CITY OF MILWAUKIE

CITY COUNCIL MEETING
SEPTEMBER 20, 2005

CALL TO ORDER

Mayor Bernard called the 1966th 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
Susan Stone

Staff present:

Mike Swanson, City Manager
JoAnn Herrigel, Community Services Director
Gary Firestone, City Attorney

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

- **Councilor Collette** read a proclamation naming October 2005 as *Disability Employment Awareness Month* in the City of Milwaukie.
- **Mayor Bernard** read a proclamation naming September 2005 as *Start Making a Reader Today (SMART) Month* in the City of Milwaukie.
- **Mayor Bernard** read a press release regarding an attempted abduction on Lake Road earlier that day. The matter was currently under investigation by the police department.
- **Councilor Stone** recognized Jamison McCune as the Milwaukie High School Student for the month of September.
- **Mayor Bernard** encouraged students in the 7th through 10th grades to participate in a statewide poster and essay contest – *If I were Mayor, I would.*

CONSENT AGENDA

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

- **City Council Work Session and Regular Session Minutes of August 16, 2005.**

Motion passed unanimously among the members present. [3:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

None scheduled

OTHER BUSINESS

A. Oregon Parks and Recreation Department Grant for Lewelling Community Park -- Resolution

Ms. Herrigel recommended that the City Council approve a resolution authorizing the City Manager to sign a grant agreement with the Oregon Parks and Recreation Department (OPRC) and approving up to $192,500 in appropriations in Capital Outlay for the Community Services Department fiscal year 2005 – 2006 budget. The grant award was made in August 2005 for the Lewelling Community Park Development Project. She thanked Art Ball and the others in the Lewelling Neighborhood District Association (NDA) who put their hearts and souls into the project. The neighbors installed the split rail fence, and the half street improvements were built using Community Development Block Grant (CDBG) funds. She anticipated the project to be completed in 2006. Operations Director Kelly Somers would be the project manager.

Mr. Ball said it was like a dream come true for him and the others who had worked so hard on this park for the past six years. Many parties helped out, and it was truly a community effort.

Ms. Herrigel noted that former Community Services employee Jason Wachs had written the grant application.

Mayor Bernard expressed his appreciation to Lewelling Neighborhood representatives Art Ball, Jeff Klein, and the late Jean Michel and commented on the partnership between the City and its residents.

It was moved by Councilor Stone and seconded by Councilor Collette to approve the resolution authorizing the City Manager to sign a grant agreement with the Oregon Parks and Recreation Department (OPRC) and approving up to $192,500 in appropriations in Capital Outlay for the Community Services Department fiscal year 2005 – 2006.

Motion passed unanimously among the members present. [3:0]

RESOLUTION NO. 45- 2005:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A GRANT AGREEMENT WITH THE OREGON PARKS AND RECREATION DEPARTMENT (OPRC) AND APPROVING UP TO $192,500 IN APPROPRIATIONS IN CAPITAL OUTLAY FOR THE COMMUNITY SERVICES DEPARTMENT FISCAL YEAR 2005 – 2006.

AUDIENCE PARTICIPATION

Rosemary Crites discussed Ed Parecki's renovation of the McLoughlin Building, which was tentatively scheduled to open on October 5.

B. Intergovernmental Agreement/Main Street Village Phase II -- Resolution

Mr. Swanson reported that Metro had been negotiating for purchase of the Texaco station at McLoughlin Boulevard and Harrison Street. The Olson's lease was up, so they had to decide whether to agree to another ten year lease or negotiate sale of the property. The Olson's were interested in negotiating a sale that would result in a development the City would be proud of. Mr. Swanson was contacted because Metro was interested in the Olson property but only if it could enter into a joint agreement with the City to market that entire block as one parcel to make it more attractive to a developer. The City currently owned the parking lot on the east side of that block.

Mr. Swanson first introduced this matter at the August 16 meeting, but he had not been pleased with the form of the agreement at the time. He noted to the Council at the time that there were some changes the City representatives would like to make in the proposed agreement with Metro. He was not sure if the timing would be such that the changes could be brought back to the Council before the closing date. Closing had gone more slowly than anticipated, and Mr. Firestone negotiated on Mr. Swanson's behalf.

Mr. Swanson believed the agreement before the Council at this meeting was clean. Some of the more substantive changes had to do with indemnifications that were initially somewhat one-sided. Those issues had been ironed out, so the agreement was now much more equal to both parties. He believed the delegation was premised on the belief at the time that he would not have time to bring the agreement back to Council before closing. Last week it became apparent that he could bring a revised agreement to the Council prior to closing, so it was appropriate that the Council consider the agreement. The proposed resolution authorized the Mayor to execute the agreement between Metro and the City and cancelled the delegation of authority to the City Manager to execute the agreement as set forth in Resolution 39-2005.

Mr. Swanson believed the agreement provided for the next step in downtown redevelopment. It would likely resemble the concept used in North Main with retail on the ground floor and residential on the upper floors. There would be a request for proposal (RFP) so the development community would have an opportunity to submit designs and competitively bid. The price of the property would be determined jointly by the City Council and Metro. About six months ago in the North Main process it became apparent that there was a great deal of momentum. To sustain the momentum, the next project had to be in the pipeline when North Main Village opened. Staff recommended that the City Council approve the resolution authorizing the Mayor to execute the agreement and repealing Resolution 39-2005.

Councilor Collette asked for clarification of the right-of-way.

Mr. Swanson replied the rights-of-way were two small parcels on the corners of the Texaco property that fronted McLoughlin Boulevard that were purchased from Olson Bros. for the McLoughlin Boulevard Enhancement Project. Apparently there was right-of-way in excess of what was needed to curve the two corners. New urban design favored buildings that were set right up to the sidewalk. The only way that could be done was to release a portion of the excess right-of-way. Metro staff wanted to ensure the City's intention was to do that, and the City agreed to exert its best efforts depending on Oregon Department of Transportation (ODOT) actions.

Councilor Collette referred to the use of the word "property" and asked if it only referred to the Texaco property.

Mr. Firestone replied that "property" was defined as the Texaco property.

It was moved by Councilor Collette and seconded by Mayor Bernard to approve the resolution authorizing the Mayor to sign the intergovernmental agreement – Main Street Village Phase II.

Mayor Bernard requested that the name be changed.

Mr. Swanson explained this was the initial naming for Metro's and the City's purposes, and whoever purchased the property would likely rename it.

Mayor Bernard said the Farmers' Market would adapt during this process. His goal had always been to move it to the riverfront. Oregon State University (OSU) conducted a survey at last week's market, and 75% of the respondents said they would cross McLoughlin Boulevard to get to the Farmers' Market assuming safe pedestrian crossings. The City expressed its continued support for the Market.

Motion passed unanimously among the members present. [3:0]

RESOLUTION NO. 46-2005:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN THE INTERGOVERNMENTAL AGREEMENT – MAIN STREET VILLAGE II BETWEEN THE CITY AND THE METROPOLITAN SERVICE DISTRICT FOR THE JOINT MARKETING OF PROPERTY LOCATED AT 10700 SE MCLOUGHLIN BOULEVARD AND 10721 SE MAIN STREET AND CANCELLLING THE DELEGATION OF AUTHORITY TO THE CITY MANAGER TO EXECUTE THE AGREEMENT AS SET OUT IN RESOLUTION 39-2005.

Local Public Safety Coordinating Council/McBrod Property

Mr. Swanson discussed property located in the 9000 block of McBrod half of which was being used by Clackamas County Community Corrections. There was also an empty facility that had been used by the County at one time for an offender addiction program. It came to the City's attention that the County Local Public Safety Coordinating Council (LPSCC) was going to hear a report about re-opening that facility. He did not believe it was at that stage yet. County Corrections originally closed the facility because of budget constraints, and the director did not foresee a budget that would sustain the program. LPSCC would hear a brief report from the Recovery Addiction Program (RAP) about its operating the facility. Mr. Swanson would attend the upcoming meeting and thought it would likely be the opening public salvo to reopening the facility. He was not sure the community service overlay (CSO) granted to the County could be transferred, so staff would look at those issues. He wanted to inform the Council but did not believe people needed to attend the upcoming meeting in droves. He would provide an update in the *Friday Memo*.

Mayor Bernard discussed his business that was grandfathered-in. He understood that if his business closed for a year or two that he would not be able to reopen the same type of business because of the zoning.

Mr. Swanson replied County use was a CSO granted in the 1980's. Staff was checking the conditions of approval. If there was a decision to change the operating entity, then there might be enough difference to require a new application.

Councilor Stone said originally the neighborhood association's understanding that this building would be used to house sex offenders. The neighborhood was outraged and did not approve of that use. She asked Mr. Swanson if that was the type of use being planned.

Mr. Swanson understood at this time it was just RAP saying it wanted transitional housing, and there were no detailed plans at this time.

Councilor Stone asked if he knew the number of people who might be housed in that facility.

Mr. Swanson understood the other facility had 80 beds. Mr. Gessner was reviewing the CSO application from the 1980's. He recalled there were conditions related to the types of crimes.

Recruitment of Elected Officials

Mr. Swanson provided information on the Regional Solid Waste Advisory Committee on Solid Waste Rate Policies. He asked the Mayor and Council to e-mail him if they were interested in being involved.

Library Services

Mr. Swanson said as part of its annual audit function the County looked at individual departments. This year it hired a library consultant who would look at service provision options. There would be four sessions on October 3 and 4 to talk with boards of trustees and elected officials. He asked that the Mayor and Council let him know if they could attend any of the four meetings.

C. Council Reports

Mayor Bernard understood a City employee was being deployed to Iraq and asked that the City review its military service policy.

Mr. Swanson said an employee was called up in 2002 and certain provisions were made to make up the difference between his military pay and City pay. He noted the City got an award at the time for making this policy decision. The same provisions would be made for this particular person while he was on active duty. Because this employee might be in a war zone, there might not be a salary discrepancy. The City would cover the insurance issue.

Mayor Bernard wanted the family to know that Council would help in any way.

Mayor Bernard met with Howard Dietrich, owner of the proposed Wal-Mart site, and John Frye from SMILE. They discussed the site and the feasibility of a combined Clackamas Community College/Oregon Institute of Technology/Portland State University Campus with light rail access. Both he and Councilor Collette had been

eager to open this type of discussion. He hoped the South Corridor Group would begin meeting as soon as possible to get some action going on that site. Mr. Dietrich had given Metro and TriMet a timeline for giving him a proposal.

Mayor Bernard spoke with a metal sculptor regarding art for the Springwater Bridge and would follow up with Metro.

Councilor Stone would like an art-based group that could look at something like this. As the City developed and grew, she thought art would play a predominant role in the decorum of the City. It was important to choose pieces well, and she thought a committee would be a good idea. She suggested a subcommittee of the Design and Landmarks Committee (DLC) because it had been so innovative in its work on the downtown area.

Councilor Collette attended the Johnson Creek Watershed Council fundraiser where she discovered she was co-chair with a Gresham councilor. She attended the Regional Water Providers Consortium as Milwaukie's representative. She attended the Mayors' Forum where she heard some interesting statistics about who survey respondents trusted the most for information. The number one choice was neighbors and neighborhood associations. Local governments and environmental groups were fairly highly rated, and politicians were at the very bottom. 60% to 67% said their communities needed planning and that the planning process was respected. She felt both of those were affirmations of what Milwaukie was doing. She discussed the OSU Farmers' Market survey and the critique of Milwaukie's Market. She felt all the participants went home with the feeling their own markets needed a community booth like Milwaukie's. It was deemed both a success locally as well as nationally.

Councilor Stone discussed her work on the Hands and Words Are Not for Hurting Project. She presented it at the Ardenwald-Johnson Creek Neighborhood meeting and received unanimous support to apply for a grant. The pledge was not to use one's hand to hurt one's self or others. She hoped to first take the project to Ardenwald School in her neighborhood and then to extend it via the Neighborhood Associations to all the schools. The Council supported launching the project by reading a proclamation in October.

Mayor Bernard discussed parking in downtown Milwaukie. There were numerous spots in facilities that were not used. Employees preferred parking on the street and moved their cars throughout the day rather than paying a small fee and walking a block or so. He urged local businesses and commuters to use the lots rather than parking on the streets.

ADJOURNMENT

It was moved by Councilor Collette and seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously among those present. [3:0]

Mayor Bernard adjourned the regular session at 8:02 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL
SEPTEMBER 20, 2005

MILWAUKIE CITY HALL **1966TH MEETING**
10722 SE Main Street

REGULAR SESSION – 7:00 p.m.

I. CALL TO ORDER
Pledge of Allegiance

2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Disability Employment Awareness Month -- Proclamation

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.)*

City Council Work Session and Regular Session Minutes of August 16, 2005

4. AUDIENCE PARTICIPATION *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*

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

None Scheduled.

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

Oregon Parks and Recreation Department Grant for Lewelling Community Park – Resolution (JoAnn Herrigel)

7. INFORMATION

A. Citizens Utility Advisory Board Minutes of July 13, 2005
B. Public Safety Advisory Committee Meeting Notes of August 25, 2005

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may go into Executive Session immediately following adjournment at 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, twenty percent of the population of the United States of America is comprised of people with disabilities; and

WHEREAS, more than two-thirds of adults with disabilities in the country desire to work but cannot find employment; and

WHEREAS, the American with Disabilities Act provided civil rights protection for America's 49 million persons with disabilities.

NOW, THEREFORE, be it resolved that I, James Bernard, Mayor of the City of Milwaukie, Oregon, do hereby proclaim the month of October as

DISABILITY EMPLOYMENT AWARENESS MONTH

In the City of Milwaukie and ask all our citizens to join us in its observance by learning about people with disabilities, their strengths, abilities, and the programs that serve their needs.

_____
James Bernard, Mayor

ATTEST:

_____
Pat DuVal, City Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION
AUGUST 16, 2005

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

Council Present: Councilors Barnes, Collette, Loomis, and Stone.

Staff Present: City Manager Mike Swanson; Community Services Director JoAnn Herrigel; and Information Coordinator Grady Wheeler.

Advisory Board Interview

The Mayor and Council interviewed Ben Horner-Johnson for a vacant position on the Center/Community Advisory Board.

Riverfront Park Concept Design Survey

Ms. Herrigel reviewed the changes that Council proposed at the last work session regarding the survey. She sought Council's approval to have the document reviewed by professionals to ensure the end result was data that could be collated. To this point, Mr. Wheeler had done all of the graphics, but she suggested having others look at it to ensure the Council got the information it wanted.

In the current version of the Downtown Riverfront Plan adopted in the Comprehensive Plan was shown with an arrow indicating the subject area. She pointed out the log dump, Kellogg Creek, and Johnson Creek. Staff incorporated the comments about using ovals next to the two concept plans. People would be asked to rank each amenity according to its importance on a scale of 1 though 5. "1" was the least value, and "5" was the greatest. For example, if one wanted to see more parking and less green space, the one would give parking a "5" and green space a "1".

The material would show the existing conditions, the Comprehensive Plan version and components, and concepts 1 and 2 with those components. She added that Fred Kent, Project for Public Spaces, suggested that because the community had been thinking about the riverfront and boat ramp for such along time, that people should think about what they wanted to do on their riverfront. It was more than boat ramp or no boat ramp. Ms. Herrigel and Mr. Wheeler were looking at how to splice that into the discussion. She felt people should be asked their preference, but the respondents could be asked to independently list 5 things they wanted on their riverfront plus an area for free-form comments. She would like to move this out and get some comments from professionals as to whether this was utilitarian as a survey tool.

Mayor Bernard felt this accomplished everything Council had asked. Mr. Kent had discussed 10 points of interest that people would want to go to. It might be

something like a kiosk that sold hot dogs or ice cream, boat launching, parking, and other things that drew people to the site. Mike Richardson (Dark Horse) had talked about having something special that drew people to the Riverfront Park. Dave Green said that was very common on the east coast, but on the west coast people tended to like a green space.

Councilor Collette and **Councilor Barnes** liked what Ms. Herrigel showed and thought it would draw out the information Council wanted to have.

Councilor Stone like the arrow from the overall plan to the specific spot and suggested taking it to the existing conditions graphic. She liked the idea of rating things. Everything was important to people in terms of the waterfront. At the last work session, the Council talked about other surveys that were done in the past.

Ms. Herrigel said there would likely be a text panel on the back that discussed previous survey results, what had happened since then, and the evolution of the two concepts.

Councilor Stone liked Mr. Kent's comments about the concept of the riverfront and what that actually meant to people. "What do you want?" she felt was the right question, so it was more broadly viewed than whether one did or did not want a boat ramp.

Councilor Loomis asked if the parking shown on the east side was the Cash Spot.

Ms. Herrigel said one was the Cash Spot and the other was the Chopsticks lot.

Councilor Loomis commented on the closure of the Safeway lot and asked if it was realistic to put parking on private property if the owner had not been contacted.

Ms. Herrigel said the key components were listed as on-site and off-site parking. When she spoke about on-site parking, she meant the area west of McLoughlin Boulevard and between the creeks. She indicated off-site parking areas. If she showed parking on private property, then she would contact the property owner.

Councilor Loomis was concerned that by showing the additional off-site parking people might conclude there was sufficient parking for the park users.

Mayor Bernard suggested not showing that parking.

Councilor Stone noted that Concept 1 showed the single dock, and Concept 2 showed the boat ramp with two docks. Could two docks be shown on Concept 1?

Mayor Bernard understood from Dave Green that there could be two docks. This was just a concept.

Councilor Stone said when looking at them, the second concept seemed nicer.

Ms. Herrigel agreed people would see the differences. If there was a reason for a difference, then that should be noted. Otherwise, they should be very similar.

Councilor Stone did not want the survey to lead the question but wanted it to present the question in a very unbiased way.

Ms. Herrigel would follow up on the plaza and size of children's play area.

Councilor Loomis thought it would have been better for the Council to have sent one plan out to the public and ask people what had been missed. He discussed the 10 points of interest and native plantings with markers. When he brought it up the last time, the idea had been shot down. He thought in sending out both concepts that the issue might be more controversial than necessary.

Councilor Barnes understood it was Council's direction to the Riverfront Board to come up with the best representation of the group's discussions.

Councilor Loomis had hoped the Council would have more input.

Councilor Barnes understood the concepts would go out to the public, but it was not the final decision. Council would ultimately make the decision.

Councilor Loomis asked if the issue would be confused by all the amenities listed.

Councilor Barnes thought the Council might find from residents that they simply did not want "A", so "A" never goes in. The question was based on what the Riverfront Board came up with as a team, and the public was being asked for input on what they wanted. If a majority of people said the City did not need an amphitheater, then Council would find that out.

Mayor Bernard agreed and understood that was the direction of the process.

Councilor Barnes understood Council would review the input and make the decision. Although it was not on the list at this time, vegetative plantings would be great.

Mayor Bernard noted the Klein property was restricted to native plantings and a trail.

Ms. Herrigel said those professionals to whom she showed this survey would tell her if it was too confusing.

Councilor Stone asked if the Council would see the final survey in the next few weeks.

Ms. Herrigel hoped to move this along. She would take the Council's comments to a professional person, firm it up, and take it out with the understanding that the City Council would weigh the information. She suggested the survey only to go to households in the 97222 zip code with the understanding that were a few households within the unincorporated area. That data would all be kept in one pot. Another pot would be filled with the input from separate vehicles such as the Sunday Farmers' Market, neighborhood association meetings, kiosks, and the City website. That way the City could track what residents wanted and also what people living in the County or elsewhere wanted. Zip codes would be required on each survey response.

Mayor Bernard thought staff had the basic concepts and a professional would look at ways to polish it a bit. He was in favor of moving ahead rather than delaying it two more weeks.

Councilor Collette did not feel she needed to see it again.

Mayor Bernard appreciated the comments about the number of docks and sizes of the playgrounds in the two concepts.

Ms. Herrigel would ask the pro bono consultant for additional help with the drawings.

Councilor Stone asked if there would be any information in the survey about what could potentially happen at the treatment plant property and how that affected the two concept plans. There were big plans for development. How did these concepts fit with what the City wanted to do in the future?

Ms. Herrigel said the log dump was shown. The City owned the property between the two creeks. The City knew what would happen to that area based on the McLoughlin Boulevard design, and that was all that was known at this time. There was discussion of future possibilities south of Kellogg, but nothing was known for sure. If the City wanted public input and to design for the next ten years, then the focus should be between those two creeks. By showing people the Comprehensive Plan version for the downtown and riverfront, people would understand there were other possibilities. People could address other areas in their comments, but if the Kellogg Treatment Plants was included, for example, staff may not be able to collate the data or potentially do anything with it. It was a question mark south of Kellogg Creek.

Mr. Swanson commented in an ideal world one would have time to plan the whole thing. This was the real world. Even if the County Commissioners adopted the Clearwater Plan, the City would not have title to the property until 2012.

Councilor Stone thought when one was looking at development there needed to be a vision that extended for 20 years.

Mr. Swanson said at this point, that was what the Downtown and Riverfront Plan did. The City was biting off a huge piece just by seeking direction on the area it owned. There were significant hurdles to overcome even if the Commissioners approved the Plan.

Councilor Stone asked how much the survey would cost.

Ms. Herrigel replied that the survey and postage would be approximately $6,000. She announced there was some difficulty at the boat ramp this past weekend. It was closed as of yesterday morning for several days to assess and rectify the problem. She notified the Oregon State Marine Board (OSMB) and Sheriff's department to let them know about the temporary closure. She had a request for proposal (RFP) out for emergency repair, and she had gotten several responses. She hoped the ramp would be re-opened once the conditions were

known. The southern side had been closed, and now the northern side was also closed. She added that the water was very low

Mayor Bernard attended the Oregon Mayor's Conference in Jacksonville, and he purchased several books "Taking the War Out of Our Words" which he distributed to the Council members.

Mr. Swanson discussed scheduling a Saturday morning Council retreat with facilitator Dick Townsend, former League of Oregon Cities Director, city manager, and Oregon Solution Project facilitator. The purpose would be to discuss Council roles.

Mr. Swanson reviewed the draft resolution and agreement joint sales between Metro and the City regarding the Olson Bros. Texaco and the City parking lot properties. There were things in the agreement with which he had some difficulties, and he decided to do things a little differently. There was some time sensitivity in terms getting property transaction between Metro and Olson's closed. When this process started, the Olson's already had a letter from the Department of Environmental Quality (DEQ) that would have allowed them to sell to another oil company without any further action. The Olson's decided to wait for Metro and the three months of DEQ processing. In fairness to them, he would like to process this as soon as possible. The proposed agreement was necessary in order for Metro to close the deal. City Attorney suggested that the City Manager negotiate the contract and be given authority to execute it with an understanding from Council of what should be done. Rather than approving the actual agreement, which Mr. Swanson did not like, he suggested this was the preferable way to go. He had concerns about setting the price. This was unfortunately rushed, but it was unavoidable because things had gone back and forth with DEQ. He believed the Olson's had gone out of their way to cooperate.

Councilor Stone understood the hope would be to sell to a developer with a project similar to North Main Village with a mix of commercial and residential.

Mr. Swanson said as the City was nearing a phase on the North Main Village Project, the Olson's indicated they were interested in selling their property. Milwaukie did not have the wherewithal to purchase it, but Phil Whitmore of Metro's Centers Program was very interested. In speaking with developers, he believed the property would generate a considerable amount of interest. There would be river views in some units. The theory has been that as soon as North Main opened its doors, the City needed to be ready with the next project to keep the momentum going. The current agreement provided for joint marketing within 18 months.

Mayor Bernard added that the Olson Bros. sign was in the right-of-way and needed to be moved for the McLoughlin Boulevard project. He discussed purchase of some of the right-of-way at the corners for the project. Having been in gas sales, he knew that the gas companies did not treat people well. The profit margin was about $0.03 to $0.05 per gallon. Brad Olson came to him and said he would rather do something for Milwaukie to help it improve. He was proud of Olson Bros. for thinking about that. If the City did not take this

opportunity, then it probably would not happen again. Once another gas company purchased the site, it would be a gas station forever. The big companies did not get rid of their stations. He felt this was a great opportunity, and Metro did a good job in analyzing the site.

Mr. Swanson would present the resolution rather than the draft agreement that was originally provided in the Council packet.

Mayor Bernard adjourned the work session at 6:20 p.m.

_____
Pat DuVal, Recorder

CITY OF MILWAUKIE

CITY COUNCIL MEETING
AUGUST 16, 2005

CALL TO ORDER

Mayor Bernard called the 1964th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Deborah Barnes, Council President	Susan Stone
Carlotta Collette	Joe Loomis

Staff present:

Mike Swanson, City Manager	John Gessner, Planning Director
Gary Firestone, City Attorney	Lindsey Nesbitt Associate Planner
Larry Kanzler, Police Chief	Paul Shirey, Engineering Director

PLEDGE OF ALLEGIANCE

Mayor Bernard turned the meeting over to Council President Barnes.

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Chief Kanzler reported the Milwaukie Police Department helped Clackamas Community College with its law enforcement and mentoring programs. As a result of those volunteer efforts, the Department received a professional service award from Clackamas Community College for support to the community.

CONSENT AGENDA

It was moved by Councilor Stone and seconded by Councilor Collette to approve the Consent Agenda that consisted of the following:

- City Council Work Session and Regular Session Minutes of July 19, 2005

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

- Rose Martin, Wood Villa Condos, 10501 Crystal Lake Lane, Milwaukie

Ms. Martin spoke on behalf of the six owners of the Rose Villa condos immediately east of Crystal Lake Apartments. They were concerned about the *clematis vitalba* that was on the list of northwest invasive species. It was coming over the fence from the apartments and was becoming more prevalent throughout the area. She had contacted code enforcement about the issue. She read a brief description of the species that "smothers and collapses indigenous forest and causes the loss of indigenous plant species. Vines can climb the tallest forest trees forming a dense, light-absorbing

canopy that suppresses all vegetation beneath it. *Clematis vitalba* can be so vigorous that the weight of foliage and stems breaks the supporting trees reducing once healthy forests to a low, long-lived thicket of vines." She called the code enforcement office, and Tim Salyers looked at it. The vines were now up in a fir tree and a pine tree, and she was afraid the clematis would kill them. Ms. Martin wanted to take care of not only her property but also others in Milwaukie with the support of the City. She requested that the code be amended to include all of the Northwest invasive species and certainly *clematis vitalba.* She and her neighbors were willing to clean up their properties, but they wanted some weight behind asking others to clean up their properties too.

Councilor Stone thought that was a good idea since the code did not address invasive species, and there were several. They damaged vegetation and killed trees. She suggested the code enforcement people look at the code, and provide Council with an updated version at some time.

- **Ed Zumwalt, 10888 SE 29th Avenue, Milwaukie**

Mr. Zumwalt spoke representing Celebrate Milwaukie, Inc. (CMI) and thanked sponsors Providence Milwaukie Hospital, Bob's Red Mill, Mill End Store, Papa Murphy's, *Clackamas Review*, ODS, the Farmers' Market, Reliable Credit, Expressway McDonald's, Comfort Care Dental, Rose Villa, Electra Credit Union, Century 21/Hart Realty, Clackamas Community Federal Credit Union, Willamette Falls Hospital, Nelson's Nautilus, Cash Spot, Quiktime Signs, the Lake Road, Ardenwald, Linwood, and Historic Milwaukie Neighborhood Associations, and many others. He recognized Councilor Loomis, Councilor Collette, Art Ball, Sharon Van Horn, Frank Higuera, Ray Bryan, Terrie Darling, Karen Martin, and the many other volunteers. He thanked City staff Grady Wheeler, Kelly Somers, Sgt. John Hipes, Beth Ragel, and JoAnn Herrigel.

The Riverfest ranked average with him this year because it was cut back to a one-day event. It was difficult to get vendors to sign up for one day, so revenue was lost there. The Dragon Boat entries increased from 11 to 19 teams; however, the event lost money when a sponsor pulled out. He continued to think the Dragon Boats were a good draw and highlighted Milwaukie Bay. He discussed how the races might be handled in the future, and he did not wish to abandon them. Finances would continue to be a problem until Riverfest went back to a three-day event with selected, high-class vendors. He suggested a future work session with the Council to discuss the event.

Council President Barnes expressed appreciation to Mr. Zumwalt for his hard work and for bringing so many people to Milwaukie's Riverfront Park.

Mayor Bernard gave Mr. Zumwalt a copy of a letter from Lava Drive residents thanking the City for its annual fireworks show.

Council President Barnes announced that the Lewelling Neighborhood received a $192,000 grant for neighborhood park development. She expressed her appreciation to those who put in so much effort including Art Ball, Jean Michel, Jeff Klein, entire Lewelling Neighborhood Association, and City staff. The $4.1 million McLoughlin Boulevard project began last week, which was a culmination of over 5 years of work. She thanked Congressman Blumenauer for his success in getting Milwaukie $4 million for the $6 million Lake Road Multi-Modal Project. Groundbreaking for downtown

Milwaukie's first major project, the $14 million mixed-use North Main Village, was earlier in the week.

PUBLIC HEARING

A. Appeal of Planning Commission Decision on North Clackamas Park Ball Field Project (AP-05-02)

Council President Barnes called the public hearing on the appeal of the Planning Commission's approval of applications CSO-05-02, TPR-05-01, and WQR-05-01 for property located at 5440 SE Kellogg Creek Drive to order at 7:18 p.m.

This hearing was limited to the issues raised in the appellant's notice of appeal, and the Council would recognize those wishing to speak. Council would use the testimony in coming to its decision on the application.

The purpose of this hearing was to consider the appeal of the Milwaukie Planning Commission's approval of applications CSO-05-02, TPR-05-01, and WQR-05-01 filed by the Friends of North Clackamas Park. The applicable standards to be considered are Zoning Ordinance sections:

- 19.1002 -- Appeal from Ruling of Planning Commission.
- 19.301 – Residential R-10 Zone
- 19.321 – Community Service Overlay
- 19.322 – Water Quality Resource
- 19.500 – Off-street Parking and Loading
- 19.1011.3 – Minor Quasi-Judicial Review
- 19.1400 – Transportation Planning, Design Standards, and Procedures

Council President Barnes reviewed the order of business in the conduct of the hearing. The applicant had the burden of proving that the application complied with all relevant criteria of the Comprehensive Plan and Zoning Ordinance. The appellant had to demonstrate that the Planning Commission erred in its decision in the particulars alleged. The City was in receipt of the appeal, which identified the issues and the reasons for the appeal.

All testimony and evidence was 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 precluded an action for damages in circuit court. Any party with standing could appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing are those who testified or signed the City Council Attendance sign-up sheet on the information table in the hall.

Council President Barnes reviewed the conduct of the hearing.

Conflicts of Interest and Site Visits: All members of the City Council had visited the site.

Mayor Bernard believed that each member of Council had received hundreds of e-mails regarding the application. Those were forwarded to the City Recorder for the record.

Councilor Stone had some ex parte contacts as Mayor Bernard said. Two people specifically came to mind -- Rosemary Crites and Jeff Klein. At a Neighborhood Association meeting there was a presentation by the Friends of North Clackamas Park to give attendees information. With those two contacts, she was asked if she thought it was an improvement to the Park and some concerns about the proposed changes to the Park were aired.

Councilor Loomis said this was probably not a conflict of interest, but he was involved in Milwaukie youth sports for over 20 years and was a board member of Kids First. He discussed ex parte contacts. Over one year ago he met with Mr. Ciecko, North Clackamas Parks and Recreation District (NCPRD) Director; John Denny, Kids First Director; and Dave Seward with adult softball per Mr. Ciecko's request. He attended with Mr. Denny as a representative of Kids First. The meeting was to inform the youth organizations about a possible plan that would be proposed. Mr. Ciecko was aware of the history between the youth organizations and the adult leagues. There was some ill will there, and he (Ciecko) thought it was important they be together and not fighting. So he presented that report. He also met with Mr. Ciecko and Jon Mantay, Clackamas County Administrator, as a representative of Kids First. Mr. Seward and Mr. Denny were also invited but were unable to attend. This meeting was to inform then that after public testimony the District was not going to go with the all-adult complex. It was going to be changed to a youth facility. He attended two District Advisory Board (DAB) meetings. The first one he attended, he testified in favor of the proposed changes at North Clackamas Park (NCP). He attended another DAB meeting where he did not testify. The Board asked him how he thought the Milwaukie City Council would feel about this proposal. Their concern was that they were spending a lot of time and money on the proposal. He told them he was there as a private citizen of the District. He was not there in any way representing the City of Milwaukie and did not offer an opinion. He had worked with John Denny, Kids First Director, getting people involved with youth organizations and encouraged people to be involved in the process. He had several general conversations with people in favor and against the proposed plan. He had been involved in youth sports in this area for a long time, so a lot of the people were his friends. They never talked directly about any of the specific plans after it was apparent that this was turning into an issue that would be before the City Council. At that time he distanced himself as an advocate of the plan and had others take over. From then, ex parte contact was general, and he told people he could not talk about the plan. Councilor Loomis's assistant coach was a member of the Planning Commission. He became an assistant coach long before the plan was known about. The person's name was Jeff Klein. At no time did they talk about the plan. Councilor Loomis made a few comments to Mr. Klein jokingly about how long he (the Planning Commission) was going to drag it out. Midnight meetings. The lawyer was costing a lot of money. Teasing things. They never specifically talked about the plan. He thought the real question was whether he could be impartial. The answer to that was 'yes.' That was the job of City Councilor. One was faced with that every day. He had done it in other situations. One did not always vote with one's personal views. He could cite many instances. Every time he got his water bill, he was not happy about it. Personally, he did not want to vote that way. It took a long time to convince him and tell him why. His

decisions were based on what was best for the City now and in the future. That was how he based all of his decisions.

Mr. Firestone clarified under state statute a conflict of interest was presented only if there was a financial interest by a council member or family member. What Councilor Loomis described did not involve a financial interest. Therefore, it was not a conflict of interest as used in state statute. There was a separate due process consideration. A councilor had to be able to make a decision based on the evidence presented. Councilor Loomis stated that he was not biased and could make a decision based on the evidence. Legally, in Mr. Firestone's view, Councilor Loomis had no reason to withdraw.

Mayor Bernard had no actual or potential conflicts of interest. Originally he met with Jon Mantay to look at the project, and he was excited that something was finally going to happen. He was concerned about the adult fields. He went to the first meeting but refused to give any comments. Since then he avoided talking to anyone about this issue as much as possible. He received many letters and e-mails, but there were no actual or potential conflicts of interest.

Councilor Collette had no conflicts of interest. She received numerous letters and e-mails as did the other Council members. She had conversations with Rosemary Crites and Jeff Klein regarding a compromise and that people felt like things were working along. That was the gist of those conversations. There were some questions about her being happier with the park as it looked like it would be. There was no particular response on her part. She had a conversation with Jon Mantay about the negotiations going on about a compromise being in the works. Until she read the packet she had not really known what had been determined. She attended several District Advisory Board meetings but did not comment at any of them.

Council President Barnes stated when she called Mr. Mantay yesterday on a different matter, he told her he would see her tomorrow night. She asked why. When she went to Clackamas High School, she ran on the cross-country team, and that was the track. She knew most of that park intimately.

Challenges to Impartiality or Jurisdictional Issues: None.

Staff Presentation: **Ms. Nesbitt** said this was an appeal of the Planning Commission's approval of developments at North Clackamas Park (NCP). After approximately 18 hours of public testimony, the Planning Commission voted unanimously to approve developments at NCP upon finding that the applicant demonstrated compliance with applicable criteria of the Milwaukie Municipal Code. That approval included four youth ballfields, one full-size soccer field, construction of a 230-space parking lot that addressed the parking ratio of 43 spaces per field, walking trails, enhancement to the water quality resources and just outside the water quality resources, construction of a new picnic facility and concession stand, restroom facilities, and improvements to Kellogg Creek Drive that included construction of a new sidewalk along the northern portion of Kellogg Creek Drive, the widening of Kellogg Creek Drive, and realignment of the intersection of Kellogg Creek Drive and Rusk Road. The County would pay for all of those improvements.

On July 27, 2005, the Friends of North Clackamas Park submitted an appeal that listed numerous points of concern with the Planning Commission's decision of approval (Attachment 2 of the packet). On August 2, 2005, the Friends of North Clackamas Park amended its appeal by withdrawing the points of concerns and requesting that the City Council uphold the Planning Commission decision and adopt some modifications to the approved site plan. The packet contained modified findings and conditions that supported the approval and reflected those changes. The changes included four youth ballfields plus a flex field that could be used as a soccer field for children 8 and under. With that arrangement, only four fields could be used at one time. By doing that the parking area could be reduced by 43 spaces. The reduction of the parking area allowed for more room on site. Originally, the applicant proposed storm water detention in the parking area. The Planning Commission said detention should be elsewhere on the site. The reduction in the number of parking spaces allowed for a detention swale to accommodate stormwater from the parking area. There would also be a new entry pavilion and message board center. The walking trails were rearranged to circle the ballfields. The proposal also included widening the access drive to the horse arena, so people could turn around and park their vehicles and trailers near the horse arena. Staff believed those changes complied with applicable zoning criteria. Staff recommended approval of the request to modify the plan. Friends of North Clackamas Park were present to discuss their appeal.

Councilor Stone thanked Ms. Nesbitt for clarifying that a few extra parking spaces were added. In the correspondence the Council received there was an example of someone attending a youth ball game where he counted 96 cars. Would this be sufficient parking?

Ms. Nesbitt replied DKS Associates, a traffic consultant, was hired to review the traffic plan and the proposed parking ratio. She asked them specifically to look at the ratio of 43 spaces per field, and DKS believed that would adequately serve the site. If an unusually large number of people were anticipated for an event, there was an agreement with the adjacent church to use its parking area. With the frontage improvements and sidewalk, people could walk safely from the church parking area to the park.

Councilor Stone noticed in reading her packet that the number of parking spaces had shrunk from the original plan.

Ms. Nesbitt said that was correct. The plan approved by the Planning Commission had 230 parking spaces. The plan the City Council was being asked to consider had 196 spaces. The original plan had five playing fields, and the revised plan only had four fields that could be used at one time. That was why there was a reduction in the number of parking spaces.

Councilor Stone referred to the DKS traffic and engineering analysis and the improvements to Kellogg Creek Drive. There were apparently plans to widen it to 28 feet with 14-foot travel lanes. She asked if anyone had considered narrower traffic lanes to slow traffic. There was obviously going to be more traffic.

Scott Mansur, DKS Associates, Portland. The 28-foot width was the standard for the City. Councilor Stone was correct that narrower lanes had the potential to slow traffic.

In this case, however, they wanted wider lanes because of the park. The road was not wide enough to stripe a bike lane, but pedestrian and bike traffic was anticipated. It would be a shared bikeway.

Councilor Stone asked if any bike counts were done to determine how many people were coming and going now.

Mr. Mansur replied that no bike counts were done as part of the impact study. When one had narrow lanes, typically a bike was forced to be in with traffic. Many of the cyclists coming to the site would not be the commuter types who are more comfortable riding in a narrow lane. Most of the cyclists going to the park would be parents or kids, and they would typically feel more comfortable being on the side of the road.

Councilor Collette had a question about the youth soccer field instead of a field that served a wider age range. Was it determined that a larger soccer field was not needed or was it a spatial issue?

Ms. Nesbitt believed the Friends of North Clackamas Park and the Parks District representatives would be able to answer that question.

Councilor Stone had a question about a reference in the staff report to the horse arena. It said it would remain; however, the dimensions of the area might be reduced. She asked why that was.

Ms. Nesbitt said there was a meeting with the Parks District and the Friends of North Clackamas Park where they talked about a joint appeal. The parties went through the notice of decision and drafted what the language would be. That was something the Friends of North Clackamas Park wanted as part of the proposal. She would direct that question to the Friends of North Clackamas Park.

Councilor Stone said the staff report stated that the area 'may' not 'will' be reduced. It left that open-ended.

Ms. Nesbitt replied the Parks District would address that issue.

Councilor Stone had a question regarding the wetlands. The staff report said that two wetlands would be filled to construct a drive, and one of the ballfields would be constructed adjacent to the other. However, those two wetlands were not subject to the water quality resource review. Councilor Stone asked why that was.

Ms. Nesbitt said that was correct. These two wetlands were not mapped on the Water Quality Resource Map. Before the Parks District came in and submitted this land use application, the Planning Commission was informed the wetlands had been identified and was asked to review them. The Planning Commission determined them to be not significant wetlands. One was essentially a drainage ditch adjacent to the loop road. After a rainy season, the runoff from the road collected in that ditch and gave the characteristics of a wetland. They did not support significant wildlife habitat. The City hired a wetland consultant to look at the site who came to that determination. The Planning Commission found that they were not significant. The applicant proposed quite a bit of wetland and natural resource area enhancements to mitigate filling those wetlands.

Councilor Stone believed she read in the packet material that some of the testing on those wetlands was done during the dry weather in February and March. Was that the data the City was going on?

Mayor Bernard had been at the park hundreds of times. This was a ditch along the side of the road and had no significance and probably never would have any significance.

Mr. Gessner said there were specific criteria established by the State of Oregon and natural resource science industry that indicated whether or not a wetland was present. Those criteria applied whether it was a very wet season or a very dry season. They were detectable. It had to do with the presence of hydric soils, which can be identified scientifically. It was also the presence of plant materials that thrived in hydric or wet conditions. Typically those were identifiable throughout a broad spectrum of the year. Staff believed that the science used to advise the Planning Commission was reliable and the Planning Commission's decision to determine they were not significant was generally supported by the science typically used to evaluate those situations.

Councilor Stone asked about the removal of existing vegetation and that it shall be replanted. In the staff report it was not clear to her what would be removed and what would be replacing it. Would the area be significant?

Ms. Nesbitt replied the condition was that tree preservation and vegetation preservation be done before any on-site work was done. That was to specifically address the walking trails that would be constructed through the water quality resource area where grasses and other vegetation would be removed. The District proposed mitigation within the water quality resource area for the walking trails.

Councilor Stone referred to the Planning Commission's concern in the report with the use of chemical pesticides and herbicide and the suggestion to encourage the Parks District not to use those or provide written notice on site if they were used. She asked if that could be made binding. The verbiage encouraged the District to do that but did not say it had to.

Ms. Nesbitt replied the City did not have code criteria that would require the Parks District to do that. At the hearing, the District did volunteer to do so.

Mr. Firestone added that generally speaking the City Council could impose any condition it felt was necessary to ensure the criteria were met. One of the criteria was whether the benefits of the proposal outweighed the negative impacts. If the City Council concluded that a condition was needed to ensure the benefits did outweigh the adverse impacts, then the Council could impose a condition of approval to ensure criteria was met.

Mr. Gessner added when this came up at the Planning Commission hearing, he strongly cautioned the body from imposing such a condition to the extent that pesticide and herbicide applicators were subject to state licensing requirements. Milwaukie did not have the internal ability to monitor and/or enforce against those when there might be alleged infractions against that condition. If the Council did impose a condition, then staff would own the enforcement responsibilities that would include responding to any allegations of infractions. He felt strongly that staff did not have the capacity to do that.

Councilor Stone understood in Mr. Gessner's opinion that responding to enforcement complaints would not be under the jurisdiction of the Parks District. Those would have to come from the City even though it was the District's duty to maintain the park.

Mr. Gessner believed the District would have responsibility for the proper application of pesticides, herbicides, and any other controlled substances under state law. The District should own the responsibility for any infractions that occurred.

Correspondence: None.

Appellant Testimony: **Susan Shawn**, 13655 SE Briarfield Court, Oak Grove, 97222, and **Jon Mantay**, 5827 SE Willow Lane, Milwaukie, 97267.

- **Jon Mantay**, Clackamas County Administrator and District Administrator for the Parks District.

Mr. Mantay reported that the County Commission identified $3 million in lottery funds to build fields in the north end of the County. The Parks District was formed about 10 – 15 years ago with the commitment to the citizens to build recreation or athletic facilities. The Commission had felt strongly about trying to live up to that, although they had not made the actual promise themselves. They thought it was important from a stewardship standpoint to live up to the promise. The Commission freed up the money for the District Advisory Board (DAB), and the journey began. That journey led to a land use design, and the original design was approved by the Planning Commission and was before the City Council at this hearing. About four months ago interested parties decided to sit down and recognize that there was a long journey ahead. They understood they would be better served by not having a win – loss situation but more of a compromise situation where both parties won. Over the past 120 days or so, interested stakeholders began to have conversations about how to work jointly and accomplish both parties' goals.

The Planning Commission approved a plan. One of the items identified was the stormwater requirement and parking lot. As negotiations and conversations continued, it was identified that one of the main concerns was at the back end of the park where the soccer field was proposed. There was actually a significant environmentally sensitive area with the creek. They thought it was important not to build a soccer field back there with additional fill materials. There was also a proposal to potentially put lights back there. Some wildlife did move through there such as birds, deer, and small game. It was important to keep that area as natural as possible. As they went through their conversations, they looked for an opportunity on field number 4 for a soccer field. He believed the application said an U* field and that it could also be a U10 field.

Mr. Mantay said Ms. Nesbitt had appropriately summarized the project, and he added several conversations. The trail system that would go around the park was paved and ADA compliant. The goal was to encourage use by as many stakeholders as possible. The Friends of North Clackamas Park filed the initial appeal because of the timing issue. The DAB heard the presentation and modification plan but was not able to give direction without a public hearing. The deadline to file the appeal was several days before. The Friends made the initial appeal, and the modified appeal went to staff. The Friends of North Clackamas Park and Parks District were before the City Council

standing shoulder to shoulder to report that the groups came up with a plan both felt was appropriate. He thought Kids First and other groups would support the endeavors.

- **Susan Shawn, Friends of North Clackamas Park**

Ms. Shawn read a prepared statement. She spoke on behalf of the Friends of North Clackamas Park which had a steering committee made up of 25 people representing a group of about 200 people living in the north Clackamas area. Over 1,100 people who wanted to save the horse arena and opposed siting a tournament ball complex in the community park signed the original petition. Mr. Mantay already discussed where the money came from for the fields. The Friends requested a master plan process at the very beginning to enable them to work with the designers. That did not happen. As probably everyone knew the resulting process from its very nature was adversarial, expensive, and time consuming. They did get their fields, but it was at a high cost. As a result the local residents frequently expressed a serious loss of trust in both county and local government. That was a statement of where they started. At the heart of the conflict were three areas of profound concern from the Friend's perspective. First was the well being of the land itself which Councilor Stone addressed well at this meeting. It was a sensitive wetland area and one of the few remaining open areas. The second area of concern was current park users and potential impact of the new complex on their use. Another was the well being of the surrounding neighborhoods due to such a radical shift and intensity of the use. Balanced against those concerns was the strong desire from the coaches for a tournament facility for their youth ball teams and the health and well-being of the children and families. They seriously encouraged upgrading the fields currently in the Park and adding the soccer field. Perhaps overlaying soccer fields over three ballfields and using portable fences. Those ideas were not allowed on the table. They got together thanks to the Oregon Consensus Program at Portland State University (PSU). They began to meet with the intent of working out the concerns and beginning to heal some of the differences that had occurred. Both acknowledged that it was actually fun, which was a big surprise. It was her pleasure to come forward before the City Council in this spirit of collaboration and to speak in support of the plan.

In terms of the three concerns, the land was protected in a variety of ways. The new area to the west protected the entire knoll, and all the trees would be saved. That had been a major concern for all the people in the area. There was also a larger buffer area along the creeklet that was at the top of field 4. All of the plants were additional buffering. Ms. Shawn discussed installing storyboards along the creeklet and wetlands to teach visitors about the wildlife and native plantings. The idea was to get the younger kids coming from the schools to learn about wetlands in the urban area. Then when they got older, they could take the buses out Hwy 26 to Wildwood Park, which was near Mt. Hood and see the wetlands in the wilderness areas. It would not only be recreational but also educational. Visitors could see that those wetlands were something precious and not just another part of the playground. She discussed the concerns about the impact on current parking. The walking trails would all be ADA accessible, and it would be fabulous. The parking for the horse arena was a major shift, and that responded to the 1,100 petition signers. The horse users said that without that parking, they would not be able to use the arena. By figuring out a way to widen that

road and provide for trailer parking, they felt the arena had been saved, which was one of the original intentions. In order to do that, the arena might have to be smaller. They had been told for the horse events that it was larger than it had to be. All the 4-H folks were comfortable with that. There was also a little paved, ADA accessible observation area for those who wanted to watch. The map of the park and community bulletin board was very important. Originally, that was all in the middle of the ballfields. The message was they – the ordinary daily users of the Park -- did not count. Now there was a bathroom and community bulletin board where the pavilion was, so it felt more inclusive and more welcoming. The soccer fields were a very high priority for many of the neighbors. Having an overlay soccer field on field 4 for little kids was very welcome. She believed that Mr. Mantay might have other comments about upgraded soccer fields at nearby schools. The well-being of the neighborhood – part of this modified plan included a stewardship committee made up of all Park stakeholders. With the District, it would develop a master plan for the north side of the Park. Secondly, it would be an ombudsman service during construction and during the ongoing life of the Park. This group of people would work in service to the Park when there were complaints about lights, noise, and off leash hours for dogs. They were thrilled about that part. It was the necessary tool to bring the spirit of collaboration into the future with the Park. The Oregon Consensus Program agreed to help set up the committee, so it would be well grounded and work well. They hoped by shifting the adversarial process to goodhearted community building that some healing would begin. She hoped the City Council would participate in what she thought was likely an historic joint appeal by approving the modified plan.

Mr. Mantay said County, District and Friends were concerned about the loss of the soccer field. The current field was about a U10 size, and they recognized there was a huge need for soccer fields in the north County. When this issue was first discussed with Kids First and other groups, it was identified there might be other sites for soccer fields. They had been looking at Lot Whitcomb. He had been talking to the school superintendent about irrigating some of the fields for greater use. They also looked at View Acres. The District retained a real estate acquisition individual to identify and actually purchase property for some fields. The County Commissioners approved $3 million though the DAB. $2.3 million was identified for this project and $700,000 for soccer fields. Along with an estimated $300,000 in system development charges (SDC) there was about $1 million to invest in soccer fields. They were optimistic they could move quickly. That was one of the concerns of Kids First, and the District wanted to make sure it met all the concerns. He commented on the question about pesticide. The ideas was that there would be a notification system on the bulletin boards, so people would know as soon as they came into the Park that pesticides had been applied.

Councilor Stone liked the idea of having educational storyboards all along the trail. She thought that was wonderful because living in the City made it difficult to appreciate nature.

Ms. Shawn added they wanted to do it well with good artwork.

Mr. Mantay said the Board of Commissioners authorized the District to spend $5,000 to $10,000 for the environmental area. The Board also began an art in public places

conversation, and they approved another $10,000. The District was trying to bring a lot of revenue sources together to make this a successful project.

Ms. Shawn thought one could feel the creative energy that was starting to come out. It was very exciting.

Councilor Stone commended everyone who was involved in this effort. This was the way to go through a process so everyone won.

Mr. Firestone had one additional piece of correspondence. It was a letter from James and Jerralee McCreary who opposed the park application, which meant they were in support of the original appeal. Their letter stated concern with traffic, lighting, and noise. They lived in the area on Aldercrest Road. That additional correspondence would be included in the record.

Testimony in support of the appeal

- **Rick Frank, 4485 SE Rhodesa, Milwaukie.**

Mr. Frank was a board member of Milwaukie Jr. Baseball and Mustang Youth Football and a coach for Milwaukie Jr. Basketball. Youth sports helped kids develop into healthy adults and good citizens. Youth sports taught valuable life lessons such as fair play, teamwork, sportsmanship, and the rewards of hard work. Youth sports built a strong family environment and community spirit. Youth sports kept kids occupied and out of trouble. Milwaukie Jr. Baseball had almost 500 participants every year. Mustang Youth Football expected 200 kids this year. There were 17 local youth sports groups that would share the proposed facility, and they served over 5,000 area youth.

There was an extreme shortage of field space for games and practice. According to the District's own master plan, there was a current shortage of 22 fields. That shortage would grow to 52 fields in 20 years. In recent years, youth sports lost fields at the Aquatic Center, Milwaukie Middle School, Ickes Jr. High, and others. The lack of field space has put youth sports in a tough position. Instead of turning kids away that would like to play baseball, they have had to reduce practice times available to each team. That made it difficult for coaches to teach the fundamentals and for the teams to compete with those from other areas. Some of the teams have had to hold practices in open fields without proper bases, backstops, or other protections that keep baseball safe.

Currently the City of Milwaukie and the Parks District provided none of the sports fields used by Milwaukie Jr. Baseball, Mustang Youth Basketball, or Mustang Youth Football. They relied solely on the North Clackamas School District for facilities. That was not the case in other communities such as Gladstone, Oregon City, Wilsonville, West Linn, Tualatin, or Lake Oswego. Their city governments and parks districts provided many of the youth sports facilities. The coaches and board members were all volunteers who were trying to help the kids in this area grow up healthy and happy. They were asking the City Council to support the efforts by providing the necessary facilities. Facilities that kids in most neighboring communities enjoy. From the start of the planning process, youth sports groups stated the need for more baseball and softball fields of any size and more full-size soccer fields. Full-size soccer fields were critical for the older youth and classic programs. Even varsity boys and girls soccer teams lacked a

full-size field where they could regularly practice. The Parks District recognized the shortage of fields in the area, and the North Clackamas Park Plan would only fill a fraction of that need. The Parks District and DAB heard many hours of public testimony, and many revisions were made to address the concerns of the groups. A walking trail was added, additional environmental mitigations were added, crosswalks were improved to the Milwaukie Center, improvements were made to stormwater retention and discharge, specimen oak and horse arena were saved, an amplified sound policy was drafted, and the Parks District would pay fully toward the improvements to Rusk Road and Kellogg Creek Drive. The plan was approved by the DAB, the Milwaukie Park and Recreation Board, several Neighborhood Associations, North Clackamas Chamber of Commerce, and by unanimous vote of the Planning Commission.

The new plan was not a new idea. It was an old idea that had been discussed. Overlapping fields created some problems with turf maintenance, lighting, and mud. The new plan was a concession with the neighbors in exchange for a promise to appeal the decision to the Land Use Board of Appeals (LUBA). While he felt the plan would hold up to such an appeal, he certainly recognized the value of working with the opposition. He was uncomfortable, however, with giving up a full-size soccer field. This put youth sports groups in a difficult position. If they opposed the plan, then they looked greedy or stubborn. But if they supported the plan, then they lost a much-needed full-size soccer field. Youth sports groups were willing to support the new plan under conditions. That the City, County, and Parks District commit to locating and developing a suitable location in the area for full-size soccer fields and that there was no appeal of the plan to LUBA by the opposition either as a group or individually. If an appeal was filed, then the new plan should be reinstated. The concerns remained steadfast throughout the process. They wanted the kids of the District to have the sports fields they deserved and were promised over a decade ago. They hoped the City of Milwaukie would support those efforts. He thanked Mr. Ciecko, Parks District staff, DAB, and the Planning Commission for all their hard work on this project. They looked forward to watching the children of the area enjoy the new sports fields.

- **John Denny, 11233 SE 27th Avenue, Milwaukie.**

Mr. Denny spoke on behalf of Kids First of North Clackamas that represented 15 outdoor youth organizations within the North Clackamas School District. Last week he called various parks and recreation districts in nearby communities. The City of Oregon City provided 10 sports fields for use by youth groups. The City of West Linn provided 13 sports fields, and the City of Gladstone provided 12. The City of Milwaukie provided one at North Clackamas Park. Kids First came into being in 1999 when they were pushing for the City to purchase Milwaukie Jr. High to maintain use of the sports fields. The City eventually came around to seeing the need and was in favor of that. By the time they came around to that, the School District was tired of waiting and sold it to Waldorf School. They no longer had use of those fields. One was replaced by a parking lot, and they had been priced out of the other. Waldorf was charging too much for its use. Mr. Mantay came to Kids First a month ago with this compromise plan. They discussed it as an organization and reluctantly but unanimously went along with the revised plan. They did that because they were told that if the plan were appealed to

LUBA, then it could take up to 12 months before it was heard. From the past experience, it was in the back of Kids First members' mind that it might not happen if it was drug out too long. They wanted to see something happen. Part of the agreement to do this with the revised plan was that the Parks District agreed to look into developing a classic-size soccer field at Lot Whitcomb or View Acres. The problem was that a baseball field would probably be displaced. A field would be lost to gain a field. They asked that if a baseball organization lost the use of a ballfield, then it got priority at North Clackamas Park. He provided a copy of the information on the numbers of baseball and soccer fields in area cities compared to Milwaukie.

- **Tim Salyers, 16480 SE Sterling Circle, Milwaukie.**

Mr. Salyers spoke as president of Mustang Basketball and fund raising chairperson for Milwaukie Jr. Baseball. He appreciated the plan for what it was. They approved of the plan unanimously but reluctantly. They preferred the 6:0 Planning Commission vote, but they were willing to work with the Friends and the District in getting the fields built. Ultimately, those fields were needed. He did not represent soccer. His brother and sister played soccer, and he used to play. A full-size soccer field was really needed. Go Cubs. He recognized Mr. Firestone for hearing many hours of testimony.

- **Susan McCarty, 11055 SE 77th Avenue, Milwaukie.**

Ms. McCarty spoke as a soccer representative and had been involved in this process since the beginning. She was heartened to hear all the support for baseball, and although that was not her focus, having fields for any sport was important. She supported the plan; however, the soccer field did her no good in a baseball outfield. The area needed soccer fields. She hoped once this plan was approved that the need for fields would not be forgotten. This was a completely volunteer soccer organization where kids paid $165, while other clubs were charging up to $1,500. The program was losing kids constantly because there are not enough facilities.

Mayor Bernard asked why build the soccer field? If the baseball fields were damaged because of soccer, then maintenance costs would be more. He heard testimony that it was useless. What kind of testimony did the City receive in support of a soccer field? Why build it at all?

Ms. McCarty was the president of the Milwaukie Soccer Club. The main clubs that would use the area were the Milwaukie Soccer Club and the North Clackamas Soccer Club. North Clackamas generally used the field at the Park, but they stopped using it several years ago because of its current condition. She did not know if they would want to use this size of field. She suspected scheduling would be difficult in the spring because most of the fields were multi-use. Having fields just dedicated to soccer and fields just dedicated to baseball was more important at this point. It did not hurt to have the soccer field at North Clackamas Park.

Mayor Bernard understood the County would make an effort to acquire and develop soccer fields. It did not make sense to limit baseball for a soccer field no one may use.

- **Steve Berliner, 10824 SE Oak Street #311, Milwaukie.**

Mr. Berliner spoke on behalf of the Friends of Kellogg Creek and Mt. Scott Creek Watersheds. He supported the appeal. He attended a number of meetings formulating

the compromise between the Friends, the District, and Clackamas County. He thought it was a very positive, constructive process. He imagined the City Council sensed some pain. It had shifted a good deal from the hue and cry from so many neighbors and opponents. He thought his would be part of the healing; everyone would not get exactly what he or she wanted. People can work together to share the benefits and the pain, and it was heartening for him to see that.

The Friends of Kellogg Creek and Mt. Scott Creek Watersheds urged the City Council to approve the appeal jointly supported by the applicant, Friends of North Clackamas Park, and other Park stakeholders. The constituents were able to work together on a collaborative process to modify a plan that very many had opposed. They thought gaining significant benefits to a diversity of park users, neighboring residents, downstream property owners, and wildlife and the Park's natural resources, which was the strongest concern among his group. They believed that the modest trade-off of laying a smaller soccer field with a baseball field offered many tangible benefits including leaving an area to be used for pick-up soccer play on the south side of the Park. This would not have been available under the original plan and would have stressed many of the other desired uses for the south side. That stress would be relieved to a great extent under the modified plan. Impervious parking spaces were reduced along with the surface water runoff both from those parking spaces and from separate irrigated soccer field and related maintenance requirements. Reducing negative impacts on the environment and leaving more of the park available for other beneficial uses as opposed to simply storing more cars.

While reducing negative impacts, the appellants were able to add significant amenities through the modification such as the potential for a beautiful entry pavilion, more accessible and convenient restrooms for all park users, a more functional horse arena facility, and a lighted walking trail that would also enable placing interpretive signage highlighting the role of parks in bringing nature and people together in an enjoyable and educational setting. He was very pleased with the development aspect under the modification. In conclusion, the approval of the appeal assured a much better park experience for the majority of potential park users, for neighbors, and for nature. It did one additional thing. If affirmed that public land use planning through a collaborative process with multiple stakeholders even when a specific interest like youth baseball was the primary intended beneficiary resulted in a swifter process and a better overall outcome and public benefits. He hoped the City Council would approve the appeal.

- **Eric Shawn, 13655 SE Briarfield, Milwaukie.**

Mr. Shawn spoke in support of the modified plan. Most of the points had already been made. As a person who was responsible for the care of two full-size soccer fields, one of which had a baseball field overlay, little if any damage would occur with this age group. 8 – 10 year old kids caused very little damage. The soccer fields he had were sand-based fields, which tended to be more fragile. He thought it was a good use of the space. In terms of cost, he did not think there was any additional cost associated with overlaying the soccer field on the outfield of the baseball field. In other words, there was no difference in grading and fill and no difference in fencing. It was simply a matter of how it was used.

- **Larry Deyoe, 5820 SE Tranquil Court, Milwaukie.**

Mr. Deyoe represented Putnam Youth Baseball as the vice-president of the league. He thanked the City Council for its patience. He spoke to how this modified plan impacted his group. Putnam Youth Baseball was a very dynamic league that was growing quickly. They had an issue if a soccer field was placed at View Acres Elementary School. It was the only junior baseball program in North Clackamas that did not get to use their middle school facility on a yearly basis. Because Aldercreek Middle School used to be Clackamas High School, the School District had Putnam Youth Baseball share it with Milwaukie and Clackamas Junior Baseball Leagues. One out of every three years, they got to use that facility. The second issue had to do with New Urban High School on Webster Road. That belonged to Clackamas Babe Ruth, so Putnam could not use that field either. Bilquist Elementary School had four fields, but Clackamas Little League perennially used those. If soccer fields were put in at View Acres, five teams would be displaced. That facility was literally used by Putnam Youth Baseball six days a week. There were practices, and games started about May 10 and ran through the beginning of July. While he supported the unity, losing View Acres would damage Putnam Youth Baseball tremendously. In essence two fields would be taken away from the League. Hopefully, Putnam could use North Clackamas Park, but it would need fields six nights per week. From his League's perspective, that could be hugely damaging. He asked that the plan be accepted but that there be a way to find another facility for the full-size soccer field. He did not think the soccer field should be displaced at all, because his League could not afford to lose any more fields. If they did, then they would have to tell 50 – 60 kids they could not put them on a field sometimes. Putnam had one of the best games of its year against the Milwaukie team in the County championship tournament. Players could be taught the fundamentals when they had fields. Please do not take View Acres from them; they could not afford another loss.

Councilor Barnes said New Urban High School moved out of the Sabin-Schellenberg Center, so the place on Johnson Road was available. Both of the trailers had been removed, so the area was open.

Mr. Deyoe understood from the School District that there was always an application process. Clackamas Babe Ruth had perennially had that field.

Councilor Barnes worked there, and she seldom saw any teams playing on the north field.

Testimony in opposition to the appeal:

None.

Neutral testimony:

None.

Staff recommendation: **Ms. Nesbitt** said staff recommended that the City Council uphold the Planning Commission's decision on applications CSO-05-02; TPR-05-01, and WQR-05-01, authorizing construction and improvements to North Clackamas Park and adopting modified site plan and revisions to the findings and conditions in support of the approval as identified in the appeal.

Councilor Barnes asked if any member of Council had questions of Ms. Nesbitt.

Mayor Bernard asked how much testimony there was on soccer fields in general.

Ms. Nesbitt said in general the testimony was in support of the full-size soccer field. There was no testimony on the modified, smaller size because it was not presented at the Planning Commission meeting. She estimated a handful of people (4 or 5) testified in support of the full-size soccer field at the Planning Commission hearing.

Councilor Loomis commented that the need was great for a full-sized soccer field. The unity Ms. McCarty showed in supporting the ballfields was a big step in the youth groups working together. There was a greater lesson to be learned from these things. Something needed to be done about the soccer fields, and Councilor Loomis recommended further discussion of that issue in the future.

Applicant rebuttal: **Mr. Mantay** said the District and County Commissioners strongly supported full-size soccer fields. Full-size soccer fields were also used for football, lacrosse, and other open space field activities, so there was a huge need for that. He noted that the popularity of lacrosse was growing in this area. Mr. Mantay attended the Kids First meeting where Ms. McCarty talked about the need for full-size fields, and that was where the Lot Whitcomb idea came into being. There had been conversations with the School District, and irrigation would cost $143,000. A similar discussion was going on with View Acres. The goal was not to displace people, but when one had better turf, multiple uses could be maximized on existing facilities. The North Clackamas Soccer Association used the current U10 field in North Clackamas Park. At that age, the players did not typically slide tackle, which tended to tear up the fields. He thought there was an opportunity for dual use. The DAB thought it was important to have a field somewhere in a multi-use location. By placing it in the outfield, the District felt it was meeting the spirit of what they were trying to accomplish. Everyone recognized that there would be scheduling issues that needed to be worked through. He thought it was important to have that use. Lastly, he had a lot of testimony that this was a young man's baseball complex. There would be girls out there playing fast-pitch softball just as much.

Councilor Loomis understood there was $700,000 set aside from the original $3 million plus an additional $300,000 in SDCs for a total of $1 million. He asked Mr. Mantay if he had investigated an all-weather surface at Aldercreek.

Mr. Mantay said he had had the conversation. The details were not ready for public discussion. The District had identified half a dozen different locations including Lot Whitcomb, View Acres, a couple of parcels east of I-205, property at SE 142nd and Sunnyside Road that would accommodate 1 field, and a PGE easement that would hold two full-size soccer fields. The District was exploring a plethora of options. There had been very preliminary conversations about what a turf field would do. He expected discussions would continue now that school was almost back in session.

Councilor Loomis remarked that promises had to be carried out.

Mr. Mantay said that was why he wanted the DAB and County Commissioners to make those statements. There was roughly $1 million, so he believed there were a number of options to explore. He was committed to finding solutions.

Closure of the public hearing: **It was moved by Councilor Collette and seconded by Councilor Stone to close the public hearing.**

Council President Barnes closed the public hearing at 8:41 p.m.

Council discussion:

Councilor Collette was excited by the compromise decision. She wished it had started out like this rather than taking so much time and creating so much conflict in the community to get everyone one at the table. The result was wonderful. It would be a much more usable park. She was among a group of people who met with a public space planner who said that every park should have ten attractions or ten reasons why one would go there. She saw a lot more of that in the modification. She was particularly pleased as a frequent park user to see open space and watershed protection. It was remarkable and a pleasure to have everyone present to hear about the hard work and what had been accomplished. Everyone would need to work together to get more baseball fields and more soccer fields in the area.

Mayor Bernard commented on distrust of local government. The City had tried not to be a part of this plan. He was not sure where the distrust issue came from. He discussed the proposed stewardship committee. It was in the City of Milwaukie and should go through the City Council. Fifty percent of the members should be Milwaukie citizens because the City owned the Park. He was amazed in the beginning that there was any opposition. The Council had no information on lighting and sound. Mayor Bernard's father was Mayor in the 1960's when the Park was dedicated, and it had hardly changed since then. Jim Newman who lived across the street brought the National Guard in to level the ground and to plant trees. North Clackamas Parks did go out for a number of levies to build baseball fields and soccer fields, but those failed. He hoped the next time there was enthusiasm to fund parks development. He was looking forward to work on the other side of the Park. He had gotten e-mail about dogs, and he had people visit him about dogs. Dogs have run up at him while he was in the unleashed area of the Park. He looked forward to that coming to Council, and he suggested beginning with this type of process. There were neighbors who were just as concerned about dogs as they were about kids laughing and having fun on the baseball field.

Councilor Stone reiterated her earlier comments about the collaborative nature of the project. It had been very contentious, and issues like this often started out this way. She thought it was wonderful to see both sides come together to come up with a much better idea. She also reiterated Councilor Collette's comment about protecting the environmental area on the west side of the Park by eliminating the soccer field. That was very important. She wanted to clear up a comment made by Mr. Denny regarding the City's purchasing the Milwaukie Middle School site in the late 1990's. The City did listen to the Kids First people and put it on the ballot so the citizens could vote on whether or not they wanted to purchase the property. The vote went down by a pretty large margin, so Waldorf purchased it. Local government sometimes seemed like it was not listening, but they were. The City Council was listening now.

Councilor Loomis believed Mr. Denny was referring to the time before the ballot measure. It was too little too late. That was in the past, and this was a new, exciting

time. This was long overdue. He was only disappointed in the process because it took so much time and caused so much expense for everyone. He hoped there was a lesson learned in that and that everyone was working together. Mayor Bernard's comment about distrust in government -- he applauded Mr. Mantay, Mr. Ciecko, the County Commissioners, and all the staff for rebuilding. Mr. Ciecko met with all the stakeholders. There had been a real distrust. He knew the youth organizations had given up. They had tried to work with the District in the past. They expected nothing from the District because they got nothing. Mr. Ciecko was a straight shooter and battled hard when it would have been easier to just spend the money somewhere else. He realized the District made a promise to this community. The 1992 intergovernmental agreement called for four lighted softball fields and four lighted soccer fields. There was a lot of healing. When he went to the DAB meetings he was disappointed to see another group that was distrustful of the Parks District. He was happy this was on the mend. Youth sports, community, and neighbors should be a happy thing and all work together. He thought this was a step in the right direction. That was why he was really concerned about the full-size soccer field because that needed to happen. This would be well received by the youth, but it was more needed by the City of Milwaukie and the Parks District. There would always be people around like Rick Frank, John Denny, Susan McCarty, and Bonnie Petty. There would always be parents involved who cared about kids, and they would find a place to play. He was proud that everyone stuck with this project.

Council President Barnes said every Saturday during the spring and fall there were lots of cars parked in front of her house because she lived close to Linwood Elementary School. She felt good as a mom and a grandma to hear all of these kids playing. What was best was knowing those parents and grandparents were spending quality time with the kids and watching them do something constructive. In many communities across this country kids did not have parents and grandparents to spend Saturday afternoon with and have their pictures taken. It was not an inconvenience having cars in front of her property or people walking over her yard to get to the ballfields. It was not an inconvenience to hear those children playing and have their parents cheer them on. It was not an inconvenience or a sorrow knowing that our ballfields were filled with happy, joyous kids. Quite frankly the alternative of those kids was not being happy and doing something destructive to our community. Being grateful that we have come to a compromise was something we all felt good about, but the issue remained. Now we have a real need that had to be addressed, and that was the soccer field. Anytime people could work together obviously there was some strength in numbers. She asked everyone to step forward including the Friends of North Clackamas Park to help come up with another compromise to help kids get soccer fields – not just the boys but also the girls who were very strong and very active in soccer. She wanted to make sure every kid in Milwaukie had a chance to play their sport on a Saturday morning with their parents and grandparents on hand. That was what a good community was all about.

Councilor Loomis heard comments about boys twice. These fields would be used by boys and girls. It was not an all-boys facility.

Council decision:

It was moved by Mayor Bernard and seconded by Councilor Collette to uphold the Planning Commission's decision on applications, CSO-05-02, TPR-05-01, and WQR-05-01, authorizing construction of improvements to North Clackamas Park, and to adopt the modified site plan and revisions to the findings and conditions in support of approval as identified in the appeal.

Councilor Stone discussed adding a condition that the District would post the property when it used pesticides and herbicides. She understood the city attorney said that could be a condition of approval.

Mr. Firestone said if the Council wished, the motion could be amended to adopt an additional condition of approval requiring on-site notification of herbicides and pesticides.

It was moved by Councilor Stone and seconded by Councilor Collette to adopt an additional condition of approval requiring on-site notification of herbicides and pesticides.

Mayor Bernard said the District was professional, and he did not feel the City had the ability to enforce such a requirement. As Mr. Gessner said, the City did not have a code that would allow it to do that. He would not support the motion for that reason.

Councilor Stone asked if the City could adopt a code. She thought it was a good idea because everyone was becoming very environmentally aware about the dangers of pesticides and herbicides. We lived in a very toxic world. There were animals running around and children playing. She thought it was a stewardship issue more than an enforcement issue. She was not suggesting that code be adopted at this meeting but thought it could be a condition of approval as the Planning Commission suggested. She was hoping to add a little muscle because she thought the Commission had a great idea.

Council President Barnes understood the concern, but the staff expressed concern that it neither had the manpower nor code. There have been numerous complaints, and not even dogs can be controlled. If the County and District said they would take care of that, then that was all right with her.

Mr. Mantay said it would happen.

The motion to amend failed with the following vote: Councilors Stone and Collette voting 'aye' and Councilor Loomis, Council President Barnes, and Mayor Bernard voting 'no.' [2:3]

The motion to uphold the Planning Commission's decision with the modified site plan and revisions to the findings and conditions in support of approval as identified in the appeal passed unanimously. [5:0]

Council President Barnes announced that any party standing might 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 would contain an explanation of the appeal rights. Questions were directed to the planning department staff.

Mr. Swanson said another element was that the Planning Commission spent 18 hours listening to testimony. He had a great deal of respect for the members both as

individuals and collectively. Because the Planning Commission decision was altered in some way, that was not a reflection on the amount of time or the quality of the decision. As a matter of fact, he felt the City Council was able to get to this point because of the work the Planning Commission did. It was a great group of volunteers. Additionally Ms. Nesbitt did some great work on this application.

Mayor Bernard added the Planning Commission did a wonderful job, and that group worked a lot harder than the City Council. He thought it was a great process and could not wait to cut the ribbon.

Council President Barnes recessed at 8:59 p.m. and reconvened at 9:09 p.m.

B. Appeal of Planning Commission Decision Relating to Property Located at 2540 SE Lark Street

Council President Barnes called the public hearing on the appeal of the Planning Commission's ruling that the building located at 2540 SE Lark Street had three legally-established dwelling units was called to order at 9:10p.m.

This hearing was limited to the issues raised in the appellant's notice of appeal, and the Council would recognize those wishing to speak. Council would use the testimony in coming to its decision on the application.

The purpose of this hearing was to consider the appeal of the Milwaukie Planning Commission's ruling that the use of the property for three dwelling units had been legally established as a nonconforming use. The applicant has taken the position that use of the property for four dwelling units has been established as a legal nonconforming use. A legal nonconforming use was a use that complied with zoning regulations when first established, but was not consistent with current zoning regulations. The applicable standards to be considered are Zoning Ordinance sections:

- 19.1002 -- Appeal from Ruling of Planning Commission.
- 19.800 – Non-conforming situation

Council President Barnes reviewed the order of business in the conduct of the hearing. The applicant had the burden of proving that the application complied with all relevant criteria of the Comprehensive Plan and Zoning Ordinance. The City was in receipt of the appeal, which identified the issues and the reasons for the appeal.

All testimony and evidence was directed toward the applicable substantive criteria. In this case, the only factual issues relate to the number of dwelling units in the building, when the number of dwelling units was established, and whether that number of dwelling units was legal when first established. 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 precluded an action for damages in circuit court. Any party with standing could appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing are those who testified or signed the City Council Attendance sign-up sheet on the information table in the hall.

Council President Barnes reviewed the conduct of the hearing.

Conflicts of Interest and Site Visits: **Councilors Collette** and **Stone** had driven by the site. **Council President Barnes** visited the site.

Mayor Bernard watched the entire Planning Commission meeting.

Council President Barnes said while looking for the address she stopped on the street with her window rolled down. The neighbor directly across the street came to her car and asked her, not knowing who she was, if she was looking to rent. Council President Barnes replied that she was not. He looked at her and said he did not think she should rent there because "the City was trying to shut the whole thing down." She thanked him and drove off.

Challenges and Jurisdictional Issues: None.

Michael Hamersly, the appellant, stated a point of order. He was told at the last Planning Commission meeting that he had to bring in all the information, otherwise it could not be appealed to the City Council or to LUBA. Page two said this was de novo, which meant it, was not restricted to the Planning Commission record. He was confused. Was it or was it not restricted?

Mr. Firestone said the rules required issues to be raised with sufficient information so that the decision-making body could address those issues. The same was true at both the Planning Commission and City Council. Applicants or other persons were allowed to provide new testimony but could not raise new issues. A new issue would be an issue that had not been raised before. The issue of how long the use had been legally in place had been discussed. There could be new evidence on that issue, for example, but no a new issue – not a different issue.

Staff Presentation: **Mr. Gessner** introduced Luke Jones, Ramis, Crew & Corrigan, who would help with the presentation.

The issue was very clear. The only question before the City Council was at what point in time was the building converted into 4 units and were the zoning regulations at that time such that they would allow that change to happen. He reiterated a point that was raised in the script read by Council President Barnes. Because this was a very narrow question that needed to be proven, the staff presentation would be focused entirely on addressing that question. The staff report had over 330 pages. There was a great deal of information that was potentially not relevant. It was the City Council's decision to determine the relevancy of information. Staff would stick closely to the issue at hand. For the record, last Friday staff e-mailed draft Planning Commission minutes from June 14, 2005. The Commission had not approved the minutes; however, Mr. Gessner reviewed them and thought they were a fairly decent representation of the proceedings of that night. In that same e-mail transmittal there was an August 10 memorandum from Mr. Jones in the City Attorney's office detailing the events and conclusions of an investigation conducted. Mr. Jones would speak to those.

Mr. Gessner reviewed the history. There was a lot of relevant history and history that might not be so relevant. The property was annexed into the City before 1968, and the City had records to demonstrate that. He also knew in 1968 that the City adopted a new Zoning Ordinance that limited the use of this property to no more than a duplex – no more than two units. That was based on the prescribed allowed use. He believed

the area of the parcel was just a little greater than 10,000 square feet. One needed 5,000 square feet per unit in the R-5 zone.

He referred to the talking points. Mr. Jones would speak specifically to those identified property owners. On July 9, 2003, Mr. Jim Griffith, Mr. Hamersly's representative at the time, had asked the City to determine that four units were permitted in that building. Staff could only determine at that time that three were permitted. The City issued a formal approval in accordance with the Zoning Ordinance. On July 27, 2003, the appeal period expired on that approval. There was some discussion in regards to the purpose of appeal periods and the necessity to have a termination of the appeal period.

It was not until November 2003 that the City was contacted by Mr. Hamersly's representative giving notice of the intent to appeal. That appeal could not be accepted, and it could not be reconsidered. In fact, staff refused to reconsider any subsequent requests for quite some time until February 2005 when staff did accept a duplicate request made by Mr. Hamersly himself to determine, again, on his behalf that four units were allowed. Staff could not make that determination based upon the information presented and the history of the case. Mr. Gessner issued a determination that was subsequently appealed to the Planning Commission. The Planning Commission considered it on June 14 and upheld the Planning Director's determination. Mr. Hamersly subsequently appealed the Planning Commission ruling.

The Planning Commission relied upon City and County records to make its decision. Both county assessor and City utility billing records identified the property as historically containing three units. They did fairly extensive research and presented that information to the Planning Commission in the staff report. The City Council already had much of that information. There was about a three-hour public hearing on June 14 wherein testimony and additional evidence were provided to the Planning Commission. The City had new information based on an investigation conducted by Mr. Gessner's request by the city attorney's office. He turned the report over to Mr. Jones to explain the nature of the investigation, what he found, and the conclusions.

Mr. Hamersly made comments from the gallery, which were inaudible.

Mr. Jones, law clerk with Ramis, Crew, Corrigan. One of his assignments from Mr. Firestone was to call the residents first and then the previous owners of the property and ask them the simple question of how many units were in the building when they lived there or owned it. He referred to the memo he prepared that summarized the positive results of the investigation. There were other people he tried to contact that for whatever reason seemed to have disappeared from the face of the earth or were at least no longer carrying telephones, answering mail, or talking to their neighbors.

The first person he spoke with was Ruth McGahuey. Her husband Mr. McGahuey was deceased. She did not recall the specific dates that she and her husband had owned the building. She remembered that it was sometime in the early 1980's. The two deeded in the title report obtained by Will Seltzer of Ramis, Crew, and Corrigan showed that she had owned the property from 1973 to 1982. When Mr. Jones asked her how many units were in the building, she replied three. That was exactly how he asked her the question. He asked her how many units she rented it out as. She said three. He

asked if she ever rented out more. Did she ever rent out four or five? She said no it was only three, and that was all they could have.

The next owner in the process was Leon Huggett with whom he spoke. As the memo showed, the title report indicated he owned the property from 1982 to 1985. He confirmed the same thing and that he had only rented it as a three-unit apartment building. He had one piece of information that he had wanted to rent it as a four-unit. He had thought about seeing if he could get a four-unit approval, but he thought there was a problem with parking. That was why he was not able to rent it as a four and kept it as a three. After speaking with Mr. Huggett, Mr. Jones drafted a brief which Mr. Huggett signed as being an accurate portrayal of what he had said. That was included with the memo.

The next owner he spoke to was David Wilkie who co-owned the building with Rick Brewer from 1995 to 1997. Mr. Jones spoke with a person named David Wilkie who had lived at the address indicated on the deed at the time he bought and sold it according to the background research tool he was using. Mr. Jones thought it was very likely that this was the David Wilkie who had in fact owned the property. But when Mr. Jones contacted him, he said no. A lot of people he spoke to were very nervous when someone called them saying they were calling for the City of Milwaukie. He told them he was just doing a research project and that no one was going to get into trouble. There was no issue to worry about. He was just trying to get information. When Mr. Jones said that, Mr. Wilkie said he could not help. Considering that information, Mr. Jones believed he did talk to David Wilkie, but he did not want to talk to him.

Those were the three owners' comments that he talked to, and Mr. Jones asked if he should talk about the residents.

Mr. Gessner remarked that City Council had that information. For the purpose of Council decision-making, he believed the City had very credible, substantial evidence that confirmed the building had three units for a period of over 20 years. There were signed statements from property owners who have no interest in this matter. They long ago sold the property. He wanted to clarify that in no way had the City alleged that Mr. Hamersly himself converted the building from three to four units. He believed it was converted between 1995 and 1997. In fact Mr. Hamersly, as part of the record, had a photocopy of the newspaper advertisement noticing the availability of the subject property. It said "four-plex for sale." He asked Mr. Jones if he had found anything in his work that would illuminate that belief more.

Mr. Jones said that was the exact impression he got from the interviews he did on the phone. It was converted some time after 1995. One of the residents, Mr. Freeman referred to the owners in 1995 – 1997 as the "two used car dealers." It was converted at some point by the "two used car dealers" with whom Mr. Jones was unable to speak.

Mr. Gessner spoke with Mr. Huggett yesterday. He was somewhat embarrassed to make the call. The purpose of call was to ask Mr. Huggett if he would come and testify before the City Council. This was someone who sold the headache a long time ago. He was not willing to testify at the hearing. Mr. Huggett did confirm to Mr. Gessner that it was three units – two upstairs and one below. When they had the occasion to enter the premises under a code violation – a serious code violation case – that eventually

resulted in the building being declared a dangerous building. All tenants were required to vacate, so they would not be subject to risks given the condition of the building. The building had four units. One asked one's self why there were four units in a building on a little more than 10,000 square feet in an R-5 zone. It was a natural curiosity to understand why that happened. Many times when staff found gross building code violations, it was because things were not done by code – either by building code or zoning code. This was a natural process of investigation and how these types of problems were considered. The witness statements substantially corroborated the information that staff had. The County assessor said there were three units. The utility bills said there were three units. He had photographs of the condition of the building. Staff had discomfort when it was trying to justify three versus four. With the work done through the City Attorney's office, he felt there was substantial compelling evidence to uphold the Planning Commission's decision on the appeal. There was a lot of information in the packet, which he could discuss at great length. He would prefer not to given the hour. He would also feel very confident in the material presented to the Council thus far.

Council President Barnes believed everyone had read the material and asked if any member of Council had a clarification question for Mr. Gessner or the City Attorney's office.

Councilor Stone had some questions regarding information in the packet and specifically information, letters from employees at PGE. One letter dated April 11, 2002, stated it was the "understanding that this address on Lark Street is a four-plex. It would be logical to think that if the meter was installed in 1964 in one unit that the other units would coincide. However, the meters have been pulled from these addresses. We do show what we did at one time have active service at 2540 SE Lark Street 1, 2, 3, 4 and a utility room. However, we are unable to access any records at this time for all accounts other than the address listed above." That told her that they had four units at that point in time. There were other references that made her question what had really gone on there. She had just read from packet page 73. On page 105 was another letter from a PGE representative stating that the "State of Oregon requires inspections prior to connection of electricity, PGE abides by those laws – and has for well over 50 years." It had "never, nor would it now, connect electricity at ay location without the property owner first obtaining proper electrical inspections."

Council President Barnes asked Councilor Stone if she had questions for the City Attorney representative.

Councilor Stone said Mr. Jones could probably step back unless he was the appropriate person to respond to the PGE questions. She referred to page 106, "condition of electrical installations." Apparently there were records that were missing. It was very convoluted. It went on to say on page 107 that, "We feel that the information that we have provided is proof that the structure was in place as a four unit apartment structure …" Councilor Stone was not sure where that came from. It did not seem to be part of the letter in terms of condition of electrical installations. It went on to say that "There may well have been four units prior to that date with all units on one meter prior to the installation in 1964, but again, no records were available." There were references

saying the electricity – the use of the different boxes and wiring – dated back to the 1960's.

Mr. Gessner did not believe the records amounted to much in terms of proof. It identified at least for billing purposes what was in place. Staff reviewed that information. Given the weight of the other information to the contrary, staff had a very hard time reconciling this. It was a very common practice for apartment buildings to have a common meter for the utilities, washroom, outdoor lighting, and then to have individual meters for each unit. One could change what happened on the inside without changing what happened on the outside. For instance, if what the City was presenting for evidence was true, then what likely happened was that the common meter was then converted to a service meter for a unit sometime between 1995 and 1997. Mr. Jones in talking with one of the tenants had found that one of the tenants was paying for the entire building. That was a red flag for staff, and he asked Mr. Jones to discuss that.

Mr. Jones said Mr. Jay VanOrman lived there from 1998 to 1999. He actually had a lot of complaints in general about the building. At the time Mr. Jones was talking to Mr. VanOrman, he had not realized the metering would be an important issue. What Mr. VanOrman had brought up on his own was that he had been paying, as Mr. Gessner said, for the electricity for all four units at the time he had been living there. He had called someone and had it repaired because obviously he only wanted to pay for his own electricity. He did say that, and Mr. Jones did not believe Mr. VanOrman had any reason to make it up. He brought it up of his own accord.

Mr. Gessner said in 1960 there could have four units. By virtue of the then subsequent property owners they decided to only have three. If there were four and it went to three, then under zoning law they were not entitled to that fourth unit once it was discontinued for more than six months or a year. The regulations worked to eliminating nonconformities.

Councilor Stone understood it could have been a four-plex, then they disconnected the meter for longer than six months or a year. Then it could not go back to the same use.

Mr. Gessner believed it was unlikely that there were four units in there during the time the McGahueys and Mr. Huggett owned the property. Based upon his conversation with Mr. Huggett he was interested in expanding by making the basement two units. When he went to the City, he was told he could not do that. Mr. Huggett told that same information to Mr. Gessner and to Mr. Jones unsolicited. Staff began to get rather confident in what it was hearing when it got unsolicited, similar remarks like this were provided. After Mr. Huggett learned that he could not put two units in the basement, he began to improve the basement. Mr. Gessner believed overtime it was enlarged to a point where a new property owner came in and actually divided the space. In regards to the letters provided by PGE and Industrial Commercial Electric, electrical systems, plumbing systems … The Industrial Commercial Electric letter on page 106 was written in 2004 or three years after the time the building was closed for fire-life safety hazards. He did not know what that person witnessed. It was quite likely not what was in place at the time the building was ordered closed. After December 2001 when the building was ordered vacated, Mr. Hamersly had spent considerable effort on having plans drawn and contracting work done to correct all the prior violations. It was not uncommon for work to be done without permits. One would see in the photographs that there was so

much exposed wiring that it really looked like the work was done without permits and therefore no inspections were done.

Correspondence: None.

Appellant Testimony: **Michael Hamersly**, POB 82921, Portland, Oregon 97282.

Mr. Hamersly was present as an owner of a four-plex in the City of Milwaukie. He had gone through a long and arduous process to get to this place. He thanked the City Council for being there because he knew it was already late. This was very important to him, so he was glad they were spending the time on it. He hoped to demonstrate he did in fact purchase a four-plex. If the City Council looked at some of its material, it would see that City employees stated he had bought a single-family house and illegally converted it to a four-plex. That was put into a news article, and he had neighbors coming and asking him why he was doing things illegally. He heard conflicting information. The article was there and he would be happy to go into those things later.

Tonight he hoped to demonstrate that the four-plex existed at least since the 1960's by providing the following information and documentation of physical facts. The four-plex building was built in 1936. That was important to note. In 1936, he believed the City of Milwaukie had about 2,000 residents. It did not require building permits for all buildings. So when they say that the wiring was done kind of funny, it was true because there were not permits at that time. It was indicative in an older building to find these unusual situations.

He hired a professional civil engineer, a professional electrician, an expert in multi-family renovations, an expert in non-conforming uses, and a professional appraiser who all physically inspected the structure and agreed that it was a pre-existing non-conforming four-plex and had been since at least the 1960's. He did his best to provide the information to show that he bought a four-plex. Planning made mistakes in 2001. Mr. Gessner started by saying it was July 9, 2003. That actually started back in December 2001. It was still going on four years later. This was what he would consider a fairly simple matter. The reason it has dragged on so long was when planning closed it down, the official reason given was it was a dangerous building. He saw that as a glass ceiling. She was not hired because she was unqualified was the official reason. The real reason was they did not want to hire a woman for that position. The official reason for this being closed was that it was a dangerous building. He would demonstrate later that was not so. They sent the notice out on November 29, 2001. They left the tenants and children in there until December 14, 2001. If it was so dangerous why were they not vacated immediately? He would go though and list – they were minor safety issues.

He did his best to provide the information. That was why he thought they pushed so hard to find three units. This was the first he heard they contacted previous tenants and owners. He wished he had thought of that because he would have gotten the information he needed. He did not have any of that information staff was talking about. They had three years to come up with this new testimony. At the Planning Commission hearing, all they had was the utility bill from the City, which was based on the appraisal record, and the county tax assessor's record. That was all they had at the Commission, and that was the compelling evidence. He would like to get a copy of the new evidence

he heard this evening about the owners and renters. He felt he had been sideswiped at the very last minute. They had three years to make those phone calls. It was interesting that staff had not done that until now.

Another thing was that if the City Council did not find for a four-plex at this meeting, Mr. Hamersly would literally lose thousands of dollars. He bought a four-plex in the City of Milwaukie, and now zoning was taking one unit. That was 25% of his business and income. He did not see how it was in the best interest of the City to take away a low-income housing unit for someone who legally bought it. He believed there was an opportunity to right a wrong and clear his name and reputation – and help clear the name and reputation of the City of Milwaukie as a good place to do business.

From his understanding all that needed to be done this evening was to decide if evidence provided to the City Council indicated the structure could have been four dwelling units in the late 1960's. If it was agreed the structure could have been a four-plex in the late 1960's, then the structure met the Milwaukie Zoning Ordinance 19.809 and could be recognized as such by the City Council by simply voting that this structure was an historic, non-conforming use with four dwelling units. He found inaccurate information in the staff report. He heard inaccurate information tonight given to the Council by Mr. Gessner. Then he would go into what he thought were the most important issues which were physical facts – no hearsay – not "he said, she said" – about this building. He saw that as similar to current court cases where people were convicted beyond a reasonable doubt from eyewitness testimony and hearsay information. They did DNA testing of the physical facts, and these people were exonerated. It was not that people were not telling what they believed was the truth. Physical facts should be taken over "he said, she said" types of situations

He addressed three things before going into the reasons for his believing this was a four-plex since the 1960's. One of the things Mr. Gessner just said – there were a number of things actually. Unfortunately, he would have to come back to that because his notes were a little messy.

When it came to calling it a dangerous building, he thought it would be shown that was official reason. The real reason was they thought it was a house that had been illegally converted. Within weeks of shutting the building down in 2001, they went in and pulled all the meters off the building. By pulling all the meters off the building, that prevented him from calling PGE, giving them the numbers off the meters, and asking what the history was. He thought that showed the intention that they did not think they found a dangerous building and then looked to zoning. Mr. Hamersly had a quote from Kenneth Kent that said, "A four-plex was not permitted in the R-5 zone." That was a letter from December 9, 2001. It was in the packet. He fully believed that showed the attitude. This was the point he wanted to make about what Mr. Gessner just said. He was saying, "well we found some building violations, then we thought we would look at zoning." It was actually the opposite. They thought they found a zoning problem, so they used an excuse of building to close the building down. They left this building closed for 18 months and did not issue any permits to fix it. That was another indication they believed there was a zoning problem. If he could fix three or four units, then it was not a single-family house. He thought they made a large mistake and had been trying

to cover that mistake for years until he finally had a chance to sit down and provide the City Council with some of the information he had found.

He asked the Council to turn to page 198. It was the letter he received on December 7, 2001. He referred to the third paragraph, second sentence of the letter from Kenneth Kent, Associate Planner for the City of Milwaukie. Mr. Kent wrote, "A four-plex is not permitted in the R-5 Zone." That was simply not true. A four-plex was permitted if it was a non-conforming use. Mr. Hamersly did not believe Mr. Kent understood that. When they found no permits because it was an older building, they thought it had been illegally converted. It had not. Then they closed the building and were in a difficult position. 18 months of keeping that building closed – it has been bad.

The facts at the Commission were only two. Tonight there were quite a few more. He referred to the key issues on page 3. It was interesting those were never hit tonight. The key issues were (1) (a) Milwaukie utility bill records show three historical units of sewer service. Testimony taken from City of Milwaukie Carla Atwood, Pat D. and Mr. Becker was on page 104. He went into the City on April 20 and had asked Carla Atwood how the utility bill was determined. She told him the utility bill was usually determined when the house was built. They looked at the building permit or record. There was no building permit or record. He asked how it was done, and she said she did not know and asked him to come back. Mr. Hamersly came back on April 27 and spoke with Carla Atwood, Pat, and Mr. Becker. They went over it again. Since no building plan had been submitted to the City in the 1930's and there was not a building plan on record, Carla and Pat believed the utility bill for the building on Lark was based on a flawed 1976 appraiser's records from the County that incorrectly identified the number of units. The utility bill was based off the appraisal record, so he did not believe it was good evidence. It was pretty much just redundant. The City only had one reason for three units and that was the appraisal record. There were only two reasons why the City said this was not a four-plex. One was the utility bill which he did not believe – from what the City employees told him – was based off this assessor's record. By demonstrating the assessor's record was inaccurate over the years, it completely eliminated the case that the City had been presenting for the past 3-1/2 years until tonight when it suddenly had new information.

Mr. Hamersly provided a handout. Clackamas County used the assessor's record to make the decision. The Clackamas County Department of Taxation – he wanted to emphasize the assessor's records were for assessment and taxation purposes only. Period. The records the City used to make its decision, they should not have. They were not intended to establish the legality of a property's use even though they could be used…. He did know why planning had depended on this for the past three years. The only two reasons in our packet that they gave for not finding four units was the utility bill, which was based on the assessor's. The assessor's record, which the assessor himself said, should not be used to establish the legality of a property.

The second page was the actual assessor's information upon which the City had been basing its information. Highlighted on the upper left was "remodeled." There were no indications that there had been any remodels since 1977. If one looked below that it said, was the interior inspected by these appraisers. All the inspectors for the past thirty-odd years had not been inside that building. They did not know what had been

going on. They listed the total square footage of that building as 1,419. The actual square footage was 3,078. They missed over half the building on this appraisal record, yet this record was what the City used to base its determination for the last 3-1/2 years that this was not a four-plex. He felt that was pretty poor information. Mr. Hamersly was forced to make drawings that Mr. Gessner referred to. He refuted the fact that he had done any work without permits. He followed all the rules, and that was why it had taken so long. He was not cutting corners. He referred to the drawing. He pointed out the stairs and door to the side unit. To get to that unit, one had to go upstairs, make a 90 degree turn to the left, go up another 4 or 5 stairs, and the front door was on the interior. One cannot see the door from the exterior. An appraiser who did not go in as stated in the upper left-hand corner would not see the fourth unit. He believed that was the missing fourth unit on the appraiser's records. That was it. That was why the City said for the past 3-1/2 years that it was not a four-plex.

Unfortunately those were the key issues Mr. Hamersly came up with as to why they believed there had been four. Due to the time he would not hit them all. He first stated that historical records showed that the structure was constructed prior to code in 1936. That made it a non-conforming, pre-existing four-plex. 1973 showed that the structure was unchanged since that time. He had signed testimony from the then-Mayor of Tigard, Jim Griffith, who was also a planner for more than 20 years who testified that in his professional opinion after reviewing the material and walking through the structure the building was "classic pre-existing non-conforming structure with four units." Signed testimony from a civil engineer that the building materials in the structure, plumbing, etc. were the same vintage and therefore met the criteria. That same civil engineer stated in his professional opinion that "the structure at 2540 SE Lark had not changed in the last 35 years. Therefore, in answer to the question of whether there had been four units located in the structure for the last 35 years. Yes, without any doubt the building had been the same for at least the last 35 years." This was a professional, licensed civil engineer who inspected the building. He had signed testimony from a well-respected member of the community, Mr. Bitz. He was a long-time resident of Milwaukie. He had been on a board and a working volunteer for a non-profit community development corporation that acquired and renovated older low-income housing, thus giving Mr. Bitz quite a bit of experience and expertise in older multi-family dwellings and the remodeling of them. Mr. Bitz in a signed letter to the Planning Commission stated, "I have personally inspected the physical property. I am willing to testify to this effort and the following conclusions. He believed the building at 2540 SE Lark was built and has been used for four dwellings. He believed there were four electrical meter bases serving four dwellings and evidence indicated they dated from the 1960's. Evidence indicated that the building was built in the 1930's. There was no evidence produced that would indicate that one dwelling unit has been added after the 1960's."

An important piece of information he recently uncovered was during the Planning Commission meeting, a Commissioner requested a copy of the title insurance. Mr. Hamersly did not have a copy with him at the time because all the title had was the legal description. It did not describe the building or how many units, so he did not bring it with him. He went home and looked to make sure he had read it correctly. What he found when he did that was he had taken a loan from Washington Mutual when he was buying the building, he found the appraiser who had done the appraisal for Washington Mutual.

So he had a licensed appraiser with a signed statement on June 20, 1997 that stated, "due to lack of current listings for comparable four-plex property …" So he was trying to find comparable four-plex properties with the four-plex he purchased.

Council President Barnes asked Mr. Hamersly to wrap up his presentation as the allotted time was up.

Testimony in support of the appeal:

Mr. Hamersly requested that the testimony be in a particular order.

Mr. Firestone stated that would not make any difference.

- **Wayne Hamersly, 13200 SE Nixon, Milwaukie**.

Mr. W. Hamersly helped in the early days of this and watched as his son worked through the process after Milwaukie shut the building down for a couple of years. About two months ago, he decided he should try and help because the questions seemed to revolve around square footage and the use of the words basement, first floor, and second floor. It was reasonably confusing because there was no basement in this property. There was a first floor and a second floor and a small bedroom on the third floor. The only below-level grade was the washer and dryer area. He went to Clackamas County to determine why they were showing a record of 1,419 square feet in a two-story and maybe three-story building. That did not make sense to him because he measured it. He talked with Joe Honel. There was a letter sent to Mr. Gessner, which he hoped the City Council had seen, but he did not hear it mentioned. He was not able to come down to the building, so Mr. W. Hamersly took pictures of the building and the stairs to show the incomplete appraisal that was done since the 1970's. He could go back to the 1970's and show that all the County appraisers indicted they had not gone inside the building. Last month when the other body that listened to this appeal mentioned that they drove by the building … this group gave full credit to the fact that some drove by but did not go in. If they did not go in it, like the appraisers, they missed over half of the building. The building actually had – there was 1,659 square feet that was not on the County appraisal. One whole floor plus the basement was not on the County appraisals. He thought that was really important. Those county records had been changed. That was in the letter. You would have to do the math because he talked to Mr. Gessner. He said the County did not say that. Mr. W. Hamersly did the math and 1,419 and 1,419 and 200 some odd feet added up to a whole extra floor. In other words, over half the building was missed. There were some comments and earlier correspondence from Mr. Gessner that discussed the fact that Mike (Hamersly) was illegal in not telling the City of Milwaukie that the utility bills – he should have 'fessed up and said he had four units. You can't tell on the utility bill how many units there were because it was not on the bill. There were some serious mistakes made in this, and he hoped the City Council would rectify those.

- **Christina Piasky, 10221 SE Crescent Ridge Loop, Mt. Scott, Oregon 97226**

Ms. Piasky started with looking at the facts of the situation. This was the first time they had seen the testimony from the people who were brought up. She thought a lot of that, the wording, could determine the prior owners' answers. She did a lot of interviewing and one could extract what they wanted out of people. She had not seen any signed

documentation on that. She also thought it would be interesting to know if these owners actually lived there and that they actually rented three units. That would make it four units. Or did they use one as storage. These were some of the questions that seemed unanswered when one considered that evidence. She had personally been in the building about a dozen or more times. Earlier in the evening during the parks hearing, she heard a couple of different questions about distrust of local government that Mr. Bernard said he did not want to see. Then lessons learned from Mr. Loomis. She thought it was interesting that distrust of local government that Mr. Gessner brought up fire/life safety hazards that were brought up in the Kenneth Kent letter. There were no fire/life safety hazards. It was very slanderous toward her husband Michael Hamersly. She thought those were minor violations, and that creeps in with the local government. In addition, it was disappointing. There was e-mail from Tom Larsen stating they were minor violations. It had been very misleading from the City of Milwaukie planning department. She was not sure what the situation was – workload balance – she was not sure what it was. She, of course, would like to see a good compromise come out of this also. They had a huge financial investment. She also thought it was unfortunate – she understood there was a time limit, but the City was allowed from 9:15 p.m. to 9:45 p.m. Yet they were allowed the 20 minutes. She thought that was discouraging. It should be apples to apples at all times. The mistrust of local government crept into those types of issues. She urged the City Council to look into the facts of the case. The DNA of the building was that there were four units. Whether people chose to rent them out was strictly a personal preference. Maybe they lived there. Maybe they let their son live there. Maybe they let their daughter live there. Who knew? Without more information, those were difficult to take. The physical facts, the meters, the building itself, there was no basement, the tax assessor's documents really showed there had been four units. She urged the City Council to ask questions and to consider that.

- **Rory Grondin, 210 Jefferson Street, Oregon City**.

Mr. Grondin did some work with Mr. Hamersly on the four-plex at 2540 SE Lark. During the time they did some basic aesthetics like painting and things like that. He was able to see some of the walls and tile work. The tile work in the upstairs unit dated back to the 1960's if not before. It had the black tar underneath it which was the material used to affix the tiles. Its use was discontinued in the late 1960's because of the asbestos and other reasons. The walls separating the downstairs units where they say the unit was allegedly added were lathe and plaster. There was a staircase that separated the front and back units, and underneath that was lathe and plaster. Also the cast iron plumbing that went into it was consistent with the rest of the building and was dated at the same time. From his evidence and what he had seen in the building…. The window in the back unit had to be lowered to egress. He and Michael did that. They did not have those codes and rules when that window was put into place as a bedroom. There were a lot of things that said to him that unit had been there since the 1960's if not before. He asked that the City Council take that into consideration.

- **David Allen, 11355 SE Stevens Road, Portland.**

Mr. Allen was an electrical contractor – industrial/commercial electric. He referred to a letter he wrote in 2004. Mr. Hamersly was a friend of a friend of his. When this issue came up, he was contacted. He went out there initially to see what he could do to get

the building into conformance. They wrote up some corrections but never did anything that altered the building structure. He later finished some work, and he was able to get some tenants in. Inspections were taken out by Clackamas County. He did note in the letter that the meters were old enough to pre-date the 1970's. They were definitely in the 1960's. In his early career he did a lot of work on remodels and service changes. He was quite familiar with the type of service this was. There were always four meters there. There might have been a question raised by Mr. Gessner as to the use of those four meters. When he was doing some of the work that needed to be done as far as separating – they wanted more outlets in the kitchens. To update the code, they wanted some of the furnaces that were gas removed and some electric ranges put in. All that work was permitted. In the process, he noted that the main service feeders that went the meter – all were exactly the same type of conductors, same size, put in at the same time. As one can see in the picture of the meters on the building, they were exactly the same. The risers going up the wall were the same. Those services had been there since at least before 1970. The photograph was taken after they were inspected sometime in 2004. Before they could allow any tenants back into the property, he had to do a number of corrections. Before the power company would hook back up to those meters they had to be tagged. One could see the tags on them now. They were not on before then. Obviously the service was never inspected when it was originally put in. He would guarantee it was not done before 1970 because there were no records of an inspection or a permit. The power company would not have hooked up to them if they had not been inspected.

Councilor Collette understood Mr. Allen said he traced what these units were wired up to. For example, one did not just go to the laundry room. Did they each go to an apartment in that dwelling?

Mr. Allen said there were four panels and four meters. Two of the panels were actually in the utility room. It was about a one-foot step down from grade. They came from the meters and the wire was the same. There were four wire runs from the two meter bases, and there were four meters. The other one was outside of what would be the front door, and the other one was by the garage space. They were all installed and run in the same manner. Then the sub-feeders that went to the light and heaters all came out of those panels and went to the separate apartment units. Whenever they did it, they did it in the same fashion, and they went to these four units.

- **Gerry Bitz, 12586 SE Guilford Drive, Milwaukie**.

Mr. Bitz had lived at that address for 25 years and lived in Milwaukie for some 44 years. In a letter he sent to the Planning Commission he stated his qualifications. He served as a board member and as a working volunteer for a community development corporation that acquired, renovated, and conserved over 120 units of low-income housing. Many of these were multi-family dwellings. Most were built in the 1920's, 1930's, 1940's, and some in the 1950's and maybe even one or two in the 1960's. He did not hold himself out as an expert, but he had a considerable amount of experience. His association with Mr. Hamersly and his family and his parents went back over 25 years when Mr. Michael Hamersly was a student along with his children at LaSalle High School. They had a close association for about 25 years.

Mr. Hamersly asked him to inspect the four-plex at 2540 SE Lark and give his opinion as to its construction. Based on his experience in evaluating hundreds of properties for renovation and restoration and based on his hands on construction work for over roughly 15 years, he was comfortable in stating that no additions other than a carport had been made to the structure for at least 40 years. He was nearly certain that none had been made since the original construction in 1936. His conclusions based on the following: lathe and plaster walls, sinks and toilets and other plumbing fixtures. One would have to look at Rejuvenation or Hippo Hardware to find sinks like the ones in this property or maybe a junkyard. Where visible, there was shiplap underlayment – not plywood under the exterior walls. The exterior cladding itself was all very dated and was well prior to the years the 1960's. The ceiling was a 1960's product. Pre-1960's electrical wiring, which others have already spoken to.

In other words, the property spoke for itself. Perhaps his testimony should stop at this point. However, Mr. Hamersly asked him to review the entire process since December 2001, which he had done. He looked through all the documents. As a citizen of Milwaukie he felt compelled to state how disappointed he was to learn how shabbily our public servants have treated Mr. Hamersly. Disappointed was not strong enough. Frankly, it made him angry. The record showed from the very beginning in December 2001 City staffers assumed that Mr. Hamersly had acted illegally or been dishonest. Putting Mr. Hamersly on the defensive, he was wise in seeking legal assistance and engaging professional consultation. Through a series of unconscionable delays, Mr. Hamersly was denied the opportunity to access his own property from December 2001 to July 2003. Some 19 months. The record showed that City personnel did not meet their own deadlines as described in the code in responding to applications. It penalized Mr. Hamersly when he missed a deadline because his consultant was undergoing cancer treatment and killed him six months later. Even after indirectly admitting they were wrong, asserting that the property was single-family dwelling, which they admitted in July 2003. The City Planning Commission stubbornly refused to acknowledge that the property was a four-plex and not a three-plex. This was in fact compelling evidence to the contrary. The City relied on a 1973 property tax assessment document that on its face was riddled with errors. The assessor never entered the premises. He was unaware an interior hallway opened into a fourth unit. He missed one entire floor and half of the building's square footage, yet the City stated this was evidence. Here was another example. In a letter written February 11, 2005, Mr. Gessner called into question Mr. Hamersly's honesty. In wrapping up he would simply say he was seeking simple justice.

Testimony in opposition to the appeal: None.

Neutral testimony: None.

Staff recommendation: **Mr. Firestone** clarified the recommendations and staff rebuttal and any questions of staff should be asked at this point before the applicant and appellant presented his rebuttal.

Mr. Gessner said if the staff was wrong, then its determination should be denied. We did not get there in the way it had been described tonight to the City Council. There was a great deal of detail left out for the benefit of the appellant's argument. He could not take the time to argue those points that were not relevant to the question of when

the building was converted into four units. Staff had no dispute that the building was constructed in 1936. There was no dispute there were historic building materials in the building. The City had signed statements from the property owners saying during their tenancy and ownership that building, up to 1995, had three units. Mr. Gessner thought that was compelling. Frankly, he wished he had that information available when he went to the Planning Commission. Knowing that he would be subject to personal attack he felt that he would rather have a more solid record so the City Council would not have to ask the question if staff was really doing the right thing. Staff acted on a fair degree of intuition. There were a lot of pieces to put together to come up with that determination. He thought staff did good work, he was sorry the experience had not been good for Mr. Hamersly.

There was another side of the story the City Council was not going to hear because he could not tell it. It was true there was a staff error in the December 7 letter from planning staff. It did not properly identify that there was a possibility of non-conformity. That letter was corrected some time thereafter. There was correspondence in the City Council information wherein Mr. Griffith, Mr. Hamersly's consultant, pretty much detailed how to strategize to manage this problem. He acknowledged that the City's position that it was a grandfathered three-unit building based upon the administrative records. Staff did not have the benefit of the information it had now. Mr. Hamersly claimed he was not privileged to the information that was provided last Friday that included the August 10 memo from Mr. Jones and the June 14 Planning Commission minutes. He could not attest personally to having mailed those letters to Mr. Hamersly. What he could attest to was that on Friday morning he gave that information to an administrative assistant, and he said it was essential that the material be in the mail that day. He was told that was done. When staff corresponded with Mr. Hamersly, it sent two types of mailings. One was sent by standard post, and the other was certified. The City had not yet received the return receipt on the certified mail. He had full trust in the fact that those materials were mailed and received by Mr. Hamersly.

The testimony, both Mr. Hamerslys, about the assessor's recording of the square footage was simply incorrect. Staff had spoken with the assessor. They had seen the records, and that was simply incorrect. It was stated that whether a property owner had three or four units was a matter of personal preference. In the beginning of his presentation, Mr. Gessner had indicated it was not a matter of personal preference because of the zoning laws governing non-conformities. If a non-conforming situation was changed, after six months or a year one did not get it back as a matter of personal preference. It was lost.

Depending on the vote, if the City Council upheld the Planning Commission's decision, then the City Attorney had prepared some additional findings for the Council to consider in light of the new information provided regarding owner and tenant statements.

Councilor Stone asked for clarification of the assessor's record regarding 1,419 square feet. Further on down it looked like it said there was 480 square feet, which seemed to refer to the basement. It stated there were two units on the main floor and one in the basement. This was from the County. She was conflicted about statements and documentation she read in her packet stating that no county assessor had ever been inside the building and that the fourth unit, the one in question, could only be accessed

from the center of the building. They would not see that unless they went into the building. From a previous issue in the City regarding Johnson Creek Boulevard, there were some County records – plat maps – that were in conflict with one another. Things can be inaccurate. She wanted to be sure the City Council was dealing with very accurate information.

Mr. Gessner believed at this point the County assessor information was accurate. He thought it was being interpreted in a way that was not intended – at least on behalf of the County assessor. When they were doing their initial investigation, Mr. Gessner and Ms. Nesbitt talked with the assessor in order to understand what information they had and how they recorded it. They recorded information for a very special purpose. They did not record all the information, and staff understood it had its limits. He did not believe that the building had never received an interior inspection. He knew at a point in time that the County's inspection practices had changed. If they were never in the building, then how would they have three? Why would they not look on the outside of the building and see four meters? The problem with this case was piecing together circumstantial information to make some sense out of it. If looked at individually, he thought some of the information could be questioned. What the Planning Commission was asked to do and what the City Council was being asked to put it all together. Put the totality of the information together. Did it make sense?

Councilor Stone referred to page 10 of the packet, which was a letter from Ray Erland of the County Assessor's office. It said, "It appears from your documentation that the sales listing indicated the property was a four-plex when your son purchased this property in 1996." That was the letter to Wayne Hamersly from the County Assessor. "However our records reflect the judgment of our appraisers using the best information they had available to them at the time of each appraisal. …We are not able to state with any certainty what point in time this property was used as a four plex." There was a statement from the Attorney's Office when the past owners were interviewed, someone did say that there was a four-plex there at one time.

Mr. Firestone said there were statements from former tenants that it was a four-plex.

Councilor Stone said it was Jay VanOrman who lived there in 1998 – 1999, and that was after Mr. Hamersly purchased the property.

Mr. Gessner said that was consistent with the staff belief that the building was converted into a four-plex between 1995 and 1997 before Mr. Hamersly purchased it.

Councilor Stone understood because the building was shut down for 18 months, now it was opened up but could not go back to a four-plex because of zoning laws.

Mr. Gessner said staff believed the building was illegally converted in 1995 – 1997, and therefore could not go back to being a four-plex.

Mr. Firestone added for clarification that it was his understanding that they were looking at the period up to the point where the City took action in 2001.

Councilor Stone understood the City took action because of safety concerns in term of the wiring, plumbing, etc.

Mr. Firestone understood the City did not want to take the position that the non-conforming use was discontinued based on inability to use the building because of the City action in restricting its use in 2001. Even though it was not used during that period, they were not looking at that period. They were only looking at when the building was converted to a four-plex and if that was maintained until 2001.

Councilor Stone asked if it could be a four-plex under current zoning laws.

Mr. Gessner replied it could not be a four-plex because of R-5 zoning. Only single-family homes and duplexes were allowed. Multi-family was not allowed in the R-5 zone.

Councilor Collette sensed even if it was originally constructed as a four-plex the inference from those previous owners was that they did not use it as a four-plex -- they used it as a tri-plex – meaning that the best it could do was to revert to a tri-plex based on the Code.

Mr. Gessner said that was correct.

Councilor Collette understood even if it historically was meant to be a four-plex but was not used as a four-plex for many years, then it was no longer a four-plex according to zoning rules.

Councilor Loomis asked about what was meant by conversion. Was there a new structure built or was the space converted into a living area?

Mr. Gessner said the latter. Staff believed that the basement had a single unit that was converted to two.

Councilor Stone understood if this were an illegal conversion to a four-plex, it could not be a four-plex given the current zoning laws. Were there any exceptions?

Mr. Gessner replied it would probably have to go in under a variance or use exception. He thought it would be extremely difficult to make findings that it could be converted under a variance. Typically a variance applied to a hardship situation where there was some physical or other circumstance that made it very difficult for a property owner to fully comply with the regulation. The variance was there to help manage unfair burdens of the Zoning Ordinance when there were very special circumstances. Typically, the number of units was not legitimately approved under a variance or exception.

Councilor Stone said her intention in this public hearing was to make a fair judgment based on looking at all the evidence. This was a very complicated case, the City Council did not have any hard evidence to say that Mr. Hamersly illegally converted it or prior to his purchase of the building that it was illegally converted. From what she read, he purchased the property as a four-plex. It had four meters at the time. She did not wish to penalize him if something happened prior to his purchasing the property. It was not really clear to her, as it sounded like it was not really clear to staff, when this exactly changed.

Mr. Gessner felt confident the change happened between 1995 and 1997. To clarify, he was not alleging that Mr. Hamersly had done improper with the property. He did believe that Mr. Hamersly purchased a zoning violation. This happened frequently. It was a very difficult situation for the property owner to be in because they were then responsible for it.

Councilor Stone understood that in all likelihood this property was misrepresented when Mr. Hamersly purchased it.

Mr. Gessner said at one time he met with Mr. Hamersly and encouraged him to seek legal redress with the seller. Mr. Hamersly indicated to Mr. Gessner that that was not a possibility – that he could not do that. The property was sold as a four-plex. He was not sure what laws applied in this case. Did the prior seller misrepresent the property? Mr. Hamersly felt he could not take action against the seller at that time.

Councilor Stone asked why the building was closed for 18 months.

Mr. Gessner did not have the details but it was about 18 months. There was an ongoing legal dispute between Mr. Hamersly and the City with regards to the violation. There was also the time necessary to develop plans and get building permits. He could not speak to all the details, but much of that time was spent in legal disputes between the City Prosecutor's office and Mr. Hamersly and his representative.

Applicant rebuttal: **Mr. Hamersly** said it was not an ongoing legal dispute. The City came in and said it shut the building down for safety issues, which they did not have to do. The City had the option to send a letter saying to correct those or send someone to correct them and charge it back. They did not do that. They shut it down because Kenneth Kent, who was a City employee and planner, believed – he got a letter on November 29, 2001 saying it was a dangerous building. On December 7, 2001, he got a letter from Kenneth Kent who did not understand the zoning laws. He said a four-plex was not permitted in an R-5 zone. That simply was not true. A four-plex was permitted if it was a non-conforming pre-existing use. A City employee, Steve Campbell, said he found a single-family home converted to a four-plex. That was a quote from a City employee contrary to what Mr. Gessner just said. Mr. Campbell went on to say that the single-family home had been converted into an apartment then he said "right away we knew something illegal was going on." They were saying he bought a house and converted it into a four-plex.

Mayor Bernard asked if that mattered. They made a mistake early. It had nothing to do with the facts of the case. He had read the article, and they made a mistake. He was Mayor at the time, and he remembered the code violation. If one looked, they would notice that the building was in disrepair. There was no question about it.

Mr. Hamersly disagreed.

Mayor Bernard said it did not matter. Mr. Gessner said there were mistakes made. There was not question about mistakes being made. It still did not matter. There was a mistake, and now they were looking at adjusting. No one ever said it was a three-unit versus a four-unit at that point. That was what the City Council was trying to decide right now. They spent all night sitting there worrying about what someone said in an article. He had been misquoted about every time he talked to a newspaper reporter. That had no value.

Mr. Hamersly said he was sorry. He was just upset because Mr. Gessner had not always been accurate in his quotes. He had said something …

Council President Barnes said the only factual issues related to the number of dwelling units in the building, when the number of dwelling units was established, and

whether that number of dwelling units was legal when first established. That was what the City Council had to make a decision on and only those three issues tonight. That was what was before the City Council. Not newspaper articles or anything else. He asked Mr. Hamersly to base his comments on those three things.

Mr. Hamersly said in conclusion he thanked the City Council for hearing the evidence. He hoped he demonstrated that he did in fact buy a four-plex. The City said he did not. If the City Council ruled that he did not buy a four-plex, then he would lose thousands of dollars in value. He believed it had been a four-plex since the 1960's, and he encouraged the City Council to vote so. He took the liberty at the last Planning Commission hearing – one of the Commissioners noted that the document City planning used to justify the three or four and that was the tax assessor's document. He went through it and took out all the inaccurate information. It was Swiss cheese. That was the document upon which the City based its findings. The most important thing … In 2003, they went through, and he initialed that there were only 1,492 square feet. That was inaccurate. There was twice that amount. The assessor himself said do not rely on assess information to make planning decisions, yet that was what the planning director had done. He provided physical facts. He had experts in the field come in and examine the building. The City Council heard from the electrician. There were four meters on the exterior of the building. There were four panels on the interior. The other thing he wanted to point out was there was no basement – they kept calling it a basement. It was divided by lathe and plaster. There were two up and two below. Below there was a staircase going up and lathe and plaster. There was not one unit that was broken apart in 1995. It was four units. It probably was constructed by what one could safely say from a civil engineer, a professional appraiser, a processional planner and Mayor of Tigard all went an inspected this building and came to the same conclusion. It was a non-conforming four-plex. Now and in the past out of the four units he rented three. From his understanding of the rules, if he did not get a renter in there within six months, he would lose the use. He would disagree. It was a non-conforming use whether he rented three or four units or two units. It stayed a non-conforming use.

Councilor Loomis asked Mr. Hamersly if he had been in contact with the person he purchased the property from. Was that possible? That seemed to be the issue.

Mr. Hamersly said he had not been in contact. He believed he had proved it was a four-plex. He had the appraisal report. He also had the title insurance. He had not brought it in before. When he opened the file he found that the lender required and appraisal. The appraiser found "due to lack of current listings of comparable four-plexes" so when Mr. Hamersly was buying this, the appraiser was looking for other comparable four-plexes. The sale also included some personal property -- four ranges, four refrigerators, again four units when he bought it. He included the advertisement he responded to in *The Oregonian* where it was advertised as a four-plex. The owner before him sold it as a four-plex. Even if he found him and talked to him, he did not feel he had to. He already had evidence that he sold it as a four-plex, and Mr. Hamersly bought it as a four-plex. He did not feel he had to speak with him again.

Councilor Loomis did not think there was a question that the previous owner sold it as a four-plex. Mr. Gessner mentioned that too.

Mr. Hamersly said that was why he brought up the news article that said it was a single-family that was converted. It upset him. He felt the City had besmirched his reputation. Neighbors had asked him why he was doing illegal things.

Mayor Bernard and **Councilor Collette** had no questions.

Council President Barnes asked out of morbid curiosity that she heard Mr. Hamersly said he bought this to be a low-income housing unit. She thought Mr. Hamersly looked like a smart young man with a wife. She asked why he did not fix it up and make it worth a lot of money to do something good. He obviously cared about his community. Why not go forward and make it something he could be proud of instead of another low-income housing unit of which Milwaukie already had tons.

Mr. Hamersly disagreed. He bought it as a low income. It was low income because each unit was only 400 – 500 square feet with one bedroom. That meant it was college kids, divorced mothers, and people who could not afford … it was a Motel 6. The units were so small one could not charge more rent. If it did not have two bedrooms unit, two people could not pay rent. People had to pay about $400 - $450 per month. That was low income. He bought it when he was 29 – eight years ago. The first thing he did when he bought, which Mr. Grondin who was in high school, Mr. Hamersly hired him and a friend to paint it. He put in all the asphalt. The water issue was not a leaky pipe. A tenant shoved a sponge in the pipe, flooded the laundry room, and called the City. That was how this all started. It took him ten minutes with a bucket and this. It was not leaky pipes.

Council President Barnes asked Mr. Hamersly had been paying taxes on what the County had said all this time was a 1,400 square foot structure or had he been paying taxes on a structure he said was over 3,000 square feet?

Mr. Hamersly said he had been paying taxes on a structure over 3,000 square feet. The reason he said that was because taxes were based off purchase price. When the person sold it, he paid market value for a four-plex. The assessor looked at the market value and the sale price and charged taxes from that. He was not getting away without paying his taxes. One thing that besmirched him was that Mr. Gessner said he should have gone in – February 11, 2005 – he should have gone into the City of Milwaukie and told them they had a four-plex. Since he didn't that cast doubt upon what he was telling the City Council this evening. If one looked at the City of Milwaukie utility bill, it did not tell how many units were being charged. It told how much water was used, sewer tax … He had a very difficult time dealing with Mr. Gessner. He had asked Mr. Swanson to not have Mr. Gessner here this evening, but that did not occur. He felt with the plaster wall separating the downstairs and the staircase and plaster walls separating the up … He had asked since 2002 which unit was added, and he had never gotten a response from the City planning staff. If he had gotten a response, then he could have had his experts go in there and open the walls, take pictures. Because every time they had opened the walls and taken picture, all they found was old material consistent with its being established years ago. It was a non-conforming use whether it was three or four. It was one of the oldest buildings in the neighborhood. The neighbors were aware it was a non-conforming use. Mr. Gessner said duplexes were allowed in R-5, but he was not sure that was accurate. What he knew about R-5 was one could have a single-family house with an accessory dwelling. That would be like a granny flat. That would

be two living units. This was an 11,000 square foot lot. One could actually tear down the structure and put in two buildings with accessory units and have four. It still even met the density standards. It was really frustrating to have the building shut down for 18 months. It was not legal issues. He was not getting a response from the City. He hired an attorney. The City Attorney said if he did not knock, then he would be fined daily, and they were not issuing him permits. Then he hired Mr. Griffith who was the Mayor of Tigard and planner for 20 years. by the time he was done working with the planning department, he was a little frustrated too. He came into the City to do business. He grew up in the area. He already lost tens of thousands of dollars having the building vacant. If it was ruled as a four-plex, then he could make $10,000 more. It was taking away low income housing from the area. He did not see how this would help the citizens of Milwaukie. It would take away from the tax value because when he went to sell it, it would be for a lower amount. Rental units were spot sold based on how much revenue it could generate.

Questions from Council to staff: **Councilor Loomis** asked if the fourth unit had been identified.

Mr. Gessner believed it was the lower floor unit that was converted. That was confirmed by his conversation with Mr. Huggett yesterday.

Closure of the public hearing: **It was moved by Councilor Loomis and seconded by Councilor Collette to close the public hearing. Council President Barnes closed the public testimony portion of the hearing at 11:00 p.m.**

Council discussion:

Councilor Collette said this was a difficult decision and had been a struggle for many. Whether or not this was misrepresented to Mr. Hamersly when he bought it from the previous owner, it was hard to say if it was designed as a three-plex or a four-plex. It did sound like for a long period of time it was treated as a tri-plex and not a four-plex. She felt bad for Mr. Hamersly. He had lost a lot of money, and it was a long process. She was not sure that the City Council could decide any other way.

Mayor Bernard thought it was an incredible waste of time and money. He was amazed that Mr. Gessner had not contacted the previous property owners until now. What an incredible waste of time. He had a house built in 1925. They added rooms in the basement, and he could not tell the difference. The wring was pretty amazing. What a waste of time. He now remembered talking with Mr. Griffith about this at a Mayors' Conference. He said he had an issue in the City of Milwaukie, and shortly after that he passed away. He was proud to say the Milwaukie's values had increased 15%. He did not know what Mr. Hamersly paid for the building but he probably had a good chance of turning it around and making a profit if he just got it done. He appreciated that Mr. Gessner had taken it to the Planning Commission because the time had passed. He gave Mr. Hamersly the opportunity to discuss the matter again. Personally, he thought people should have made those phone calls in the beginning. He would vote to support the Planning Commission.

Councilor Loomis supported the Planning Commission's decision. It was confusing, and he felt badly for Mr. Hamersly. He felt the problem was with the seller after going through the testimony. He appreciated Mr. Bitz's testimony but it should have stopped

before the personal stuff which was unnecessary. He had known Mr. Gessner as a staff person for some time, and he knew he did not hesitate to say he made a mistake. Mistakes happened. There was a lot of paperwork and stuff to go through. To question his integrity when trying to decide an issue was pretty low. They should stick to the facts although they were a bit cloudy. If he were in Mr. Harmersly's shoes, he would get some documentation from the person from whom he purchased the building.

Councilor Stone said this was a difficult issue, and she felt for everyone who had been involved because it was a long process. The issues before the City Council were to determine at what point the building was illegally converted to a four-plex. It looked like, if she heard it correctly, that had occurred sometime between 1995 and 1997. At that time were the zoning laws applicable to support non-conforming uses as a four-plex. From what she heard in the staff report, they were not. Because that was what needed to be decided, she would also uphold the Planning Commission's decision. It was not because she did not want to see Mr. Hamersly make good on his property. She felt badly that he purchased the property as a four-plex. It seemed like it was most likely converted to one. There were a lot of things Mr. Hamersly could do to upgrade the property. She did drive by it, but she did not go in. It certainly looked to her like he still had some work to do on it that could increase its value.

Council President Barnes echoed the other Council members' comments. Mr. Hamersly could make it into something nice. When she drove by, she thought it could use some work, but there were people out there who would be willing to be good renters.

Mr. Firestone provided the additional findings that the Council might wish to adopt:

1. To be established as a legal non-conforming use the property had to have four units legally established in 1968 and not be discontinued.
2. The evidence was that from 1973 to 1995 the property was used for three units and not for four units. The statement of former owner Leon Huggett was particularly persuasive on this issue.
3. Applicant offered evidence based on the physical state of the building and on a letter from PGE. The PGE letter did not state when there were four separate electrical services to the building. The physical information was less persuasive than the statements of the former owners as to the actual historic use of the building.
4. The applicant provided no evidence from anyone familiar with the number units in actual use in 1968 or at any time prior to 1995.
5. The City Council concluded that the building was converted from three units to four units some time between 1995 and 1997. At that time, it was not legal to establish a four-plex on the property.
6. Testimony concerning the age of the walls and other physical portions of the structure established when the building was constructed but did not necessarily establish when separate units were created.

Those were possible additional findings the City Council could reach based on the testimony and what he heard from the City Council. There were findings from the Planning Commission. The City Council could uphold the Planning Commission's decision, uphold the director's decision, deny the appeal, adopt the Planning Commission findings, and any or all of the findings he just read.

Council decision: **It was moved by Councilor Collette uphold the Planning Commission's decision, the Planning Commission findings, and the findings suggested by the City Attorney with the exception of number 5 as she was not convinced the building conversion occurred between 1995 and 1997and included the Planning Commission findings. Councilor Stone seconded the motion.**

Motion passed unanimously. [5:0]

Council President Barnes announced that any party standing might 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.

Motion passed unanimously. [5:0]

OTHER BUSINESS

Intergovernmental Agreement with Metro

Mr. Swanson said he would revise what had been provided in the City Council packet. The staff report suggested that the City Council adopt a resolution approving the draft IGA between Metro and the City to provide joint marketing of two properties. One was located at 10700 SE McLoughlin Boulevard, the Texaco Station. The City property was located at 10721 SE Main Street. After working on this, he did not feel as comfortable as he would have liked. He provided an alternative resolution of the City Council that authorized the City Manager to negotiate and execute an intergovernmental agreement with Metro regarding the same properties.

He felt the current agreement needed some additional work. For example, the City did agree to indemnify on certain environmental issues. One of the things it appeared to agree to was to indemnify on any contamination Metro might cause. He did not know that was a necessary component of any indemnification he might give. There were also right-of-way questions that he would like to explore with Metro. They had some concerns about right-of-way granted to the City as part of the McLoughlin Boulevard project that he felt needed to be clarified. There were also some procedural issues. They asked that the City authorize execution of the agreement by ordinance when that would normally be done by resolution. He asked for the authority to negotiate the final agreement and execute that same agreement. The reason for this was timing as Metro needed to close this deal in order to make it effective.

Mayor Bernard said Mr. Swanson was experienced and felt comfortable in his ability to negotiate to the benefit of the City.

It was moved by Councilor Loomis and seconded by Mayor Bernard to adopt a resolution authorizing the City Manager to negotiate and execute an intergovernmental agreement with Metro providing for joint marketing of the

property located at 10700 SE McLoughlin Boulevard and 10721 SE Main Street. Motion passed unanimously. [5:0]

Center/Community Advisory Board C/CAB Appointment

Council President Barnes announced that the Council appointed Ben Horner-Johnson to the Center/Community Advisory Board.

Council Reports

Councilor Collette minutes of the downtown development team. She testified at the TriMet Board meeting and invited members to the groundbreaking. Urged them to support Portland to Milwaukie light rail and transit center.

Mr. Swanson wanted to clarify that was a group of individuals and was not sanctioned by the City.

Mayor Bernard had an opportunity to thank Congressman Blumenauer for $4 million for Lake Road. He attended the Mayors Conference this weekend, and the thought it was amazing what happened throughout the state. He discussed the Portland to Milwaukie light rail project and the economic efforts taking place in the downtown.

Council President Barnes announced that she had done a ride-along with Officer Krebs, attended the Lake Road Neighborhood Summer picnic, attended the Clearwater hearing before the County Commissioners and testified on Milwaukie's behalf, and met with the Sister City delegation.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 11:20 p.m.

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Pat DuVal, Recorder

CITY OF MILWAUKIE

To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: Oregon Parks and Recreation Department Grant for Lewelling Community Park

Date: September 9, 2005

Action Requested

Approve a resolution authorizing the City Manager to sign a grant agreement with the Oregon Parks and Recreation Department (OPRD) and approving up to $192,500 in appropriations in Capital Outlay for the Community Services Department fiscal year 05-06 budget.

Background

In August 2005, the City was awarded $192,500 in Local Government Grant funds by the OPRD for our Lewelling Community Park Development Project. The Lewelling project was ranked 5th out of a total of 22 grant awards. Staff and neighbors alike are jubilant that we can finally complete this exciting project that we have all worked so hard on.

The history of the project is as follows:

- 1999 – The City purchased the property at Stanley and Willow
- 2000 – The City demolished a drug house on the property and cleaned up the site
- 2000 – Lewelling neighbors installed a split rail fence around the site
- 2001 – City, Parks District and neighbors developed a Master Plan with donated services of Mike Faha, of Greenworks, a landscape architecture firm
- 2002 – With funds from neighborhood grants and fundraising efforts, Lewelling NDA hired Greenworks to complete a final design for the park

- 2005 - Using CDBG funds from Clackamas County, the City completed half street improvements on three sides of the property
- 2005 – Lewelling NDA installed trees in planter strip and graded and hydro-seeded the site using donated soil

Next Steps:
Staff will issue a bid for a contractor for this project as soon as the grant agreement has been signed. Project completion could be as soon as the fall of 2006.

Concurrence
Community Services staff has met with Engineering and Operations staff to map out a strategy for managing this construction project.

Fiscal Impact
The 05-06 budget would be modified to reflect the receipt and expenditure of $192,500 in Local Government Grant funds.

Work Load Impacts
The Community Services Director will work with Kelly Somers, the City's Public Works Operations Director, to bid the project and manage the contractor. Lewelling Neighborhood leaders will be consulted with on a regular basis regarding project details.

Alternatives
Deny approval of the proposed resolution.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A GRANT AGREEMENT WITH THE OREGON PARKS AND RECREATION DEPARTMENT (OPRD) AND APPROVING UP TO $192,500 IN APPROPRIATIONS IN CAPITAL OUTLAY FOR THE COMMUNITY SERVICES DEPARTMENT FISCAL YEAR 05-06 BUDGET.

WHEREAS, city staff and the Lewelling Neighborhood Association have worked for five years to prepare a site at Stanley Avenue and Willow Street for park development; and

WHEREAS, all land use approvals have been attained for the site; and

WHEREAS, the City has been awarded a grant of $192,500 by the Oregon Parks and Recreation Department; and

WHEREAS, Oregon Local Budget Law provides that expenditures in the year of receipt of grants, gifts, bequests or devises transferred to the local government in trust for a specific purpose may be made after enactment of a resolution or ordinance authorizing the expenditure (ORS 294.326(3).

NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to sign a grant agreement with the Oregon Parks and Recreation Department (OPRD) and that expenditure of up to $192,500 in appropriations in capital outlay for the Community Services Department fiscal year 05-06 Budget is approved.

Introduced and adopted by the City Council on September 20, 2005.

This resolution is effective on September 20, 2005.

_____
James Bernard, Mayor

ATTEST:

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

_____
Pat DuVal, City Recorder

_____
City Attorney

CUAB MEETING MINUTES
Wednesday, July 13, 2005
Johnson Creek Facility Conference Room
6101 SE Johnson Creek Blvd.

Members Present
Bob Hatz, Chair
Charles Bird, Vice Chair
Betty Chandler
Ed Miller

Staff Present
Paul Shirey, Engineering Director
Jay Ostlund, Civil Engineer

Consultant
John Guilarducci, FCS Group

I. CALL TO ORDER

Chair Hatz called the meeting to order at 5:57 p.m.

II. INTRODUCTIONS—None.

III. CONSENT AGENDA

February 16, 2005, Minutes approved as presented.

IV. REPORTS

A. Wastewater rates and financial condition of the utility

Consultant John Ghilarducci presented the findings of the rate study and fiscal analysis conducted recently for the wastewater utility. The following *questions and answers were discussed:*

Q How long will it take to accumulate $150,000 in depreciation?
A Four years.

Q Won't that be more than is needed?
A No, because the utility will need to draw on this funding for capital replacement needs next year.

Q How have volume-based rates effected revenue?
A Wastewater revenue is down from $3.0 million to $2.8 million in 04/05. Rate revenue should stabilize over time, but not sure how long that will take.

Q Are fixed costs any less, or going down?
A No. For example, electricity keeps rising as do fuel-related costs.

The Board expressed a desire to set a maximum balance for the depreciation fund and asked the consultant to return with a recommendation.

Q How do we account for the loss of revenue?
A This is probably due to conservation and the effect of variable rates, plus the increase in use of water-efficient appliances on the market.

The Board asked the consultant to look at operating expenses and look back for several years to see how the utility is doing on the operating side.

B. City capital construction status report

The Board was given a status report on current public works construction activity for the year. This report is updated weekly and appears in the City Manager's weekly memo.

V. DISCUSSION—None.

VI. MATTERS FROM THE BOARD—None.

VII. OTHER—None.

VIII. INFORMATION SHARING—None.

IX. FUTURE MEETING DATE/AGENDA ITEMS

Wednesday, September 7, 2005

Wednesday, October 4, 2005

X. ADJOURN

The meeting adjourned at 7:57 p.m.

Bob Hatz, Chair

Paul Shirey, Scribe

PUBLIC SAFETY ADVISORY COMMITTEE MEETING NOTES

August 25, 2005 - Ardenwald Park

Present:
Larry Kanzler - Police Chief
Ray Bryan – Historic Milwaukie Neighborhood Association
Dolly Macken-Hambright – Linwood Neighborhood Association
Cheryl Ausmann-Moreno – Ardenwald Neighborhood Association
Susanna Pai – Lake Road Neighborhood Association
Gene Covey – Lewelling Neighborhood Association

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

Chief asked how the members felt about inviting the new Public Works Director to a future meeting. Everyone agreed that it was a good idea.

Citizens Academy – West Linn will only have one participant.

The group discussed the recent pawn shop sting operation that was done in Portland by the FBI and other agencies.

Chief said there is another grant for radio equipment - $66,000. It goes before Council soon.

Cheryl said that the Community/Neighborhood booth is very popular at the Farmer's Market. They would like to obtain some of the gun locks from the PD.

Chief would like to put together a survey for citizens regarding police response. He asked for ideas on how to reach the greatest number of people and get better responses. Cheryl will contact Grady Wheeler and ask if we could include the survey in the Pilot.

Councilor Stone asked the Chief to remove the drug house sign from the Willow Court Apartments on 32nd Avenue. He declined at this time – he wants to wait until he's sure that there is no longer a problem. The property is no longer "Section 8" housing. The crime rate has been reduced by approximately 90%.

The meeting was adjourned at approximately 7:20 p.m.

The next meeting is scheduled for September 22nd.