

AGENDA

MILWAUKIE CITY COUNCIL JANUARY 6, 2004

MILWAUKIE CITY HALL
10722 SE Main Street

1925th MEETING

REGULAR SESSION - 6:30 p.m.

I. CALL TO ORDER
Pledge of Allegiance

II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Public Safety Update (Larry Kanzler)

III. CONSENT AGENDA *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*

A. City Council Minutes of December 16, 2003;

B. Resolution 1-2004: Designating Papers of Record

IV. 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.)*

V. 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.

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

A. Regional Partners Economic Development – Resolution (Jeff King)

B. Economic Development Grant Project (King)

VII. INFORMATION

A. Park and Recreation Board Minutes, October 28, 2003

B. Library Board Minutes, November 24, 2003

VIII. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council will go into Executive Session immediately following adjournment of the regular session pursuant to ORS 192.660(1)(c) performance evaluations of public officers and employees.

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.

MINUTES

MILWAUKIE CITY COUNCIL DECEMBER 16, 2003

CALL TO ORDER

Mayor Bernard called the 1924th meeting of the Milwaukie City Council to order at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

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|-----------------------------------|--------------------------|
| Council President Larry Lancaster | Councilor Deborah Barnes |
| Councilor Joe Loomis | Councilor Susan Stone |

Staff present:

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| Mike Swanson, City Manager | John Gessner, Planning Director |
| Gary Firestone, City Attorney | Paul Shirey, Engineering Director |
| Alice Rouyer, Community Development/Public Works Director | Steve Campbell, Code Compliance Coordinator |
| Larry Kanzler, Police Chief | |

PLEDGE OF ALLEGIANCE

It was moved by Mayor Bernard and seconded by Councilor Lancaster to amend the meeting agenda to include Other Business Item C – Milwaukie Transit Center Working Group Status Report. Motion passed unanimously.

CONSENT AGENDA

It was moved by Mayor Bernard and seconded by Councilor Barnes to remove Item E – Purchase of Laptop Computers for Public Works – from the meeting agenda. Motion passed unanimously.

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

- A. City Council Minutes of December 1 & 2, 2003
- B. Resolution 50-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the First and Third Tuesdays of Each Month as the Regular City Council Meeting Date and Repealing Resolution 2-2003;

- C. **Resolution 51-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the Mayor to Sign and Renew the Intergovernmental Agreement with Clackamas County for a Grant to Maintain the Juvenile Crime Diversion Program;**
- D. **A Resolution of the City Council of the City of Milwaukie, Oregon, Opposing the Formation of an Electric People's Utility District in Clackamas County;**
- E. ~~**Purchase Laptop Computers for Public Works; (Removed)**~~
- F. **Award Contract for Sewer Master Plan;**
- G. **Award Contract for Brookside Storm Sewer Phase III; and**
- H. **Award Contract for Johnson Creek Boulevard HVAC Improvement Project**

Councilor Loomis requested Item D be removed from the consent agenda for discussion.

Motion passed unanimously.

AUDIENCE PARTICIPATION -- None

Ardith Duncan, 12401 SE Guilford, Milwaukie, expressed concern with the adult foster care home being built on the corner of Lake Road and Guilford Drive. The City told the neighbors who had not been informed it is a done deal. It is a business and not a residence.

Patricia Broadwell, 12215 SE Guilford, Milwaukie, addressed the City Council regarding a foster care facility being constructed next to her home. Broadwell feels she has lost \$50,000 in equity. The structure looms over her backyard and pool area. She knew nothing about the construction until the foundation was poured. She went to the Milwaukie building department and was told there was nothing that could be done. She pays \$4,000 a year in property taxes, and what is happening is wrong. She and the others in the neighborhood should have been asked. She plans to have her home appraised, and someone should be liable for her loss whether it is the City of Milwaukie or the state. Broadwell does not intend to lose the equity in her house. The building is a monster and looks like a hotel. The bedrooms are 8 x 10 and all have toilets with a central shower. Does the City follow up on who lives here? It is a business with hired help living upstairs? It is a dormitory with a central desk. No one seems to care that this can happen to anyone. The other foster care home about half a block away at least has adequate parking. She contacted the press to make a commentary but was told her loss was not that important. She is almost 60 and this is her last go round.

Swanson told Council he spoke with Broadwell late this afternoon, and he will ask the city attorney to talk specifically to the federal pre-emption. One issue is local land use regulations, and this house is appropriate in terms of being a single-family residence. The issue presented is that it is apparently planned to be an adult foster home facility. The City is pre-empted by federal siting authority, and there is literally nothing that can be done. The one thing people can do, though it will not help in this situation, is to contact their United States senators and representatives. He understands the policy

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that underlies the federal government stepping in and saying local governments do not have the ability to control the siting of these facilities. There does, however, appear to be a disproportionate number of facilities in certain communities, and Swanson feels the least the federal government could do is address issues of fairness. He sympathizes with people who have fears about what will happen in the future, but he also understands what Congress tried to accomplish. He urged people, at least for the future, to contact their representatives to seek some equity in terms of location.

Broadwell asked if the Planning Commission was aware of this situation and if it went before the Commission.

Firestone said, if a use is permitted outright, a land use approval is not required, and all that is needed is a building permit. Under the Federal Fair Housing Act, all governments are prohibited from any type of discrimination in housing, and that includes discrimination based on the need for specialized housing such as adult foster care. There is a state statute that requires local governments to treat a residential facility for people with special needs with six or fewer residents exactly the same way as it treats a single-family residence. If the facility has more than six residents, it is treated like a multi-family residence. The people working in the facility are not counted as residents. As a result, cities have no choice but to allow these facilities in residential neighborhoods outright. All the City can do is ensure these structures meet zoning requirements such as setbacks and height restrictions.

Broadwell said the structure has a total of 8 bedrooms with 5 of those for foster care. It is a 4,600 square foot house on a 10,000 square foot lot. With the 5 bedrooms downstairs and 3 upstairs, that is more than 6 residents.

Firestone does not know the zoning in that area, therefore does not know the size of the facility allowed. The City has adopted specific standards. The state standard has varied from time to time, and he understands Milwaukie at one time adopted the Clackamas County standard, which may allow more spaces than the state standard. The state standard is the absolute minimum needed to comply with the Federal Fair Housing Act, but more may be required under specific circumstances. For example, if the City allows 8 unrelated people to live in a single-family residence, it must allow a residential facility that provides for 8 people. Firestone understands the City examined the situation and concluded that under its existing code and the Federal Fair Housing Act as applied by state statute that the City could not do anything.

Broadwell said she was not considered, and that is wrong. All City officials have said they would not like this facility built next to their homes. If this went to the Planning Commission, it should have considered this 50-year old, very nice residential neighborhood of mostly ranch homes with swimming pools and next to a Jr. High School. The City had a chance to say “no”, but it didn’t.

Mayor Bernard said this did not go to the Planning Commission and was not required to do so under the code.

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Broadwell said there are 8 unrelated people. Where is the parking for all of these residents? The structure is a huge box with very little land around it. This is wrong.

Councilor Barnes suggested Broadwell and her neighbors write a letter to *The Oregonian*. Letters to the editor do get published. She asked Broadwell if she had spoken with the owner.

Broadwell approached the owner of the property next door when she first saw the construction begin. The owner was evasive, and when the foundation was poured Broadwell contacted the building department. She was told the building was to code, and that there was nothing she could do.

Councilor Barnes understands Broadwell's frustration. She has 2 group homes in the neighborhood, and they have proven to be very nice neighbors. One was built and the other was opened in an existing home.

While **Broadwell** sympathizes with the residents of these homes, she does not feel people understand her concerns. It is an enormous building with no windows. It is ugly. The Lake Road Association came to her to find out what was going on and how she could let it happen. They told her to stay on and fight it because it is wrong. She wants some compensation so she can build a second story on her house and block it out. She does not want them looking over her roof. This is unheard of – allowing it to be at street level. No one else's is. The houses in the newer development to the west are not. Other houses are built on stair steps. This is a huge looming hotel set up like a dormitory. The building department told her the residents have to live there, and the owners have to live there. Who follows up on that? She bets 6 months after they move in the owners hire some other people to live there because they can afford it. They make a lot of money, then they are gone. She wants everyone to know it can happen in his or her neighborhoods, and it is not right.

Councilor Lancaster asked if this type of enterprise enjoys tax-exempt status.

Firestone replied those operated for profit typically are not tax-exempt and must be licensed.

Councilor Lancaster suggested the City Council submit correspondence to its congressmen. Milwaukie is already penalized by a disproportionately high number of tax-exempt entities that continue to erode the tax base. He encouraged every citizen to take action.

Councilor Stone commented Council sympathizes with Broadwell, and she agrees with Lancaster that senators and congressmen should be lobbied. She would like to see the City somehow enforce design standards so that the structures being built in neighborhoods comply with the existing architecture, so they are not so obtrusive. She thought Broadwell might have an easier time accepting this if the house conformed

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more with the existing standard of architecture in the neighborhood. That is where the City could have some input. She would like to make sure there is something on the books.

Firestone said any design standard for housing, if it is considered needed housing which covers about everything in this state, must be clear and objective. While it can be done, it is not easy.

Mayor Bernard believes Lake Oswego recently adopted that type of ordinance, and Milwaukie should take a look at that.

Councilor Lancaster commented this was a major issue the last time Milwaukie did a revision to its land use ordinances. The City is severely constrained in terms of what it can do.

George Van Bergen, 12366 SE Guilford, Milwaukie, stated this structure definitely is non-conforming to the community. He spoke with the planning department several weeks ago and received the same explanation. The properties all have deed restrictions although they may no longer hold water. The properties were all developed in an R-10 situation, and he has great empathy for Broadwell. She purchased a very expensive house, and this is stuck right up their nose next door. He finds it hard to accept the federal government's having an overlay application. This is similar to the house on the Columbia River, which he believes is still sitting empty. Van Bergen wonders about the permits that will have to be issued because he knows the cost of getting into the house is high. He looks upon this situation as being an inverse condemnation. When something is permitted to go into an area that reduces the value of everyone else's property, this is a condemnation or a taking. This may or may not hold up in court. The house seems to have 8 or 9 bedrooms. Are staff bedrooms counted also, and does it become a multi-use property? The Washington Street house he sold to the School District was moved to Jackson Street, and now it is a half way house for convicts. If the facility on Lake Road does not make it as a senior facility, will it become a place for disadvantaged people? What will be there in 5 years? It could be even worse. He has great empathy for Broadwell and does not blame the sellers because they probably did not have any control over what was going to happen. He does go along with the thoughts of reviewing this problem and having to go along with the federal government. There is a home authority, and these are people's homes. The City, in his mind, should be able to control its own destiny. These people have suffered a terrible loss.

Mayor Bernard hopes the City will look at the issue and help if possible.

Councilor Lancaster said, if the City does look at this, it should also look at what residential neighborhood properties are subject to commercial development. That should be part of the whole solution to the City's defending itself from these federal edicts.

David Aschenbrenner, 11505 SE Home Avenue, Hector Campbell Neighborhood Association Chair, encouraged residents to clear out the gutters and drains in front of their houses to keep their streets free of water. He announced the neighborhood centennial park project at 37th Avenue and Monroe Street is 90% complete and will be completed early this spring.

PUBLIC HEARING

CSO-99-06 Clackamas Education Service District (ESD) Revised Conditions of Approval

Mayor Bernard called the public hearing on the Clackamas Education Service District's (ESD) request to revise the conditions of approval is called to order at 6:35 p.m.

The purpose of this hearing was to consider revising the conditions of approval for CSO-99-06 by modifying business hours and meeting times on the property located at 4011 SE Lake Road.

The applicant has the burden of proving that the modifications are consistent Zoning Ordinance Section 321 – Community Service Overlay, Section 1011.3 – Minor Quasi-Judicial Review, and applicable Municipal Code provision.

All testimony and evidence must be directed toward the applicable substantive criteria just described or other criteria in the plan or land use regulation which one believes to apply to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the City Council an adequate opportunity to respond to each issue precludes appeal to LUBA based on that issue. Failure to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in circuit court.

Mayor Bernard reviewed the conduct of hearing.

Site Visits: The Mayor and all Councilors have visited the site.

Conflicts of Interest: **Mayor Bernard** announced his wife, Siri Bernard, sent an e-mail supporting the application. He lives next to the site, but he does not have any financial interest in the facility. It will not benefit him. He believes the ESD has been a good neighbor, and he is interest in looking at the proposal.

A member of the audience, who at that point did not identify himself, said he has a problem with the Mayor continuing to speak about the property when his property is associated with it. Anything the Mayor says tends to influence others on the board. He believed the Mayor does have a financial interest because downzoning does affect people. He thought the Mayor should recuse himself.

Mayor Bernard appreciated the comments. He has no financial interest and will not gain financially from this decision.

Councilor Barnes announced she works for the North Clackamas School District 12 and on occasion is paid by ESD for participating in District training. The School District for which she works is part of the Clackamas ESD.

Firestone said the ethics issue is whether or not there is a financial interest in the outcome of the decision.

Mayor Bernard and **Councilor Barnes** stated they would not benefit financially from the decision.

The member of the audience asked if that applies if a member of Council owns property abutting the subject site.

Firestone said that is the Council member's choice to make. The Mayor stated he does not have a financial interest, which typically means an ownership interest or potential share in profits in the property that is the subject of the application. Being a neighbor does not create a direct financial interest. The status as neighbor, in some cases, may so affect someone that the person chooses to recuse oneself. There is no direct financial interest, and the rules recognize the effect on the Council member is the same as it is on a group of people, which in this case is a group of neighbors. In this case, there is a group of people, which is a class of neighbors. The issue is whether the Mayor or any other member of Council can decide the application based on applicable standards without prejudice.

Mayor Bernard said he believes he can do that.

Mayor Bernard asked if any member of the audience wished to challenge any Council member's impartiality or ability to participate in the decision.

Richard Raynor, 12403 SE 41st Court, Milwaukie, objected. The Mayor has a big influence on the Council and has already said his wife is in favor of the application. That is a tip as to what the Mayor is going to say.

Mayor Bernard asked if there were any objections to Council's jurisdiction to consider this matter. There were no objections.

Planning Director John Gessner presented the staff report. He indicated the subject property on a map and its relationship to the neighboring properties. There is access to the site both from Lake Road and 37th Avenue. Most of the parking is located on the southern portion, and Gessner indicated its relationship to the adjoining properties. As part of Council's decision, Clackamas ESD did dedicate and improve a 2-acre area for public park uses. He pointed out the 37th Avenue exit.

Gessner noted 2 date corrections to the staff report. Page 1 should read, "On September 19, 2000, the City Council approved Clackamas ESD's request ..." Page V.4 should read, "... ESD conducted the study, which was accepted by the Council on June 18, 2002 ..."

The Clackamas Education Service District (ESD) is requesting to expand the frequency of meetings and the number of persons allowed to attend for a trial period that would expire May 31, 2004. The original limitations had a lot to do with neighborhood traffic concerns. The Lake Road Neighborhood District Association (NDA) because of traffic concerns on Lake Road and 37th Avenue, appealed the initial application. When the City Council adopted its findings, the meeting times ESD requested for the approval purposes were specified so there would be no questions about when daytime and nighttime uses of the site would be. Additionally, Council wanted assurance the original traffic analysis was reliable.

The Council must use the public benefits test under the City's community service overlay (CSO) regulations to make its decision. There are essentially 2 parts to the test: (1) Is it in the public interest; and (2) Will the public benefits be greater than the potential adverse impacts of the use. Staff identified the possibility of adverse impacts related to additional traffic and additional nighttime activity such as lighting and noise in the parking lot. These are possibilities, however, the Lake Road NDA provided written support of the application. There has been a relative lack of complaints to the planning department, and the probability of there being adverse impacts is relatively low at this point. Staff believes the application complies with the public benefits tests. It is further recommended, if City Council decides to approve the application, that the decision be revocable if there are persistent problems. Staff rarely makes this type of recommendation, but it feels generally comfortable with the proposal.

Gessner concluded that staff believes the application complies with the public benefits test, and that the benefits will exceed the adverse impacts. Staff recommends approval with a revocability provision.

Councilor Lancaster asked how many complaints the City has received to date.

Gessner responded when ESD originally occupied the site there were complaints about lighting in the parking lot.

Councilor Lancaster understands the Lake Road NDA reviewed this request and has given its approval.

Gessner said the packet contains a letter of endorsement signed by the Lake Road NDA officers.

Correspondence: There was no additional correspondence other than what was included in the packet.

Applicant Testimony: **David Campbell**, ESD Superintendent, 4011 SE Lake Road, Milwaukie. There have been a number of occasions in which teachers from the North Clackamas School District and others have had a desire to be involved in coursework ESD could create and provide. The difficulty is that teachers' time is their most scarce resource. The further they have to go for scheduling those types of classes, the more difficult it is for them to take advantage of the offerings. This facility offers excellent meeting rooms that can be used for those types of programs for teachers, and this is one of the reasons for the request.

ESD also gets requests from other groups, for example the Lake Road NDA, who would like to use the facility. The NDA has held one meeting there, and that was the extent of what could be allowed under the current conditions. ESD believes the facility would serve neighborhood groups like this very well as long as meetings were maintained and limited. ESD also gets requests from organizations like the Oregon School Board Association to hold special regional meetings. It would be a great benefit to school board members to be able to attend meetings there. All of these functions add benefit to the community in that attendees use local services such as restaurants and service stations.

When ESD moved into the facility 2 years ago, it pledged to be the best neighbor it could be. In keeping with that pledge, ESD is seeking a trial period from the time the City Council makes its decision to May 2004 with periodic reviews with the Lake Road NDA to make sure problems have not been created for the neighborhood. ESD believes the traffic pattern for staff and others using the building have not and likely will not create a traffic problem. Campbell said ESD is requesting a trial period and believes the value would be significant for the public schools in the area.

Councilor Stone said the letter states it would be extremely rare for attendance to exceed 100 people; however, that is what is being requested. If that is rare, what would be a more common average?

Campbell said generally speaking the meetings would be for a group of 20 – 25 teachers. Occasionally, parent groups wish to meet in the facility with the early childhood program. Those groups might number 30 – 40 at the most. Since ESD has been there, it has never had a meeting that had 100 people. There could be an occasion in which that many school board members might attend. During the trial period, parties will be able to determine if those numbers have an adverse impact.

Councilor Lancaster understands the request is to change the evening time from 6:00 p.m. to 8:30 p.m. Is that to accommodate the schedules of the additional people or more programming?

Campbell responded that is to accommodate teachers' schedules. Typically, ESD tries to schedule a one-day session for 5 hours rather than one-hour sessions for 5 days. The ESD would be allowed that kind of flexibility.

Councilor Barnes asked if there would be user fees.

Campbell said it depends on the group. For example, the Lake Road NDA would pay no user fee. If a group outside of what ESD would consider regular use, a fee might be charged. More likely ESD would not allow such a group to use the facility. He noted these fees have been in effect for Marion Hall, but in reality groups have not met that use standard for a long time.

Councilor Barnes discussed her experience at that facility is that the parking lot is very dark. She understands the neighbors' concerns about lights but is worried about problems with its being so dark.

Campbell commented staff has expressed similar concerns, so some ground level lighting has been installed. ESD believes it can deal with the lighting issues that way without having to turn on the larger lights. The one thing ESD has agreed to with the neighbors is that the lights will not be left on and shining into homes late at night, and he feels ESD can deal with that.

Councilor Barnes noted it is difficult, especially in the evening, turning left from Lake Road to access the facility.

Campbell said a left turn from Lake Road is not supposed to be done at all.

Councilor Barnes explained she has been behind people turning left and has been delayed. Is there a way to make it clearer that left turns from Lake Road to ESD are not allowed?

Campbell said it has been made very clear to ESD staff and others using the facility that they are not allowed to come off Lake Road with a left turn. They are welcome to use Lake Road from east to west and make a right turn. ESD staff is also told they are not supposed to leave the site by making a left turn onto Lake Road. It may happen on occasion, but he does not believe it is ESD staff or visitors. On rare occasions, drivers use this as a cut through. ESD has asked neighbors to let them know when they see cars turning inappropriately.

Councilor Loomis asked that ESD keep the City informed of meeting schedules and anticipated attendance during the trial period.

Campbell said ESD would be pleased to share this information with the City Council as well as the NDA.

Councilor Lancaster asked the typical starting time for evening meetings.

Campbell said the ESD Board meeting starts at 6:30 p.m., and the North Clackamas School District Budget Committee met at 7:00 p.m. last year. Typically, outside groups meet at 7:00 p.m.

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Neutral Testimony: None

Testimony in Opposition: **Richard A. Raynor**, 12403 SE 41st Court, Milwaukie. He provided history on the facility because only one City Council member sat through the last variance application on this property. It is really important to go over what happened. This is R-10 property, and to the best of his knowledge, it is the most valuable property in the City of Milwaukie. As someone said in the previous discussion of the foster home, this is a lovely neighborhood. He personally looked all over the area before he settled there, and he would like to keep it that way.

This property, though he does not know the rationale of the Council at that time, was up for subdivision and houses were going to be built. At the time growth was a “no-no”, so they looked for other alternatives. Exactly how this came about, he does not know and is speaking only of what he saw. The Seventh Day Adventist Church wanted to build in the area and got the property. It received temporary permission to go in there although it was R-10 property. Over the course of some time, the Church evidenced the fact that it did not have the funds to both construct and maintain the property. It was like the building of the pyramids. They would have a collection on Sunday, and on Monday, some workers would show up to work for a day. That was it. It went on and on and on. Things like the gravel driveway and dust raised by the construction, for example. They tried, but they did not have the resources.

Raynor did not feel the City really considered the residents at that time. To his knowledge there were no inspections and no final inspection of the property. The Church occupied the facility with no occupancy permit. That is Milwaukie checking into things. Then they had a schism in the Church and decided to put it up for sale. The only bid on it was the ESD. At the time the Jr. High was up for grabs, and the City wanted it. ESD needed some extra space for the Marylhurst people. They could have easily gotten that property and done some joint sharing with the City. But no. They chose to spend millions of dollars on this property. He thinks ESD, a bit arrogantly, bought it without a contingency in the contract that it would receive a variance. It went before the Council, and the Council at the time turned it down. No one is talking about that. Then under appeal ESD came back and said it would do certain things to maintain the residential nature of the property. One was to put in the gate. The second was to put in the park. Mr. Marshall was very enthused he was getting a park for free. One has to note there is no free lunch. Milwaukie pays, or North Clackamas pays. It is just a little green space that they use for lunch. Interestingly enough, there were signs at the entrance of this property that this is ESD property for official business, etc. Just recently, the sign came down, and they welcome people to the property. The gate went in and was good for everybody. It protected the ESD property and stopped any problems at night. The park went in.

Raynor has not really seen any change in the lighting and noted Councilor Barnes’s comments on the issue. The lights were so strong, it was like Thomason’s car lot in your back yard. People objected to that. This is the problem when you grant a variance

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and allow people to do non-conforming things in a residential area. It is conflicting. You want to go to a meeting and have plenty of light; residents do not want that. ESD agreed to change the lighting in consideration of the residential character of the neighborhood. They really did not do that. Particularly on the entrance strips, the high, bright lights have not changed. He does not know why new variances are being considered when ESD has not met the approval standards of the board before.

The other thing is no one knows how many people are in there. ESD says 30. Raynor was on the property yesterday at 1:30 p.m. and took pictures. There were 72 cars in the lot, and they were coming and going. That is not 30 people. There are over 100 cars there at any given time. Interestingly enough, on 9/11 he saw the lights on with over 100 cars in the lot that evening. What was that about?

This is a residential neighborhood. We look to you to maintain these residential areas. It is not whether ESD should have these meetings. He should say, also, he does not see Lake Road represented. They presented very strongly against this at both meetings. They presented strong objections and never gave in. What has happened now is, like everything else, things change and people change. They are not interested in these things. They were strongly against it primarily because it does not fit. Whether it is nice to rent out facilities in the evening for Boy Scouts or whatever. That was not the issue. The issue was these people were in Marylhurst, and they said they were getting kicked out or it did not fit their needs anymore. They wanted to move a very small group of about 30 people. In their letter dated September 23, 1999, ESD stated not all of the 109 employees would be working at the Lake Road site. ESD goes on to say there will only be 32 full time people. There are over 100 cars at any given time.

It is not a question of being in the public interest. It is what Mr. Marshall said at the time, the residents have a right to what was agreed to when they bought their properties. Raynor believes residents have a right to what was agreed to in the first modification. He was against it at the first hearing; he changed at the second hearing. Councilor Lancaster listened. The question was, who was going to maintain the property? It was a white elephant. It was a huge property that never should have been in the first place. That is the problem with down zoning and non-conforming use. He added the Lake Road association said if you let these people in, this is just the beginning. They will want more. If you look at the plans, they have plans to build on that property. They want to build a complex as they continue to grow with all their programs. They have contracts to rehabilitate drug addicts. They have contracts to rehabilitate felons. The next you know, ESD will want that. They say no, but they have those contracts. When you really consider what happened, it was a down zoning. It was a bad situation. Somebody picked it up who had money. Taxpayers' money to do anything it wants. This Council stood up by first saying no, and then it said sure, we will do it with these conditions. Raynor does not think the conditions should be changing. What next? Pizza parlors? School proms? The point is traffic in the neighborhoods was an issue and non-conforming use in an R-10 zone. He heard people testify the first time that ESD would say things but would not do them. There are over 100 cars back there. Nobody knows what goes on back there except for those who live back there.

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Why is the Lake Road NDA not at this meeting? No one ever asked him what he thought about it. He thinks the Lake Road Civic Association is suffering from the fact it has no one to do the work. Terry did it for years and does not want to do it any more. You do not see a lot of strong people here in opposition. He thinks the people who live there are. It is like the foster home. When something hits home, they jump. People have other things to do. He also pointed out that this thing came up around Christmas the last time when people are going to parties and things and cannot get here. He thinks it is a problem of once a non-conforming is allowed in a residential area for an organization that has unlimited funds, they will continue to press and press and press. They say it is in the public interest, and that is irrelevant.

Councilor Loomis asked Raynor if he attends the neighborhood meetings.

Raynor attended when Centex was going on, but by nature he does not. Theoretically the civic association is illegal. In theory, he is part of the Lake Road Association, but he does not get any information other than what is on the TV channel.

Councilor Loomis recommended Raynor attend the meetings. The City Council does take what the NDAs say into consideration, and the Lake Road NDA wrote a letter of support.

Councilor Barnes noted Raynor lives just down the street from the Lake Road NDA Chair Bob Moore. He is a former teacher and would be happy to talk with him.

Raynor did not wish to comment on Bob Moore. He is not his president. Councilor Barnes is a teacher. The last time this was up for a vote, the Mayor at that time was retired from Multnomah ESD. Guess what she voted for? His property does not abut; it is at the end of the cul-de-sac. Moore wrote a letter saying it was okay when he was head of the Lake Highlands Civic Association. There are only 20 people in that development. Moore wrote the letter saying he was in favor of it. That is not representative. Councilor Loomis's point is people should go to the meetings. Those meetings have been focused on Centex, and a person gets tired of listening.

Dan Blaufus, 12293 SE 40th Avenue, Milwaukie. This is relevant because the headlights shine right on his property. He is delighted to have the ESD as neighbors. Campbell has always been pleasant and responsive, and Blaufus could not be happier. He is not necessarily opposed to the proposal, but he is opposed to the extent of the proposal. If he reads it correctly, the ESD would be allowed to have 20 meetings per night that end at 8:30 p.m. Twenty meetings per night is every weekday of the month except 1 or 2. He thinks this is too much. 100 cars leaving at 8:30 p.m. when his kids go to bed at 8:00 p.m. You have to think about this from the worst case. You have to assume ESD will do the most it is allowed. That is why he has a problem with the 5-month trial period. If there are very few meetings in the next 5 months, and it becomes permanent, then a future ESD superintendent who has grandiose ideas about what he or she wants to do with the programs can go to 100 people 20 days per month. That is too much. ESD wants 4 times as many meetings at night but does not want to count

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the 20 meetings per month that start at 3:00 p.m. and end at 8:00 p.m. That is not counted as a night meeting. That is too great an increase. If ESD needs to have 30 people at meetings, Blaufus thinks it is responsible to parrot back to what is really needed now rather than getting permission to have a meeting everyday until 8:30 p.m. There are negative incentives in terms of the neighbors. He appreciates the fact the Mayor lives in proximity to ESD. He does not object to the ESD; they could not be better neighbors. His concern is the extent of the request. He is not sure looking at the modifications for 5 months will not really teach people anything. One has to assume there will be 100 cars in there 20 days per month. It is not that he does not trust the gentlemen from ESD, but he does not know whom he will be asked to trust 10 years from now.

Applicant Rebuttal: **Campbell** commented on 2 issues. The early childhood staff drives the cars that are in Raynor's photos. Those people work a good share of the time in homes in other locales. On occasion, they are at the facility as a total staff. Those are the instances referred to, and those were not outside groups. There continues to be a perception about programs that never have been ESD's. When on the Marylhurst campus, ESD was in a building next to other programs operated by the state and county that did in fact serve people who had been in other kinds of circumstances such as prison. These have never been ESD's programs. The program people at the site include early childhood education, curriculum instruction, superintendent's office, and fiscal office. He wanted to make that clear for the record.

Additional Staff Comments: **Gessner** had 2 comments. He reminded the City Council that if it does approve the modifications, it is effective only until May 31, 2004. The ESD would have to come back to the City Council to specifically request either an extension or permanent institution of the request. The staff report identifies 3 decision-making options. First, if the City Council agrees the application meets the approval criteria, the option is to approve it. Second, if the City Council believes it does not meet the approval criteria, the option is to deny it. Finally, if the City Council believes the proposal does meet the criteria, conditions can be developed.

Councilor Stone said Raynor raised the issue of the number of vehicles at any given time. According to his numbers, they were in excess of what is allowable. Has the City been monitoring this conditional use and developed data that shows whether or not ESD is in compliance?

Gessner said the City does not; however, he believes the City Council authorized up to 109 employees but did not specify the number of cars parked on the property at any given time during normal business hours.

There were no further questions from Council.

Campbell indicated Gessner's comments about vehicle parking were accurate.

Close Public Hearing: Mayor Bernard closed the public testimony portion of the hearing at 6:55 p.m.

City Council Discussion: **Councilor Barnes** firmly believes the neighborhood associations are the links to City residents. When people have concerns, she would urge them to go to their neighborhood leaders. They are the rank and file who are in contact with the City Council and guide its decision-making. If 3 officers of the Lake Road NDA signed a letter indicating they agreed with the proposal on a temporary basis, she takes that as what they have learned from the residents. She urged anyone having a concern to go to the neighborhood leaders and noted there were 3 at this meeting. They make their presence known at the Council meetings and are in regular contact. The City Council heard from people who are not happy and understands about the lighting issue. Every time she has been to the ESD it has been dark, and it is difficult to see. She does not believe there are a lot of teachers who will want to show up for a meeting at 8:00 p.m. They will be there as soon as the school day is over and meet for an hour or two. She does not believe there will be truckloads of teachers.

Mayor Bernard sees an increase from 2 to 8 meetings.

Firestone believes the point being made was a combination of the increase in monthly daytime meetings and the extension in customary business hours. The assumption being that if a meeting began within the customary business hours it would be treated as a daytime meeting.

Councilor Lancaster noted several things he thought were important. Raynor spoke very well the last time. It speaks highly of him that he came in very negatively and changed because of community input and some cooperative problem solving. In Lancaster's mind, Raynor raised an important issue. When he looks at the request, daytime meetings would increase 30% with a population increase of 400%. That is a huge shift. Nighttime meetings are proposed to increase 400% with about 330% increase in population. This is a huge shift in bodies and activity. Not knowing certain what activities have been, maybe those thresholds are being approached now, but we just do not know it. If we make that kind of quantum shift, there could be a dramatic impact to the neighbors and to the community in terms of traffic. That is why he asked the questions about start times, and he said 6:30 p.m. at the earliest. That is good because he was concerned about Lake Road rush hour traffic. Councilor Lancaster also takes to heart that not only do children need to get to bed early, but also oftentimes people work long hours and need to get to bed early. He has a concern about the 8:30 p.m. time. The increase in hours of operation is 22.7%. There are some significant increases across the board. In terms of the trial period, he takes the point there could be a period of time there is not a lot of increase as the new hours go into effect. He feels it would be more appropriate that the trial period be over an entire education cycle to get a true picture of what the traffic will look like.

Councilor Stone agreed with Councilor Lancaster's comments. Not to discredit the NDA, but there are 3 people who signed the letter who are the officers. Whether or not

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this was raised at a meeting and voted on, she has no idea. These numbers seem pretty significant when you look at them from a percentage basis. She has some reservations about that as well. Councilor Stone did not know if there was anything in place that the Council could condition, such as a meeting that was going to last late or if there were more people in attendance than normal. Maybe that is an option.

Councilor Loomis will probably vote in favor. The NDA did vote in favor of this, and everyone who lives in that neighborhood is a member. If anything comes out of this meeting, he wants people to understand the City Council listens to what the neighborhoods say. He urged people to go to the meetings and be heard because it does have an impact. At this point there have been no traffic complaints whatsoever from the testimony he has heard. Raynor said no one knows what is going on unless you go back there. To Loomis, this sounds like they are doing a good job because the neighborhood is not being disturbed. This is a community, and one has to make decisions. There is land there, and it is valuable. In his mind, if that were developed into housing, all it takes is one bad neighbor to ruin the whole neighborhood. It could be a young or old driver or someone who turns the radio up loud or squeals the tires. From what he sees, those problems are not happening. ESD seems to be a good neighbor. He supported Councilor Lancaster's points about conditions going full cycle.

Mayor Bernard commented he did not know ESD had night meetings, and the facility is in his back yard. He believes ESD does a good job with the lighting on his end. Neighbors were concerned about people going into the property and party and that weeds would grow over the fence. He walks through there all the time, and it is really underutilized. Mayor Bernard was at the Lake Road Highlands meeting when members voted, and those few who attended really had no complaints. He intends to vote in favor of the proposal and would support extending the test period to the end of year.

Firestone said the City Council could approve the full request of just a portion of it. The City Council does have the authority to approve less but not more than requested.

Councilor Lancaster said if the City Council makes this a conditional approval, it must be very clear in the criteria used that determine if approval is acceptable on a permanent basis. Will it be based on the number of complaints from adjacent property owners? Or will it be those who live on Lake Road impacted by traffic? How will the City Council decide if there is not an acceptable trial period?

Mayor Bernard urged people to let Council know about complaints via e-mail, surface mail, or by phone or go through the Lake Road Neighborhood District Association or Lake Highlands Neighborhood Association.

Councilor Loomis asked Campbell to notify the City of meetings, so the police department can observe the area.

Gessner said staff sent out notices to all property owners within 300 feet of the subject property. He suggested the next notice ask for specific complaints or problems with the application so staff can accurately report neighborhood experiences.

Councilor Lancaster likes the aspect of those most affected being in the loop. If the notification process is thorough, Council assumes that no complaints means everything is all right.

Councilor Barnes commented ESD holds training during the summer months, and it is a full calendar year operation.

Councilor Lancaster suggested a full-year trial period with a known start date.

Mayor Bernard understands Council may not add time to the trial period.

Firestone said that is beyond what ESD has asked. Under the circumstances ESD is asking to be allowed to do things it is not allowed to do currently. Typically, an applicant is not granted more than requested. The City Council could re-open the hearing to allow ESD to amend the application to request a longer time. If the City Council did that, it would have to allow people to speak in opposition as well.

Councilor Loomis understands if the request were approved as it is, then in 5 months, the City Council would again consider the modification. He asked if the modifications were revocable at any time during the 5-month period if the criteria are not met.

Gessner said that is correct and is part of the conditions of approval.

Councilor Stone had a question about the number of meetings and the number in attendance. She asked if there would be a way to get data in terms of this trial period to determine what night meetings are being held and how many are in attendance. If the trial period were short, she would want to make sure there is a way to evaluate whether ESD is doing what it says it will.

It was moved by Councilor Barnes and seconded by Councilor Loomis to approve the applicant's request to modify business hours and meeting times and to adopt the recommended findings and conditions of approval.

Councilor Lancaster does not like doing things piecemeal. He asked how long it would take if the City Council asked ESD to submit the application correctly.

Firestone understood Lancaster was referring to a longer trial period. The City Council could re-open the hearing now, or it could continue this proceeding and re-open it at a future meeting by asking ESD to submit something in the interim. Again, people would be allowed to testify in support and opposition. If the City Council allows that change to be made at this meeting, it would also have to allow people to address that issue.

Councilor Lancaster said if the City Council were to delay and do it in one action, the affected parties would have another chance to comment.

Mayor Bernard said all the property owners within 300 feet of the site got notice of this hearing and had an opportunity to comment.

Councilor Stone commented on looking at whether or not the City Council wants to re-open the issue to extend the period of time. She asked if the trial period could go through the end of May 2004 and at that time continue the trial period for additional months.

Firestone said that is a possibility. ESD would have to come back to City Council with a new application that would be effective at the end of May 2004 in any case. If ESD chooses not to come back the Council, the use would go back to the current situation. Affected property owners would be notified.

Councilor Lancaster supported that as long as property owners would be notified.

Motion to modify business hours and meeting times and to adopt the recommended findings and conditions of approval passed unanimously.

Mayor Bernard announced that any party with 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.

OTHER BUSINESS

Amend Municipal Code Chapter 8.04 – Nuisances, Weeds and Noxious Growth, Dead or Decaying Tree or Tree Limbs – Ordinance, second reading

Mayor Bernard announced the Council has called for the first and second reading by title of an ordinance amending Municipal Code Chapter 8.04 and the first reading of the ordinance was last week.

The city manager proposed an amendment to the language that would read under Section B of 8.04.110 – “Dead, decaying or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. In stating the abatement cost pursuant to section 8.04.200 C of this chapter, the council may at its sole discretion determine the cost to be less than the total cost of abatement in order to:

1. Share no more than fifty percent (50%) of the net cost of removal of a tree in the right-of-way with an adjacent property owner who did not plant the tree and/or
2. Assist a low income resident of the city who is responsible for paying the cost of removal and whose income level shall meet the low income eligibility requirement of chapter 13.20. In making this determination, the council shall

consider using other alternates such as deferred and partial payments to minimize the adverse impact on income.

Mayor Bernard said there were requests to look at low-income assistance.

Swanson said when this ordinance was first considered, the City Council requested a change that was made that evening. That was the amendment he just read, which added language that would require that the City contribute 50% of the cost of removal of a dead, dying, or decaying unsafe tree in the public right-of-way. At the close of the hearing, the issue was also raised of whether or not it was possible to create some assistance for persons responsible for paying for tree removal that might be low income eligible. Over the past couple of weeks, he has spent time thinking about these issues. It appears to him the City Council already has the ability within the nuisance section of the municipal code. Within this section, if the property owner is cited and does not abate the nuisance, then the City has to do so. The cost of that abatement is determined by City Council, and that cost becomes a lien against the property. The City Council has a great deal of discretion in determining that cost that could be 50% of the total cost of the removal. Secondly, the City Council could take into account whether the person responsible for payment is in fact low income. The criteria are identified in other City programs such as water and sewer. There is a Council resolution that adopts the Clackamas County Housing Authority's income requirements for Section 8 housing. Thus, the City does have a recognized standard for determining what low income is. The City Council may adjust costs based on that determination. He also added as part of the language, that the City Council may look at other options such as partial payments and deferred payments.

Swanson said when the proposed ordinance was considered at the last meeting, the City Council requested a change. The amendment he just read added language that would require the City to contribute 50% of the cost of the removal of such tree in the public right-of-way. The issue of creating some assistance to those responsible for removal who might be low income eligible was also discussed. For example, the City could wait for a property to go through an estate preceding.

Swanson believes the lien provisions of the nuisance section do provide the City with an answer to the issues. He prepared language that would appear within that particular section dealing with dead, decaying or unsafe trees or tree limbs within the public right-of-way. He was also careful to state under the low-income provision that the person who must meet the eligibility requirements must be responsible for paying for the removal. He wants to avoid the owner of the house as the responsible party from piggybacking on a renter who may qualify for low-income assistance. He tried to develop language that takes advantage of an existing process to deal with both issues without creating a new program somewhere in the code.

Firestone said, assuming the City Council wants to adopt this language, the City Council would need to adopt a motion reconsidering the earlier motion and essentially

withdrawing it. The City Council would then make a new motion for first and second readings then adoption of the ordinance with this language.

It was moved by Mayor Bernard and seconded Councilor Barnes to reconsider and withdraw the earlier motion. Motion passed unanimously.

It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second reading by title only and adoption of the ordinance amending 8.04.110 – Nuisances, Weeds, Noxious Growth, Dead and Decaying Trees or Tree Limbs with the language as recommended by the city manager.

Councilor Stone wanted clarification on how the City can determine these safety hazards without a city forester. Are there some criteria in place to make the determination?

Code Compliance Coordinator Steve Campbell said there are several options such as an intergovernmental agreement with the City of Portland. The Oregon Department of Forestry has a program that helps identify unsafe trees on public property.

Firestone added other jurisdictions that have city foresters and may be willing to perform the work.

Councilor Stone asked if the criteria and process will be in written format if the City receives a nuisance complaint?

Campbell said the current complaint procedures would be followed. City staff would complete the first level of investigation and contact a forester if necessary.

Councilor Lancaster thought there might be a way to tie this into college curriculum on a no cost basis.

Councilor Barnes commented there is a forestry program through the Sabin Schellenberg Center.

Campbell has looked into that program. Staff will carry out the first level investigation.

Councilor Loomis added there are also limbs that obscure vision.

Mayor Bernard understands the process is notifying the property owner of the nuisance by mail.

Campbell said staff usually tries to make contact with the owner during the site inspection. The benefit of this is to be on site and explain the hazard. Frequently, this is all that is needed. Depending on the cooperation of the property owner, the City then stipulates the number of days in which the property owner must resolve the problem. Staff can take immediate action if the situation is very dangerous.

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Motion passed unanimously.

The city manager read the ordinance for the first and second times by title only with the subsection that was amended. Subsection B of Section 8.04.110 is now amended to read: "Dead, decaying or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. In stating the abatement cost pursuant to section 8.04.200 C of this chapter, the council may at its sole discretion may determine the cost to be less than the total cost of abatement in order to:

1. Share no more than fifty percent (50%) of the net cost of removal of a tree in the right-of-way with an adjacent property owner who did not plant the tree and/or
2. Assist a low income resident of the city who is responsible for paying the cost of removal and whose income level shall meet the low income eligibility requirement of chapter 13.20. In making this determination, the council shall consider using other alternates such as deferred and partial payments to minimize the adverse impact on income.

The City Recorder polled the Council: Mayor Bernard, Councilor Barnes, Councilor Loomis, Councilor Lancaster, and Councilor Stone aye; no nays; no abstentions.

**ORDINANCE NO. 1929:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL
CODE CHAPTER 8.04 – NUISANCES.**

The Council recessed for 5 minutes.

City Manager Review Process

Human Resources Director Mary Rowe provided information on the city manager evaluation process. She provided a summary of comments from 9 staff input forms completed by department managers. She also provided the document to the city manager for his self-evaluation and statement of goals for the next year. Council received an appraisal process form and summary of the department head input. Overall the ratings were exceptional in all categories, and there were only 2 responses in the 34 categories that were not rated as "fully effective" or "exceeds". There were 2 areas where 1 person thought Swanson was "developing". Rowe provided a range of ratings for each category and added some of the comments particularly those that were repeated. All comments made by department heads about Swanson's strengths and weaknesses were included. The next phase of the process is for the City Council to meet and consider the information she provided and make its own comments.

The Council agreed to complete the rating forms and return them to Human Resources in 2 weeks.

Consider Settlement Agreement with Richard Peterson and Union Pacific Railroad Company

City Attorney Gary Firestone presented the staff report. He reviewed the form of the settlement agreement between Richard Peterson and Union Pacific Railroad through their attorneys relating to the nuisance abatement assessment imposed by the City and the lien directed to be placed on the Union Pacific Property. Essentially both Union Pacific and Mr. Peterson agreed to pay \$2,500 each in return for the City's not imposing the lien and taking no further actions. This would put an end to the matter for the City, Peterson, and Union Pacific. The second order of business would be to adopt a resolution repealing the previous resolutions ordering the imposition of the lien.

It was moved by Mayor Bernard and seconded by Councilor Barnes to accept the settlement agreement with Richard Peterson and Union Pacific Railroad and adopt the resolution rescinding the lien.

Mayor Bernard appreciated these 2 parties working with the City and accepting their accountability. He feels this is a fair and equitable distribution of responsibilities.

Councilor Loomis agreed with the Mayor's comments.

Councilor Barnes also agreed. However, part of the responsibility of being a good corporate citizen and good business owner is to step up to the plate when mistakes are made. When one does not, that only reflects on what kind of businessperson one actually is. If one chooses to take from the community and not give back when at fault, then how can that person be trusted to do business in the future? There is another party in addition to Peterson and Union Pacific that did not step up to the plate and that caused great discomfort for staff, residents, and the Council. This person made a mockery of the City's decisions and took them to the radio airwaves. This person did not have the courage to say he made a mistake and pay an amount equal to the other parties involved. She urged people to remember that in the future when thinking about doing business.

Mayor Bernard amended his motion to approve the settlement with Richard Peterson and Union Pacific Railroad and pursue the third party for full damages.

Firestone suggested making that a separate motion.

The motion to accept the settlement agreement with Richard Peterson and Union Pacific Railroad and adopt the resolution rescinding the lien passed unanimously.

RESOLUTION 52-2003:

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MILWAUKIE DIRECTING THAT NUISANCE ABATEMENT
ASSESSMENT NOT BE IMPOSED AS A LIEN.**

It was moved by Mayor Bernard that the City of Milwaukie pursue full reimbursement for damages in reference to the house that was located on 21st Avenue by the responsible party.

Councilor Barnes would like to continue, with limited expense to the City, to make sure the third party does not walk away with anything less than a gentle judicial reminder that letters and phone calls shall not be ignored.

Firestone said the motion could state something like “move to direct staff to continue to pursue reasonable legal options against any other responsible party”.

It was moved by Mayor Bernard and seconded by Councilor Barnes to direct staff to continue to pursue reasonable legal options against any other responsible party.

Councilor Lancaster, Councilor Stone, and **Councilor Loomis** were not prepared to support such a motion without further discussion with legal counsel in executive session.

Motion failed 2 – 3 with the following vote: Mayor Bernard and Councilor Barnes aye; Councilor Loomis, Councilor Lancaster, Councilor Stone nay; no abstentions.

Advisory Board Appointment

Mayor Bernard, with Council consent, appointed Scott Cook to the North Main Developer Selection Committee.

Milwaukie Transit Center Working Group Status Report

Planning Director John Gessner presented an update on the working group process over the past several months in the attempt to identify an acceptable location for the transit center. Meetings have been held with neighborhood groups and representatives from the downtown and north industrial property and business owner group. Eight options were identified in the staff report. He showed the graphic of option 2.5 -- the Kellogg Lake Option. This option came at the request of the Milwaukie working group in specific response to Option 2.4 – the Post Office Alternative.

Mayor Bernard met with the Kellogg Lake Apartment management, and it is not particularly opposed to the alternative since new sidewalks would be built to his property and street access improved.

Gessner pointed out the land owned by the City just south of Kellogg Lake. There is a footprint developed by the working group and TriMet and Metro staff that would move all of the busses from downtown to this site. The light rail platform originally proposed in the Locally Preferred Option (LPA) behind Milwaukie Jr. High would be shifted to the parking lot behind Milwaukie Lumber.

He provided draft notes from the December 4, 2003 Milwaukie-only meeting. The group identified what it does and does not like about the alternatives and what could be done to remedy the weaknesses. The process is at a point that many of the working group members are eager to get to the narrowing phase. There will be a citywide open house on January 15, 2004 and the community will have the opportunity to review and comment on the options. The Planning Commission will hold public hearings in February 2004, and these comments will be part of its consideration. The Planning Commission will develop a recommendation for the City Council for an April 2004 hearing. The requested action at that time would be for the City Council to take action on the Planning Commission's recommendation for the purpose of forwarding it to the South Corridor Policy Committee for amendment to the LPA.

It is clear in the process that no matter where the transit center lands, there will be tradeoffs. This has been a very complex process because of the opposing opinions. There has been a very deliberate and rational examination of exactly what the tradeoffs and impacts might be, so the community can come together and knowingly say it understands the potential impacts and benefits.

Community Development/Public Works Director Alice Rouyer added the term "Milwaukie only" refers to meetings without TriMet and Metro staff.

Councilor Loomis wants to ensure the recommendation takes into account what is best for the future of Milwaukie. He does not want another sewage treatment plant situation. The vision for what is best is very important.

Gessner said determining what is best is challenging because there are different impacts at each location. It is hoped the working group delivers that message and incorporates it into the recommendation. There have been a couple of exercises to identify in objective terms what the impacts and benefits might mean. The working group participants have been doing their own calculations, and Gessner feels there will be a good sense of what is best.

Carlotta Collette, Ardenwald-Johnson Creek Neighborhood District Association President, 3905 SE Johnson Creek Blvd., Milwaukie. The working group discussed the options endlessly. Early on, the group wanted to reject all of the industrial options largely because, while the busses were out of downtown, they were relocated to the middle of one of Milwaukie's few industrial areas. This would mean the loss of jobs, parking, and businesses. The neighborhood was concerned about cut-through traffic trying to reach the northern section. Many were concerned that the 2 options would just be the same headaches of the busses idling downtown. She feels the Kellogg Lake site

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would alleviate the downtown concern and create a nice focus on the south end of downtown. It is close enough to downtown that people would be safe taking transit while removing the presence in the core area. The working group will probably end up merging some of the options. The group had discussed an option that would take some parking out of the Kellogg Lake site and move it to the ODOT site on Ochoco. There will likely be a combination of alternatives that will merge the best of all worlds. The working group has talked all along about what is best for Milwaukie and the options that support the goals of the downtown and riverfront plan and maintain the neighborhoods.

David Aschenbrenner, working group member and Hector Campbell Neighborhood District Association Chair. Working group members have learned a lot in the process of meeting with north industrial business and property owners, citizens, and other stakeholders. The group is working seriously to find the solution best for Milwaukie. The goals are to move the transit center out of downtown and find something that will not be a sewage treatment plant type of solution in 10 years. The people involved have spent a lot of time working on the problem, and the group is making good progress. This is a difficult issue because it looks so far into the future. The options range over such a wide area, there will be a combination of the items that move forward and have the best interest of Milwaukie at its core.

Councilor Stone recalled when the LPA issue first came before the City Council that there was a timeline for moving the transit center.

Aschenbrenner believes it is 2006.

Collette said the Kellogg Lake site could be moved on quickly because the City already owns the site, and a condemnation process would not be needed. The Milwaukie-only meetings have been really exciting, and participants have made strong collaborative efforts. Staff has been fantastic in its support.

Aschenbrenner added to follow up on moving the transit center. That could be done on the Kellogg site relatively quickly as a surface bus layover. The parking structure would be an element of light rail. The transit center could move no matter what happens with light rail.

Councilor Stone noted the options all have light rail incorporated. The community spoke loud and clear in its vote that it truly does not want to spend money on light rail. Yet everything is tied into that. It would be nice if the transit center could be moved as the first goal. Then move on to the next step if and when the voters approve funding.

Aschenbrenner understands from TriMet that could be done in the 2006 scenario.

Mayor Bernard added phase 1 was moving the transit center and is not dependent on a vote. If there is a surface lot, will there be a bridge?

Aschenbrenner understands there will not be a bridge. The goal is to get layover busses out of downtown Milwaukie. There will still be full bus service downtown, but the busses would only make their stops and move on. The South Kellogg site would have a small park-and-ride facility.

Other

Mayor Bernard said he would like to hold over the PUD resolution to a future meeting.

Mayor Bernard announced the Council would hold an Executive Session immediately following adjournment of the regular session under the authority of Oregon Revised Statutes 192.660(1)(h) to consult with legal counsel on actual or pending litigation.

ADJOURNMENT

It was moved by Councilor Stone and seconded by Councilor Lancaster to adjourn the meeting. Motion passed unanimously among the members present.

Mayor Bernard adjourned the regular session at 8:50 p.m.

Pat DuVal, Recorder

RESOLUTION NO. 1-2004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE *CLACKAMAS REVIEW*, *THE OREGONIAN* AND *THE DAILY JOURNAL OF COMMERCE* AS THE PAPERS OF RECORD FOR THE CITY OF MILWAUKIE.

WHEREAS, ORS 192.620, Public Meetings Law Policy, requires an “Informed public aware of the deliberations and decisions of the governing bodies”; and

WHEREAS, ORS 193.010 defines a newspaper of general circulation, and ORS 193-020 defines a newspaper in which public notices may be published; and

WHEREAS, the *Clackamas Review*, *The Oregonian*, and *The Daily Journal of Commerce* meet the needs of the City and the requirements of State statutes,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Milwaukie, Oregon, designates the *Clackamas Review*, *The Oregonian*, and *The Daily Journal of Commerce* as the papers of record for the City of Milwaukie.

Introduced and adopted by the City Council on January 6, 2004.

This resolution is effective on January 6, 2004.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan & Bachrach, LLP



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Director of Community Development & Public Works

From: Jeffrey King, Project Manger

Subject: Resolution supporting the Regional Economic Development Partners

Date: December 1, 2003 for January 6, 2004 Meeting

Action Requested

Approve attached resolution supporting the goals of the Regional Economic Development Partners.

Background

In October 2003, the City of Milwaukie joined the Regional Economic Development Partners. Regional Partners work to strengthen the regional economic climate through shared economic priorities. In an effort to increase awareness and build broader community support, the Partners organization is asking City Council to consider and endorse the goals and vision of the Partners through adoption of a resolution. All other members of the Regional Partnership are being asked to the same.

The Regional Partners is a coalition of regional economic development practitioners that have informally worked together for the last decade. The group recently formalized the coalition through the formation of a private non-profit corporation. The region for the organization's economic interest is the Portland-

Vancouver PMSA, encompassing Clackamas, Clark, Columbia, Multnomah, Washington and Yamhill Counties.

The move to strengthen and formalize the Regional Economic Development Partners came about due to the weakening of the Portland metropolitan regional economy, loss of jobs and competitive advantages, and the changing dynamics of economic development. The broad goal or mission for the Regional Partners is:

“To allow the Regional Partners to remain light, fast, agile and responsive to the market while building a sustained level of cooperation to achieving shared priorities for the region’s economic future.”

Two important foundations of the Regional Economic Development Partners are:

1. Advocate for the long-term economic prosperity of the metro region and educate and influence regional, state and federal leaders to insure a healthy economic climate.
2. Present a united front through coordination with the partners and shared economic priorities.

Current and planned activities of the Regional Economic Development Partners include:

- The recruitment, expansion and retention of businesses;
- Generalized marketing or “branding” of the region;
- Industry sector and firm specific marketing and outreach;
- The development of regional economic development policy and strategies;
- Monitoring and reporting on progress and implementation of regional economic development strategies;
- Monitoring and reporting on general economic, industry and business trends.

The Regional Economic Development Partners are working on a six-month work plan. The priorities are listed in the resolution.

Membership in Regional Partners will benefit Milwaukie in several ways. These include:

- Provide a seat at the table help shape regional economic development policy and strategies affecting the metro area including Milwaukie.
- Increase awareness to other partners and organizations of the economic development needs and opportunities in Milwaukie.
- Increase business leads to help in reducing vacancies of industrial and commercial sites and increasing family wage job opportunities for Milwaukie residents.
- Provide information to Milwaukie on local economic development best practices, tools, resources and emerging trends, so that Milwaukie can seek opportunities to strengthen its economic and tax base.

Staff is seeking Council approval of the attached Regional Economic Development Partners resolution. The organization is seeking the support of its annual goals and work program from each of its members.

Concurrence

The Community Development Director and City Manager support this resolution

Fiscal Impact

The Regional Partners organization assesses a \$30,000 annual membership fee, which is based on community size. Funds have been budgeted in 2003-2004 budget to cover this expense.

Work Load Impacts

City staff attends meetings and coordinates with Regional Partners' organization. The project is part of the existing Community Development staff work plan.

Alternatives

- Adopt resolution as presented.
- Adopt resolution with changes.
- Take no action.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SUPPORTING THE REGIONAL ECONOMIC DEVELOPMENT PARTNERS.

WHEREAS, the Portland-Vancouver region (comprised of the Counties of Clackamas, Clark, Columbia, Multnomah, Washington and Yamhill) experienced an unprecedented period of economic growth in the 1990's; and

WHEREAS, the region must be proactive and position itself for the economic opportunities that the global marketplace will present in the coming decade; and

WHEREAS, positioning the region to successfully compete in the global economy for renewed economic development will require cooperation of all jurisdictions and economic development enterprises in the region; and

WHEREAS, the attached Framework For Creating Shared Economic Priorities and the Six Month Work Plan were developed by the Regional Economic Development Partners and approved by the Metropolitan Economic Policy Task Force in June 2003; and

WHEREAS, the focus of the recommendations are based upon common themes and economic strategies that the jurisdictions throughout the region have identified and that are consistent, similar or supportive of each other; and

WHEREAS, the priorities of the Six Month Work Plan are:

1. Developing and growing Industry Clusters; and
2. Creating, funding and implementing a private-sector led marketing campaign to promote the region as a desirable location for investment; and
3. Identifying and supporting policies that support industrial land capable of meeting industry and business needs; and
4. Advocating and promoting the region's economic development strategy and identify champions for the implementation of Shared Economic Priorities.

NOW, THEREFORE, BE IT RESOLVED that

The City of Milwaukie recognizes that the region's economic priorities as outlined require focused commitment from both the business community and local/regional/state governments; and

The City of Milwaukie may direct staff to actively pursue, and when appropriate identify needed resources, and work toward implementing the priorities identified in the Six Month Work Plan and the Shared Economic Priorities; and

The City of Milwaukie shall support appropriate actions necessary to implement the Six Month Work Plan and the Shared Economic Priorities; and

The Regional Partners shall provide the City of Milwaukie periodic reports that identify the progress to date and actions needed to implement the Six Month Work Plan and the Shared Economic Priorities.

Introduced by the City Council on January 6, 2004.

This resolution is effective on January 6, 2004.

James Bernard, Mayor

ATTEST:

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

Pat Duval, City Recorder

City Attorney



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development & Public Works Director

From: Jeffrey King, Project Manager

Subject: Economic Development Grant Projects

Date: December 16, 2003 for January 6, 2004

Action Requested

Review information and provide feedback on economic development grant implementation tasks

Background

Staff was notified on August 28, 2003, that the City received a \$25,000 grant from the Mount Hood Economic Alliance (a regional State-Lottery-funded organization) for economic development projects in the City of Milwaukie.

Economic Development Grant Tasks

At this time, staff is seeking feedback and guidance from Council in implementing the economic development grant tasks. These tasks are:

1. Create an inventory and profile of available industrial and commercial sites.

This project item consists of identification of available industrial/business sites and vacant buildings. This element will create a central inventory database. Larger sites within the database will be profiled using key attributes. Site profiles will then be placed and maintained on the City's web site.

Goals accomplished by task: This task will result in increased access by the site selector and business community to vacant commercial and industrial sites in Milwaukie. It will also help increase the number of business leads interested in available sites.

2. Develop an economic development marketing effort, including a section on the City’s web site.

This project element will result in 2,500 professionally printed brochures to promote and market the enterprise zone (the enterprise zone covers the City industrial areas of North Milwaukie, Johnson Creek Blvd. and International Way). The product is a two-sided, multicolored, 8½ x 11 sheet. It will promote the incentive as well as some general economic development and industrial park information.

An economic development section will be added to the City of Milwaukie web site. The site will assist in business recruitment, retention, and new business formation. It will be comprehensive in nature and provide information on available sites, business resources, demographic information, business assistance, and city contacts. It will also link to other sites.

Goals accomplished by this task: This task will result in increased distribution of marketing materials. It will also lead to increased awareness by businesses of the advantages and opportunities of a Milwaukie location.

3. Commence business outreach and visitation program; Build relationships with business community.

The City of Milwaukie will coordinate with Clackamas County in surveying businesses in order to understand their needs and current situation. We need to “know what we don’t know.” Policies, programs, and assistance to business can only be effective if we understand our customer and how to best serve them. The survey will enable the City to identify key trends and issues facing businesses. We will also conduct outreach meetings with our largest employers and other key businesses in order to build relationships and better understanding. These efforts will help to provide more effective assistance and quicker response to local businesses.

To further these aims, staff also recommends establishing a short-term, ad hoc or advisory committee on economic development. The committee would be established for a four-month period, with members selected from diverse, private- and public-sector backgrounds. They would have three specific tasks:

- Help with the completion of grant tasks.
- Complete an analysis of economic development strengths, weaknesses, and opportunities in Milwaukie.
- Develop economic development policy and program recommendations for Council.

Goals accomplished by this task: This task will result in increased awareness by City and other economic development professionals, of business requests for assistance. Improved coordination and communication with Milwaukie businesses will lead to faster response to a range of business requests and needs. Retention or creation of family wage jobs is also a possible benefit.

Greater coordination, communication and participation with the business community will also increase capacity to carry out economic development in Milwaukie.

4. Industrial land infill feasibility.

The project would determine the feasibility of annexing a 6.5-acre parcel of land abutting the International Way Industrial Park at the corner of International Way and Lake Road. It would result in adding developable industrial land to the City's inventory.

Goals accomplished by this task: Completion of documentation of the parcel to determine feasibility for annexation to the City and use as industrial land. These issues include transportation access, wetlands, and determination of slope areas not suitable for building.

5. North Industrial area traffic study.

There is significant concern that the North Milwaukie Industrial area is losing its economic competitiveness. An important factor leading to the successful redevelopment of the North Industrial area is a quality transportation and access network. Private businesses and property owners commissioned further work to define needs by industry and to document methods to improve access both now and in the future. The study will contribute to the City's work with the North Industrial Land Use Study. This study was completed in June 2003.

Goals accomplished by this task: Completion of report to more fully document and clarify existing traffic problems and threats. The report will also help develop options to improve the transportation network in the North Industrial area.

6. Industrial Building Reuse Assessment.

Milwaukie has little ready to build "greenfield" industrial land. As an older community, opportunities lie in redeveloping existing sites. This may include demolition and/or building retrofit to adapt these older buildings in order to better respond to the current and future needs of business. This would open sites for redevelopment and reuse and increase industrial site inventory. Project elements would target one or more large buildings/sites in the North Industrial area. Working with the property owners, tasks would include documenting site and building retrofit strategies such as change of use, changes in size of units, subdividing space, building access changes, utility and telecommunication upgrades that will make a facility more responsive to current market needs.

Goals accomplished by this task: This task will lead to a site or sites that are more marketable. Completion of site and building reuse and retrofit strategies will encourage redevelopment and leasing or purchase by active businesses.

Timeline: All project elements within the grant need to be completed by December 31, 2004.

Concurrence

Community Development, Planning, and the City Manager's Office support the implementation of economic development grant, program, and action steps.

Fiscal Impact

The total of these proposed economic programs and task is budgeted at \$57,000. The budget breakdown is as follows:

- \$25,000 Source:** Grant from Mount Hood Economic Alliance.
- \$14,000 Source:** Cash match from the City of Milwaukie 2003-04 City budget.
- \$ 8,000 Source:** In-kind match from the City of Milwaukie (staff time, space, materials).
- \$10,000 Source:** Private sector grant match from North Industrial Land Owner's Group*

*The cost of the North Industrial Area Traffic Study, commissioned by the North Industrial Land Owners Group, was included in the original grant application as a private sector grant match. This study was completed in June 2003 (before the August 2003 grant award) and was estimated to be a \$10,000 grant match to help in completing grant task #4 described above. While this \$10,000 amount is included in the \$57,000 total grant budget, there is no fiscal impact to the City associated with this line item. All work associated with this grant task line item was completed prior to the grant award.

Work Load Impacts

The proposed economic development program is included in the Community Development annual work program. Some tasks will be completed with consulting assistance.

Alternatives

- Proceed with economic development grant tasks as described.
- Suggest other ways to provide economic development services.
- No action on economic development at this time.



Park & Recreation Board

PARB

Tuesday, October 28, 2003

7:00 PM to 9:00 PM

Conference Room – City Hall

MINUTES

Attendees: Mart Hughes, Kathy Buss, Ray Harris, Rob Gabrish, Sherri Dow, Sonny Newson, Kate McCready

Staff: JoAnn Herrigel, Joan Young

Open Period: Herrigel and the Board welcomed Sonny Newson, a recently appointed PARB member.

Minutes:

Minutes of the September 23 meeting were approved as written.

City Staff Updates:

Homewood - CSO

Herrigel said the Community Service Overlay for Homewood Park would be on the December 9 Planning Commission agenda.

Trolley Trail

Hughes reported on a recent Trolley Trail working group meeting. He noted that the working group had voted to accept the MTIP funding and in so doing had accepted the criteria for the trail that MTIP funding is based on. (According to District discussions with ODOT, the minimum “required” trail width would be 10 feet and the “preferred” width is 12 feet). He said a list of trail materials including specifications and costs for each would be presented at the next working group meeting on November 19 from 3 to 5 at the Milwaukie Center.

Spring Park

Hughes and Herrigel reported on the Elk Rock walk that had taken place on October 18. Hughes noted that there had been about 90 people on the walk. He said that he had used some funds from a Friends of Elk Rock Island account to buy herbicide and had done some application recently. He noted that Island Station had received a grant from Portland and was working on removing invasive species. The project coordinators are looking for volunteers.

System Development Charges (SDCs)

Herrigel referred to the SDC memo she had sent to the Board containing questions and answers on Park District SDCs. She said she gets a lot of questions from residents and Council about how and when SDC funds the City collects can be used for park projects in Milwaukie.

Hughes and Young summarized the District’s process for updating the SDC rates:

- District staff is updating the Capital Improvement Plan (CIP) using the master plan and other sources
- District staff will then develop a methodology for spending SDC funds within the District

- District staff is now meeting with various stakeholders regarding the methodology (and increased rates)
- A public notice will go out in November stating that changes will be proposed
- A public notice will go out in December regarding the substance of the changes
- Staff will take the proposed changes to the BCC in mid-December
- A public hearing will be held at the BCC in February

Hughes noted that the District's current SDC rates are the lowest of any in the region and have not been increased since 1994. The District's intention is to set the new rates in the middle range for the region (\$2300 is proposed). He noted that this was a fee change, not a tax and so it would NOT have to be referred to the voters.

The Board discussed whether they wanted to recommend to Council that SDC funds be used for Park projects in the City. The consensus was that we should wait until after the new methodology and rates are approved. Herrigel said she would get a copy of the CIP from Michelle Healy to share with the Board at the December meeting.

Vice Chair

Herrigel noted that there have been times when Mart Hughes has been unable to attend District meetings and that it may be a good idea to appoint a Vice Chair to represent the City at DAB or other meetings. Kathy Buss made a motion nominating Sherri Dow as the Vice Chair of the Milwaukie Park and Recreation Board until the end of her Board term. Rob Gabrish seconded and the motion was approved 7-0.

Park District Update

Joan Young reported that two Park District work groups were in place: Recreation services and Public Relations and Outreach. Herrigel asked if the Aquatics Park work group had been convened. Young said that representatives were being selected. The Board agreed that the City should be represented on that group. Kate McCready volunteered to sit on that working group. Herrigel said she would follow up with Commissioner Kennemer.

Hughes asked if there had been any further discussion of merging the Park District with the County Parks Department. Young said that where there are overlaps in the two organizations, staff is being encouraged to merge functions. She noted that Directors of both the District and the County Dept remain in tact. Hughes asked if the District could expand to the whole County if a full merge of these two groups took place. Young responded that she doubted that there was enough funding to allow this to happen.

Other

- Buss reported that the Ardenwald Historic Walk had been very successful. She said that about 55 people joined the tours.
- Hector Campbell Neighborhood is beginning work on a pocket park at 37th and Monroe and volunteers are welcome.
- The group was reminded that the Closing Ceremony for the Centennial will be held at the Riverfront on December 20.

Herrigel checked in regarding November and December meeting dates. *All agreed to hold both. Newson said he would bring pie to the November meeting and Kate said she'd provide a desert for the December meeting.*

Adjourn

Buss motioned to adjourn at 8:15. Dow seconded and motion passed 7-0.



Ledding Library Board November minutes

November 24, 2003 6:30 PM
Ledding Library

Meeting called by:

Tom Hogan

Attendees:

Attendees: Mark Docken, Pat Healy, Tom Hogan, Sue Trotter, Michael Welling, and Ed Zumwalt.

Absent: Pat Lent

Staff: Cynthia Sturgis

Agenda topics

Approval of minutes

The following statement was added to the "WELL Update" section of the October minutes: "Tom Hogan will write a summary of the discussion and concerns for the the WELL committee."

Minutes were approved amended.

Librarians' report

Cynthia reported that the senior librarians will be meeting with Alice Rouyer on November 24th to discuss the newest plans for the North Plan project.

Rob Dortignacq will work on revisions to the floor plan for the library until we know more about final plans for the North Main project.

The city managers met to discuss the proposed library levy. They are recommending a 35 cents rate.

WELL

The next meeting for WELL is scheduled for December 10. No meeting has taken place since the last Library Board meeting in October.

Circulation

Board members expressed concern about the decrease in circulation due to reduced open hours. Ideas discussed included approaching the senior center and retirement centers for deposit collections or encouraging their use of the library and changing the floor plans to better display collections. Cynthia will call the library development office at the State Library to see if they can provide advice on displays and floor planning