be re-engineered to make it a viable business and industrial district. To allow TriMet to go in there now with a park-and-ride would completely destroy the area for the businesses and our City. TriMet, ODOT, Metro, the businesses, the City, and its neighborhoods must step up now and solve this problem once and for all. All during the drawn out Kellogg Lake hearings Southgate if mentioned at all was mentioned peripherally as the LPA – one that soon would be replaced. Emphasis was placed on the Goodwill site as the 800-car park-and-ride. Later when the owner of that site said he was going to put in a Wal-Mart a large hue and cry arose. The sky was falling. That would block light rail. All along TriMet was strategizing to use the Southgate site as a park-and-ride no matter what happened regarding Kellogg, Goodwill, or ODOT. The Council was in possession of the e-mail from TriMet dated August 6, 2003 – about one or two days after the Working Group started. One of the bullets – (word unintelligible) deliberations with the community should never sway from having at least some transit park-and-ride presence at Southgate, and the discussion should indeed start with the LPA. Should the transit center and primary park-and-ride move elsewhere we would still present with certainty that there would be a supplemental lot at Southgate even if it were to remain forever a 400± surface space. Another bullet – if the Southgate park-and-ride project faltered the funds went away. That is not acceptable. It is needed now and under any scenarios would be needed in the future if it only to evolve into a TOD. The need has been identified as a park-and-ride now and for the foreseeable future. Noting their strategy Mr. Zumwalt wondered if Milwaukie thought it was being well served or if we were just a pawn. We are in a very unique position. We have one chance to rebuild our City the right way and only one, so we had better do it right. Council would be well-advised to put a halt to TriMet's plans for a park-and-ride at Southgate until all engineering, traffic, and parking problems have been solved for the future benefit of the business area and

the City as a whole. Anything else would be a terrible blow for all concerned. Please step back and reconsider all of the options.

#### Staff Recommendation

**Ms. Rouyer** offered a recommendation of approval of the CSO and the TPR application. She directed attention to the criteria. The criteria the Council needed to pay attention to this evening was the CSO in particular the public benefit test. The off-street parking and loading section as well and also the TPR and adjustment for the sidewalk. Those were the relevant and key issues. In response to some issues raised today, she asked Mr. Firestone to address nonconforming parking and loading. Mr. Whitlow mentioned the introduction of the term pre-existing use.

**Mr. Firestone** said basically he did not think the term pre-existing use was relevant to the standard. It might have been stated in part of the presentation. It was just stated as a comment. The standard was in Section 19.502.b that said the standards and procedures of the section should also apply to uses with nonconforming parking and loading facilities. That term “nonconforming parking and loading facilities” did not implicate nonconforming use or nonconforming structures that were governed by Section 19.800. And if one looked at the face of the language it was his opinion at least that it just referred to an application for use on a site that physically on the ground had nonconforming parking.

**Mr. Swanson** understood at least one person who intended to offer testimony in opposition was told that that would probably be deferred to May 16, 2006. If the Council took rebuttal testimony now and on May 16 someone showed up who said he wanted to testify in opposition, then the cart was before the horse. He suggested at this time deferring rebuttal testimony and start with testimony in opposition May 16. So rebuttal testimony in order to consider all relevant testimony should also take that into consideration.

**It was moved by Mayor Bernard and seconded by Councilor Barnes to continue the hearing to May 16, 2006, at 7:00 p.m. that would consider testimony of those opposed to the appeal, staff recommendation, appellant rebuttal, applicant rebuttal, questions from Council to staff, and closure of public hearing followed by Council discussion and decision. Motion passed unanimously. [5:0]**

**Mayor Bernard** understood the 120-days was on May 17.

**Mr. Swanson** said a decision would need to be made this evening.

**Mr. Firestone** said there was also the point raised by Mr. Whitlow that he had requested time to submit additional materials. The Council should clarify whether additional materials would be accepted between now and May 16 or whether it was done except for oral testimony.

**Mayor Bernard** heard about the material that would be submitted. He felt an effort had been made to confuse the Council as much as possible on this issue. He would be in favor not taking additional material.

**Councilor Stone** asked Mr. Firestone to be more specific on the material since the Council had gotten so much already.

**Mr. Firestone** said Mr. Whitlow stated that it would be just a clarification regarding the ordinances that were submitted as to when they were applicable and possibly what effect they had. One option the Council had was to allow the written submissions to be presented and require that they be submitted within a relatively short period of time and just accept them and without passing on their relevancy [inaudible].

**Mr. Whitlow** indicated at the beginning if the case was to be continued which it now was the appellant would ask for an open record period short enough to fit into that schedule. He would ask for seven days. He had submitted the stack of paper, but he had not had time to review it with the City Attorney to conclude which ordinance was which in terms of its effective date. That was part of what he wanted to do. He received the material from the City at 10:00 a.m. the previous morning based on a records request. He had not had time to go through it or confer with counsel about when the effective dates were.

**Councilor Loomis** asked Mr. Whitlow if he was sure he could comb through that and narrow it down or would he be sending that to Council.

**Mr. Whitlow** already submitted that. He was asking for the opportunity to identify what it was and which version of the code was in effect.

**Mayor Bernard** understood this was new material just received at this hearing.

**Mr. Firestone** replied the material that was submitted, and it was a question of whether the Council wanted to allow Mr. Whitlow to clarify which document it was believed to have been in effect at a certain date and presumably to make some argument related to the date.

**Mayor Bernard** understood the Council could take the material and make its own determination.

**Mr. Firestone** said that was also a possibility.

**Mr. Abel** said the applicant did not request a continuance nor did it need a record extension. The materials that were being talked about were already in the record. He was not asking that someone go pawing through the record and give the Council the ten big documents that it might want to look at. He understood that was what the appellant was asking to do. The record was complete, and he recommended that the record be closed. The applicant would rebut on May 16, and the process would be concluded.

The Council concluded the record was closed.

**OTHER BUSINESS -- None**

**ADJOURNMENT**

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

**Mayor Bernard** adjourned the regular session at 11:04 p.m.

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Pat DuVal, Recorder

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,  
APPOINTING SCOTT CHURCHILL TO THE MILWAUKIE PLANNING COMMISSION.**

**WHEREAS**, a vacancy exists on the Milwaukie Planning Commission; and

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

**WHEREAS**, Scott Churchill possesses the necessary qualifications to serve on the Milwaukie Planning Commission.

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

SECTION 1: That Scott Churchill is appointed to the Milwaukie Planning Commission.

SECTION 2: That his term of appointment shall commence upon adoption of this resolution and shall expire on March 31, 2008.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on May 16, 2006.

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

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, & Corrigan, LLP

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

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

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

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

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

**WHEREAS**, Milwaukie Municipal Code Section 2.12.020 provides for appointment of members of the Milwaukie Park and Recreation Board “by the council;” and

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

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

SECTION 1: That Bob Cooper is appointed to the Milwaukie Park and Recreation Board.

SECTION 2: That his term of appointment shall commence upon adoption of this resolution and shall expire on March 31, 2007.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on May 16, 2006.

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

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, Corrigan & Bachrach, LLP

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

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

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

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

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

**WHEREAS**, Milwaukie Municipal Code Section 2.12.020 provides for appointment of members of the Milwaukie Park and Recreation Board “by the council;” and

**WHEREAS**, Mart Hughes has served on said Board, possesses the necessary qualifications to continue for an additional term, and has indicated his desire to serve for an additional term.

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

SECTION 1: That Mart Hughes is appointed to the Milwaukie Park and Recreation Board.

SECTION 2: That his term of appointment shall commence upon adoption of this resolution and shall expire on March 31, 2010.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on May 16, 2006.

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

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, Corrigan & Bachrach, LLP

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

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

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING HAROLD "SONNY" NEWSON TO THE MILWAUKIE PARK AND RECREATION BOARD.**

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

**WHEREAS**, Milwaukie Municipal Code Section 2.12.020 provides for appointment of members of the Milwaukie Park and Recreation Board "by the council;" and

**WHEREAS**, Sonny Newson has served on said Board, possesses the necessary qualifications to continue for an additional term, and has indicated his desire to serve for an additional term.

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

SECTION 1: That Sonny Newson is appointed to the Milwaukie Park and Recreation Board.

SECTION 2: That his term of appointment shall commence upon adoption of this resolution and shall expire on March 31, 2010.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on May 16, 2006.

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

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, Corrigan & Bachrach, LLP

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

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



To: Mayor and City Council

From: Gary Firestone, City Attorney

Subject: Tri-Met Park and Ride (A-06-01, CSO-05-04, TPR-05-04)

Date: For May 16, 2006 Council Meeting

#### Action Requested

Adopt motion denying appeal A-06-01, approving applications CSO-05-04 and TPR-05-04 subject to the conditions of approval in the staff report, adopting the findings in the staff report, and authorizing the Mayor to sign an order reflecting the Council decision.

#### Background

The Council opened the hearing on this matter on April 18, 2006, and heard testimony from the appellant, the applicant, and several citizens. The Council continued the hearing to the date certain of May 16, 2006. The remaining portions of the hearing are:

- Testimony in opposition to the appeal (in support of the applications)
- Staff recommendation
- Appellant rebuttal
- Applicant rebuttal
- Council deliberation and decision

#### Concurrence

The Planning Director, Director of Engineering, Community Development Director and City Manager concur.

CITY COUNCIL OF THE CITY OF MILWAUKIE

FINAL ORDER DENYING APPEAL A-06-01 AND APPROVING APPLICATIONS  
CSO-05-04 AND TPR-05-04

Based on the evidence in the record, including evidence provided at City Council hearings, after duly notice public hearings, the Milwaukie City Council orders as follows:

1. Appeal A-06-01 is denied.
2. Applications CSO-05-04 and TPR-05-04 are approved, subject to the conditions of approval listed at pages 52 and 53 of Attachment 1 to the April 7, 2006, staff report. (Copy attached as Exhibit 1).
3. The Analysis of Appeal section at pages 3 to 9 of the April 7, 2006, staff report is adopted as findings of the City Council. The Findings in Support of Approval included in Attachment 1 to the staff report (Exhibit 1) are adopted as findings of the City Council.

DATE OF COUNCIL ACTION: May 16, 2006

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James Bernard, Mayor

May 17, 2006

File(s): A-06-01, CSO-05-04 and TPR-05-04

## **NOTICE OF DECISION**

This is official notice of action taken by the Milwaukie City Council on May 16, 2006.

**Applicant:** Tri-Met

**Appellant:** Mark Whitlow of Perkins Coie for various property and business owners in the North Industrial Area

**Location:** 9600 SE Main Street

**Tax Lot:** 1S1E25CB01000

**Application Types:** Appeal, Community Service Use, Transportation Plan Review

**Decision:** Appeal denied, Applications approved

**Review Criteria:** Milwaukie Zoning Ordinance:

- 19.314 Manufacturing Zone
- 19.321 Community Service Overlay
- 19.500 Off-street Parking and Loading
- 19.1011.3 Minor Quasi-Judicial Review
- 19.1400 Transportation Planning, Design Standards, and Procedures

**Neighborhoods:** McLoughlin Industrial

The City Council adopted a final order that is the final decision in this matter. The final order includes findings and conditions of approval. The final order is available for review and copying at City Hall, 10722 SE Main Street - Milwaukie, OR 97222.

Appeals to the State are handled by the Land Use Board of Appeals (LUBA). LUBA's address, phone number and e-mail address are: 550 Capitol Street NE, Suite 235, Salem, OR 97301-2552; (503) 373-1265; <http://www.oregon.gov/LUBA/index.shtml>. LUBA can provide information regarding appeal procedures.

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Katie Mangle  
Planning Director

cc: Appellant  
Applicant  
Kenny Asher, Community Development/Public Works Director  
Paul Shirey, Engineering Director  
Zach Weigel, Civil Engineer  
Tom Larsen, Building Official  
Bonnie Lanz, Permit Specialist  
Ron Schumacher, Deputy Fire Marshal  
Interested Persons  
File(s): AP-06-01, CSO-05-04, TPR-05-04



To: Mayor and City Council

Through: Mike Swanson, City Manager  
JoAnn Herrigel, Community Services Director

From: Les Hall, Code Enforcement Coordinator

Subject: Amend Title 8 of Municipal Code to address inoperable vehicles on private property

Date: March 22, 2006

**Action Requested**

Approve an ordinance amending Title 8 of the City of Milwaukie Municipal Code to include the storage of inoperable vehicles on private property and to include a definition of inoperable vehicles in Title 8 definitions.

**Background**

Code Enforcement staff receives numerous complaints about vehicles that are in the driveway areas of houses, which are unlicensed, have flat tires, or otherwise in a non-drivable condition being stored for extended periods of time. As many of these vehicles are not dismantled, they do not violate current code, but nonetheless detract from the livability and appearance of the neighborhood. Currently, City Code only prohibits storage of vehicles that are dismantled or unlicensed in the front or side yard setbacks. The Zoning Ordinance states that "all vehicles, licensed or unlicensed, shall be stored in driveway areas only."

The proposed code changes would:

- 1) Amend Title 8.04.070 (B) to include "inoperable vehicles" in the list of materials that are prohibited to be stored on private property.
- 2) Amend Title 8.04.010 – Definitions - to define "Inoperable vehicles" as: "any vehicle which has no current valid state vehicle license, or which cannot be moved without being repaired or dismantled or which is no longer usable for the purposes for which it was manufactured. This definition shall not include any

vehicle kept in an enclosed building or any vehicle kept on the premises of a business lawfully engaged in wrecking, junking or repair of vehicles.”

**Concurrence**

Code Enforcement staff feels that these code changes would be beneficial to the overall livability of neighborhoods.

Planning feels that this amendment would be beneficial to the citizens of Milwaukie.

**Fiscal Impact**

Compliance with this code language would have no fiscal impact on the City. , Non-compliance could cause abatements, which would be partially offset by penalties imposed by the Municipal Judge imposing penalties.

**Work Load Impacts**

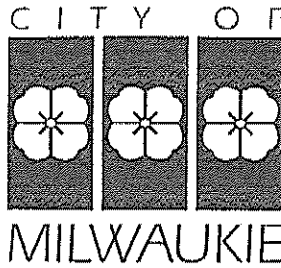
Slight increase for Code Enforcement staff due to enforcement actions.

**Alternatives**

Make no changes and allow inoperable vehicles to continue being stored on private property.

**Attachments**

Ordinance amending code language in Title 8 of Milwaukie Municipal Code.



May 1, 2006

Mayor James Bernard and Milwaukie City Council  
10722 SE Main Street  
Milwaukie, Oregon 97222

Dear Mayor Bernard and Council Members,

At our regular meeting held April 27, 2006, Code Enforcement Officer Les Hall shared information regarding a proposal to add to our Milwaukie City Ordinances. This proposal is intended to provide Code Enforcement the option of requiring homeowners to either remove or garage vehicles that cannot legally be driven on the street but remain parked on private property.

Each neighborhood has at least one home/property with one or more vehicles that are nonfunctional, usually unsightly, and have been sitting for quite some time. Owners have the opportunity to donate these vehicles to charity or may use other means to remove them from the property without undue hardship, and still they remain, sometimes for many years.

It is not our intent that this enforcement be used nor interpreted to place hardship on those citizens who use the vehicle, are actually working on a "project" vehicle, or those citizens who may be visiting for an extended period but intend to remove the vehicle in a reasonable time frame. These vehicles serve some purpose and these neighbors are not the source of this ongoing problem.

Vehicles with flattened tires, broken glass, moss, rust, and weeds, however, are indicative of neighborhood blight and contribute greatly to the "broken window" theory of overall neighborhood degradation. Such vehicles may also present safety hazards since many of these vehicles might no longer be secure as they are sitting. This lack of care in our neighborhoods is just another subtle invitation to criminal elements, which we do not need.

It is the unanimous desire of the attending Committee members that this Ordinance be passed by Council in order to give Code Enforcement assistance to deal with properties storing these sorts of vehicles and to help keep this situation from reoccurring at these same properties into the future.

Thank you,

  
Karen Martin, Chair

Public Safety Advisory Committee

PUBLIC SAFETY BUILDING  
3200 SE HARRISON  
MILWAUKIE, OREGON 97222  
PHONE: (503) 786-7400 • FAX: (503) 786-7426

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 8 OF THE MUNICIPAL CODE TO INCLUDE INOPERABLE VEHICLES AS A NUISANCE AND INCLUDE A DEFINITION OF INOPERABLE VEHICLES.**

**WHEREAS**, the City recognizes the need to maintain neighborhood livability; and

**WHEREAS**, the parking of inoperable vehicles on private property detract from the livability of neighborhoods; and

**WHEREAS**, inoperable vehicles create a nuisance and blemish the visual appeal of neighborhoods;

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

Section 1: Milwaukie Municipal Code Section 8.04.070(B) is amended to read as follows:

B. Debris on Private Property. Accumulations of debris, rubbish, manure, and junk, junk machinery or junk vehicles of any kind, inoperable vehicles, and other refuse located on private property that are not removed within a reasonable time and that affect the health, safety or welfare of the city;

Section 2: Milwaukie Municipal Code Section 8.04.010 is amended to read as follows:

**8.04.010 Definitions.**

Except where the context indicates otherwise, the singular number includes the plural and the masculine gender includes the feminine, and the following definitions shall apply:

- A. "City" means the City of Milwaukie.
- B. "City manager" means the city manager or person authorized by the city manager.
- C. "Council" means the governing body of the city.
- D. "Inoperable vehicle" means any vehicle which has no current valid state vehicle license, or which cannot be moved without being repaired or dismantled, or which is no longer usable for the purposes for which it was manufactured, and which has been in that condition for at least 15 days. "Inoperable vehicle" does not include any vehicle kept on an enclosed building or any vehicle kept on the premises of a business lawfully engaged in wrecking, junking or repair of vehicles.

E. "Person" means a natural person, firm, partnership, association or corporation.

F. "Person in charge of property" means an agent, occupant, lessee, contract purchaser or person, other than the owner, having possession or control of the property.

G. "Public place" means a building, place or accommodation, whether publicly or privately owned, open and available to the general public.

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:

Ramis, Crew, & Corrigan, LLP

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

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

Present:

Karen Martin, Chair–Campbell Neighborhood Association

Jim Colt, Police Captain

Gene Covey–Lewellyn Neighborhood Association

Ray Bryan–Historic Milwaukie Neighborhood Association

Dolly Macken-Hambright–Linwood Neighborhood Association

Bonnie Mishler–Island Station Neighborhood Association

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The meeting was called to order at 6:00 p.m.

Karen asked if everyone had reviewed the minutes from March's meeting. Dolly made a motion to accept the minutes. Bonnie seconded the motion. Passed unanimously.

Karen–announced that she will be moving outside the City limits soon. She asked if anyone wanted to volunteer as chair. The group decided to ask Susanna Pai if she would be interested in the position.

Colt–wanted to pass on information from the Chief that there has been a reduction in overtime of approximately 85% in the last month. Also - the PSAC needs to present their work plan to the Council. The group agreed to June 20<sup>th</sup>.

Les Hall from Code Enforcement explained what the new ordinance covers regarding inoperable/junker/abandoned vehicles on private property, unless they are inside an enclosed structure. Enforcement would be done on a complaint basis. Karen asked if a tent was considered a structure. Les will check to see what the definition of "structure" is. The process starts with notifying the owner *and* occupant, giving them two weeks to deal with the situation. The next step is a warning. The third step is a citation. The next step is going before the Council and through the abatement process. Code Enforcement will try to work with people to resolve the problem. Dolly suggested sending a letter of support to the Council. Everyone agreed. Dolly will draft the letter.

Bonnie said that they are having a problem with the radar speed trailer–they can't find liability insurance for it. They were going to see if the Police Cadets could move the trailer around. Dolly said most neighborhood associations were supposed to have people assigned to put the trailer out daily and store it inside at night. Karen will check on the insurance situation.

Gene asked Captain Colt about the payday loan situation in Milwaukie. He said that they are waiting to see what the legislature decides.

The meeting was adjourned at 7:24 p.m.

Next meeting is scheduled for May 25th.