

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MARCH 19, 2002**

Call to Order

The 1882nd meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King

Brian Newman

Staff present:

Mike Swanson,
City Manager

Larry Kanzler,
Police Chief

Alice Rouyer,
Community Development
Director

Jay Saatkamp,
Public Works Operations -- Water

PLEDGE OF ALLEGIANCE

Boy Scout Troop 376 led the Pledge of Allegiance.

PROCLAMATIONS, COMMENDATIONS, AND SPECIAL REPORTS

The City Council and Police Chief Kanzler commended Milwaukie resident Kim Saul and Public Works employee Bill Coy for their actions in emergency situations.

Mayor Bernard congratulated Code Compliance Coordinator Steve Campbell for being named Clackamas County Reserve Officer of the Year 2001.

Clackamas County Law Enforcement Levy Discussion

Clackamas County Sheriff Pat Detloff provided information on the May law enforcement levy that would help fund the Sheriff's Office, District Attorney's Office, Juvenile Department, and Community Corrections Department. Some funds would be used to expand county jail capacity when the state moves its intake center from the building it currently shares with the County. The rate for the local option tax would be 59 cents per \$1000 assessed value. There is no differential for those properties in incorporated areas.

Councilor Newman had concerns about compression if Milwaukie decides to go out with its own money measure in the near future.

Swanson said this would not put Milwaukie in compression, and he discussed Measures 47 and 50.

Councilor Newman said Milwaukie residents are opposed to the idea of library funds being used to cover law enforcement shortfalls.

Swanson understands the feared cuts to city libraries will not materialize; however, library funding will be part of the County's across the board reductions.

Councilor King supports the law enforcement levy. Mayor Bernard does not support the levy at this point because the County did not make an effort to contact the cities to discuss their needs.

Detloff asked the City Council to consider a resolution of support for the law enforcement levy.

Board and Commission Appointments

Mayor Bernard, with Council consensus, made the following advisory board appointments: Jean Michel to the Budget Committee, Ed Zumwalt to the Library Board (re-appointment), Gary Klein to the Riverfront Board, and Donald Hammang to the Planning Commission (re-appointment).

Citizen Appreciation

Mayor Bernard thanked Denise Magee-Gonzales, Susan Stone, Barbara Cartmill, and Donna Harris for sharing their thoughts on roadside memorials at the previous night's work session.

CONSENT AGENDA

It was moved by Councilor King and seconded by Councilor Newman to adopt the consent agenda consisting of:

- A. City Council Minutes of March 3 & 4, 2002;**
- B. Resolution 5-2002: A Resolution of the City Council of the City of Milwaukie, Oregon, Amending Fees for Services; Establishing One- and Two-Family Fire Suppression Systems Fees and Classifying the Fees Imposed by this Resolution As Not Subject to Article XI, Section 11B of the Oregon Constitution**
- C. 2001 - 2002 Waterline Improvements -- Phase 1 Bid Award;**
- D. Approve Engineering Design for Lava Drive Booster Pump Replacement;**
- E. Resolution 6-2002: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the Mayor to Sign an Intergovernmental Agreement (IGA) between the City of Milwaukie with Clackamas County District Attorney to Provide Legal Service to Seize Assets Derived from Criminal Enterprise Pursuant to ORS Chapter 190, and for the Dispersal of Assets and Property Subject to Chapter 666, Oregon Laws (2001) Relating to Criminal Forfeitures; and**
- F. Authorize Staff to Negotiate a Contract for Management Information System Software**

Motion passed unanimously among the members present.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING -- None scheduled

OTHER BUSINESS

On behalf of the Milwaukie City Council, Councilor King extended condolences to the family of Vince Kohler.

ADJOURNMENT

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

Mayor Bernard adjourned the meeting at 6:30 p.m.

Pat DuVal

Pat DuVal, Recorder

CITY OF MILWAUKIE
CITY COUNCIL AGENDA
MARCH 19, 2002

MILWAUKIE CITY HALL
10722 SE Main Street

1882ND MEETING

REGULAR SESSION - 6:00 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance
- II. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
 - A. **Citizen Commendations (Kanzler)**
 - B. **Clackamas County Law Enforcement Levy (Foote/Detloff)**
- 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 March 4 & 5, 2002**
 - B. **Fire Suppression System Fees -- Resolution (Carter)**
 - C. **2001/2002 Waterline Improvements -- Phase 1 Bid Award (Roeger)**
 - D. **Approve Engineering Design for Lava Drive Booster Pump Replacement (Roeger)**
 - E. **Intergovernmental Agreement with Clackamas County District Attorney -- Resolution (Kanzler)**
- 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.)*

Authorize Staff to Negotiate Contract for Management Information System Software (DuVal/Gartner/Smith)

VII. INFORMATION

- A. Riverfront Board Minutes, February 12, 2002
- B. Planning Commission Minutes, January 22 & February 26, 2002

VIII. ADJOURNMENT

EXECUTIVE SESSION -- *At the end of the regular meeting, the Council may hold an Executive Session under the authority of Oregon Revised Statutes 192.660 as needed.*

For assistance/service per the Americans with Disabilities Act (ADA), dial TDD 786-7555.

The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

MILWAUKIE CITY COUNCIL
WORK SESSION
MARCH 4, 2002

The work session came to order at 5:30 p.m. in the City Hall Conference Room.

City Council present: Mayor Bernard and Councilors King, Lancaster, Marshall, and Newman.

Staff present: City Manager Swanson, Community Development/Public Works Director Rouyer, Police Chief Kanzler, Interim Planning Director Gessner, and Associate Planner Kent.

Information Sharing

1. **Swanson** distributed the itinerary for the trip he and Mayor Bernard are making to Washington D.C. to discuss transportation funding with the congressional delegation.
2. **Councilor Lancaster** noted an upcoming Clackamas County Tourism event on March 18.
3. **Kanzler** showed a brief Milwaukie Cadet Program recruitment video.

Board and Commission Interviews

The City Council interviewed Al Dorsey, Sherri Campbell, and Ken Bladow for the Cable Access Studio Ad Hoc Committee; David Aschenbrenner and Lamar Buckelew for re-appointment to the Budget Committee; and David Ewton for the Traffic Safety Board.

School Resource Officer Program

Kanzler announced plans to leave 2 vacant police officer positions unfilled to reduce the departmental budget. To provide sufficient staffing level, the department will withdraw the 1 school resource officer from the middle and elementary schools. This action would help provide the necessary level of safety for officers on the streets, so they in turn can better serve the community at large. The school resource officers are fully-funded by the City, and the affected school principals understand the budget dilemma. **Kanzler** intends to keep the resource officer in Milwaukie High School.

Councilor Lancaster had concerns about getting enough benefit from having an officer in the schools instead of on the streets. He feels this is a time when the City can least afford to take actions that reduce the desired officer to population ratio.

Kanzler said the number of assaults and thefts at Milwaukie High School is rising, and he sees the benefit in having an officer who knows the students. Even without a dedicated officer, Milwaukie would be the first responder to calls from the middle or elementary schools. The officer to population ratio is only

III. A. 2

slightly lower than 1.5, and the department anticipates it can maintain that standard if adjustments are made.

Swanson explained the December financial reports indicated a pending problem unless some mid-year actions are taken. Police staff has been uniformly excellent and responded like a team to make needed budget efficiencies.

Councilor King was concerned this solution would have negative long-term effects and suggested asking the School District to partially fund the resource officer positions.

Kanzler met with Police staff to weigh all possible options, and the group identified 2 key components -- protecting the public at large and providing 9-1-1 services. The department is currently at its lowest staffing level in 7 years. The option of delaying vehicle purchases to reduce the budget was discussed but is not considered an alternative since it directly impacts officer safety. Officer Neitch, the middle and elementary school resource officer, agrees this is the only solution that makes sense. The department is still committed to the schools and community, but officers must be assured they can carry out their duties in a safe environment. Maintaining the current course of action would likely incur officer overtime and operational expenses over budgeted amounts.

The group discussed having a cadet visit the schools each day, but **Kanzler** felt the liability might be too great.

Mayor Bernard suggested preparing a letter to the School District lobbying it to help pay for the resource officer positions.

Councilor Marshall has consistently fought for 1.75 officers per thousand population with 1.5 as an absolute minimum. There will be major policy decisions at budget time, and he will suggest cutting programs rather than providing mediocre, reduced services.

Kanzler said 2 positions will go unfilled but not eliminated. The department is obliged to provide a safe environment for the community as well as being judicious in its expenditure of public funds.

Swanson added 2 personnel actions are pending arbitration.

Councilor Lancaster said the Budget Committee will need to understand the real City priorities, and law enforcement cannot be compromised.

Councilor Newman commented this is classic case of limited resources and more services than can be provided. He supported the Chief's action to keep officers on the street.

Swanson will prepare a list of services the City is mandated to provide. He cautioned there are programs, such as neighborhood grants and code enforcement, which are very well received by the public but not mandated.

Urban Forestry Program Direction

Swanson briefly summarized the Urban Forestry Ad Hoc Committee charge and anticipated outcomes. The group agreed on regulations for public property; however, it could not reach consensus on private property issues because of philosophical divisions. He did not believe it would be beneficial for the Committee to continue work on issues for which there is no agreement.

The group agreed the Committee has done what it can, and the City Council will move on with the process.

Kent said there was a general concern in the Committee about adding another level of permitting. Other issues had to do with removing trees on lots being developed and tree canopy preservation.

The group discussed analyzing the tree canopy, but **Rouyer** cautioned them about the expense.

Councilor Newman asked if there was Council support for legally establishing a threshold on large development sites of 5 units or more, for example, when a project risks the tree canopy.

Councilor King would support protection of the tree canopy any way possible including developer incentives.

Councilor Marshall suggested the Planning Department look at the feasibility of creating some incentives. Options might include reducing SDCs, discounting permits, or eliminating a portion of the property tax.

Swanson recommended creating a list of development criteria supporting protection of the tree canopy.

Rouyer suggested tree preservation mitigation as part of the variance application. She summarized the conversation: the City Council supports the notion of adopting revised public right-of-way and public property standards, of reviewing conditional use and community service overlay applications to include language that encourages tree preservation, and continuing to identify incentives for preservation and tree planting in the neighborhoods. The City Council wishes to regulate trees on private property only by positive options.

III. A. 4

Proposed Flag Lot and Other Development Standards

Gessner reviewed the proposed revisions to the City's development standards including flag lots, appearance of manufactured and other housing, accessory units, definitions for "story" and "half-story", and provisions for Planning Director code interpretations.

Councilor Marshall referred to staff report page 3 and the recommendation to limit accessory buildings to 15 feet in height with a maximum footprint of 480 square feet. To maintain neighborhood character, he suggested the accessory dwelling height not be allowed to exceed that of existing structure on the same lot. He also thought 480 square feet was too limited to park 2 full-sized vehicles.

Gessner will research the square footage issue.

The group agreed the staff work was very well done and looks forward to adopting these new standards.

Swanson announced his intention to postpone the Downtown Traffic Management Study to allow time to speak with Budget Committee members.

Councilor Marshall requested a brief executive session pursuant to ORS 192.660.

Adjournment

Mayor Bernard adjourned the work session at 7:45 p.m.

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MARCH 5, 2002**

Call to Order

The 1881st meeting of the Milwaukie City Council was called to order by City Recorder DuVal at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King
Jeff Marshall

Brian Newman

Staff present:

Gary Firestone,
City Attorney
Larry Kanzler,
Police Chief

Brion Barnett,
Associate Engineer
Alice Rouyer,
Community Development Director

PLEDGE OF ALLEGIANCE

In the absence of both Mayor Bernard and Council President Lancaster, Councilor Marshall was elected by a majority of those present to act as chair person at this session.

CONSENT AGENDA

It was moved by Councilor King and seconded by Councilor Newman to adopt the consent agenda consisting of:

- A. City Council Minutes of February 19, 2002;
- B. OLCC Application for Roswell Market, 8929 SE 42nd Avenue (change in ownership); and
- C. Resolution 4-2002: A Resolution of the City Council of Milwaukie, Clackamas County, Oregon, Establishing Sewer Service Charges Effective Date.

Motion passed unanimously among the members present.

AUDIENCE PARTICIPATION

Russell Dillon, 4602 SE Harrison Street, Milwaukie. He spoke in objection to the City's utility billing procedure. As a disabled, retired person, he does not pay his utility bill until he receives his pension check. He recommended extending the time before which a payment becomes delinquent.

Councilor Marshall said City Manager Swanson would contact Mr. Dillon.

PUBLIC HEARING -- None scheduled

III. A. 6

OTHER BUSINESS

Abandoned Vehicle Ordinance Amendment

Kanzler requested the City Council adopt amendments to Municipal Code Chapter 10.40 -- Abandoned Vehicles. This amendment would bring the City into conformance with state laws and change some existing convoluted ordinance language. Vehicles would be removed from City streets much more quickly through this amendment.

It was moved by Councilor Newman and seconded by Councilor King to read the ordinance amending Milwaukie Municipal Code Section 10.40.010 and repealing Sections 10.40.020 - 10.40.070 for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by Councilor King and seconded by Councilor Newman to read the ordinance amending Milwaukie Municipal Code Section 10.40.010 and repealing Sections 10.40.020 - 10.40.070 for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Newman and seconded by Councilor King to adopt the ordinance amending Milwaukie Municipal Code Section 10.40.010 and repealing Sections 10.40.020 - 10.40.070 for the first time by title only. Motion passed unanimously among the members present.

ORDINANCE NO. 1898:

AN ORDINANCE AMENDING MILWAUKIE MUNICIPAL CODE SECTION 10.40.010 AND REPEALING MILWAUKIE MUNICIPAL CODE SECTIONS 10.40.020 THROUGH 10.40.070.

Downtown Traffic Management and Parking Plan Update

This item was postponed to a later meeting.

Board and Commission Appointments

Councilor Marshall, with the consensus of Council, made the following advisory board appointments: David Aschenbrenner and Lamar Buckelew to the Budget Committee; Deborah Barnes, Sherri Campbell, and Al Dorsey to the Cable Access Studio Ad Hoc Committee; Janet Witter and Molly Hanthorn to the Center/Community Advisory Board, and David Ewton to the Traffic Safety Board.

Councilor Marshall announced the City Council would meet in Executive Session immediately following adjournment to discuss litigation pursuant to ORS 192.660.

Adjournment

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

Councilor Marshall adjourned the meeting at 6:15 p.m.

Pat DuVal, Recorder

SCANNED

To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development Director *DRS*

From: *R Carter* Roosevelt Carter, Program Services Coordinator

Subject: One-and-Two Family Fire Suppression Systems Fees

Date: March 19, 2002 City Council Meeting

Recommendation/Action Requested

Adopt the attached Resolution amending the City's Plumbing and Building permit fee schedules to include new fees for "one-and-two family fire suppression systems."

Background

Oregon Administrative Rule (OAR) No. 918-050-0140 requires permit fees for fire suppression systems installed in one and two family residences to be established.

OAR 918-050-0140 requires: "stand-alone and multi-purpose fire suppression system fees shall be calculated as separate flat fees based on the square footage of the structure with graduated rates for dwellings with 0 to 2000 square feet, 2001 to 3600 square feet, 3601 to 7200 square feet and 7201 square feet and greater. The permit fee shall be sufficient to cover the costs of inspection and plan review." The proposed fees are intended to cover the costs associated with inspection and plan review.

The provisions of OAR 918, Division 050 apply to all municipalities located within Clackamas, Multnomah and Washington counties. Adoption of these fees will ensure Milwaukie's continued compliance. The effective date of these fees will be April 1, 2002.

Fiscal Impact

Requests for these systems will not likely create an upsurge in permit activity nor are they likely to add any significant new revenue. Fire suppression systems are not required in one and two family dwelling units. Typical applicants for "one-and-two family fire suppression systems" will have slope and or distance limitations affecting their property that may require such a system. A small number will want the added fire suppression protection.

III. B. 2

Workload Impacts

Processing a multi-purpose (where there is no separate water line to the suppression system) permit could require from 1.25 to 3.0 hours of plumbing inspection and permit specialist time. Stand alone and multi-purpose systems with separate water lines to the home could require from 2.5 to 4.5 hours of inspection and permit specialist time. The proposed fees will cover the costs associated with these services.

Concurrence

Building, Planning, and the City Attorney reviewed and approved sending the proposed resolution to Council.

Exhibits

Exhibit A: Proposed Resolution and Fee Schedule

Alternatives

1. Not adopting a fee. This would prevent the City from covering its administrative and inspection costs for these systems.
2. Adopting a different fee. Because the proposed fee is calculated to recapture the City's costs, any other fee would result in over-collection or under-collection.

EXHIBIT A

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING FEES FOR SERVICES; ESTABLISHING ONE-AND-TWO FAMILY FIRE SUPPRESSION SYSTEMS FEES AND CLASSIFYING THE FEES IMPOSED BY THIS RESOLUTION AS NOT SUBJECT TO ARTICLE XI, SECTION 11B OF THE OREGON CONSTITUTION.

WHEREAS, OAR No. 918, Division 050 applies to all municipalities located within Clackamas, Multnomah and Washington Counties; and

WHEREAS, OAR No. 918-050-0140 requires permit fees to be established for fire suppression systems installed in one-and-two family residences;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie amends Resolution No. 17-2001, adding permit fees for one-and-two family fire suppression systems consistent with OAR No 918-050-0140. The fees are:

Multipurpose or Continuous Loop Fire Suppression Systems (requires a backflow device installed by licensed plumbing contractor or persons exempt from licensing):

0 sq. ft. to 2,000 sq. ft.	\$87.50
2,001 sq. ft. to 3,600 sq. ft.	\$130.00
3,601 sq. ft. to 7,200 sq. ft.	\$164.00
7,201 sq. ft. and greater.....	\$200.00

Stand-Alone Fire Suppression Systems:

0 sq. ft. to 2,000 sq. ft.	\$87.50
2,001 sq. ft. to 3,600 sq. ft.	\$130.00
3,601 sq. ft. to 7,200 sq. ft.	\$164.00
7,201 sq. ft. and greater	\$304.00

The City Council determines that the fees imposed by this Resolution are not taxes subject to the property tax limitations of Article XI. Section 11(b) of the Oregon Constitution.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on March 19, 2002.

Effective Date: April 1, 2002

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney



III. C. 1
APPROVED

To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Director of Community Development and Public Works
Dennis Lively, City Engineer *Dennis Lively*

From: Paul Roeger, Civil Engineer *P. Roeger*

Subject: 2001/2002 Waterline Improvements – Phase 1
Bid Award

Date: March 4, 2002 for March 19, 2002 City Council Meeting

Action Requested

Authorize the City Manager to sign a contract for the 2001/2002 Waterline Improvements – Phase 1 with Landis and Landis Construction, LLC, in the amount of \$197,926.30 (includes a ten percent project contingency).

Background

The recently adopted Water System Master Plan identified waterlines that need to be upgraded to improve fire protection and domestic water flows.

Two upgrade projects are included in this bid. In the Monroe Street portion of this project we are replacing old 4-inch and 6-inch cast iron line with a new 8-inch PVC line. In the Franklin Street portion of this project we are replacing an old 4-inch cast iron line with a new 6-inch PVC line. All services will be replaced and new fire hydrants will be added.

A project vicinity map is attached. Project bid advertising was completed as required. Twenty-one sets of plans went out to contractors for bidding, and seventeen bids were received for the February 28, 2002, bid opening. A brief bid summary follows, including the engineer's estimate.

The engineer's estimate was considerably higher than the low bidder's price. This is likely due to the weakened economy and the fact that lower bids are typical during the winter season.

The low bid contractor is Landis & Landis Construction, LLC. Landis & Landis Construction has worked for the City before. Staff checked references, and is satisfied with this contractor's performance.

Fiscal Impact

\$300,000 is budgeted in this year's Water Fund for these improvements.

Contractor	Bid
Landis & Landis Construction, LLC	\$179,933.00
Werbin West Contracting	\$182,380.00
Kasey Cooper Excavation	\$184,840.00
NW Construction	\$187,149.88
LA Construction	\$196,090.00
Range of Other Bids	\$196,960.00 to \$313,817.00
Engineer's estimate	\$241,980.00

SCANNED

To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Director of Community Development and Public Works
Dennis Lively, City Engineer *Dennis Lively*

From: Paul Roeger, Civil Engineer *PR*

Subject: Lava Drive Booster Pump Station Replacement
Engineering Design

Date: March 4, 2002 for March 19, 2002 City Council Meeting

REQUEST:

Authorize the City Manager to sign a Purchase Order in the amount of \$33,000, contracting with Murray Smith & Associates, Inc. (MSA) for final engineering design of the Lava Drive Booster Pump Station Replacement project.

BACKGROUND:

The Lava Drive Booster Pump Station is located on a small easement at the northeast corner of Lava Drive and Waverly Court and was originally constructed in approximately 1970 to provide increased water pressure for domestic flow and fire protection for the Waverly Greens Apartments on Waverly Court.

The recently adopted Water System Master Plan included an evaluation of the water booster pump station that resulted in a recommendation for increasing the capacity and improving the reliability of this station. MSA was subsequently retained to assist the City in determining the best available course of action for accomplishing these needs by completing analysis of alternatives.

Currently the Pump Station contains three pumps and a control panel in a buried, 10-foot diameter steel enclosure. It is equipped with one 15-horsepower domestic pump and two 75-horsepower fire pumps. There is no back up for the domestic pump and the fire pumps over-pressurize the system and have surging problems. Another significant drawback to the current arrangement is that the existing package pump station is a

III. D. 2

confined space, as defined under OSHA regulations. Regular monitoring and maintenance activities are limited due to the confined space regulation requirements.

The recommended new pump station will consist of two domestic pumps and two fire pumps, similar in capacity to the existing pumps. The pump station will be fully automatic, with remote over-ride capability from the main telemetry panel at the Public Works Center. Accommodation would be made for connecting a fire pumper-truck and a portable generator unit to the pump station. Pressure regulating equipment also will be installed. The new pump station will be located on the southeast corner of the intersection of SE Lava Drive and Riverway Lane. Access will be provided from a parking lot located 6 to 8 feet below the roadway grade, thus eliminating the confined space problems associated with the existing pump station.

The estimated construction cost of booster pump station replacement is \$133,000.00. The cost of engineering this project is approximately \$33,000.00. This year's CIP budgeted \$100,000.00 to replace the booster pump station. The cost of engineering is well within the amount budgeted for this fiscal year. Additional funding will be budgeted in the CIP for next fiscal year.

The Engineering Department would like to negotiate a contract for final design of this project with Murray Smith & Associates who have done the work to date. City Council approval is required, since we will exceed the \$25,000.00 contract limit for staff approval.



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Larry Kanzler, Chief of Police
Subject: Proposed Intergovernmental Agreement
Date: March 8, 2002

Action Requested

Adopt a resolution authorizing the Mayor to sign an intergovernmental agreement (IGA) between the City of Milwaukie and the Clackamas County District Attorney to provide legal service to seize assets derived from criminal enterprise pursuant to ORS Chapter 190, and for the dispersal of assets and property subject to chapter 666, Oregon Laws (2001) relating to criminal forfeitures.

Background

In 2000 the voters of Oregon enacted Ballot Measure 3. The effects of this Measure mandated **civil** asset forfeiture derived from drug investigations be redirected to unspecified rehabilitation programs. Law enforcement and county prosecution teams no longer share any proceeds in excess of 25% of the gross amount identified for seizure under the **civil forfeiture** standard.

To provide remedy to the cost of investigating and prosecuting criminal enterprises previously incapacitated by the passage of Measure 3, the 2001 legislature enacted Chapters 666 and 780 Oregon Laws (2001). ORS Chapters 666 and 780 (2001) were enacted as uniform statutory schemes to provide the procedural and logistical framework for all non-federally based **civil and criminal** forfeiture actions occurring in the State of Oregon.

In essence, Oregon Laws Chapter 666 and 780 outline a process for the **post criminal conviction seizure of assets and property**. The **criminal** forfeiture process will be supervised and managed by the Clackamas County District

III. E. 2 rt -- (Criminal Forfeiture Agreement)

Attorney including all prosecutorial costs associated with the forfeiture action. At the conclusion of the proceedings any costs associated with the forfeiture action will be reimbursed to the supported police agency and the District Attorney with any remaining assets divided equally between the police agency who initiated the criminal action, in our case Milwaukie, and the Clackamas County District Attorney who prosecuted the forfeiture.

Implementation of this agreement will provide a lawful process to recover some of the costs associated with the investigation and prosecution of crime.

Concurrence

- All police agencies in Clackamas County
- Milwaukie Police Department staff
- City Attorney

Fiscal Impact

- All fiscal impacts are expected to be positive. Law enforcement in Clackamas County in partnership with the District Attorney will proceed slowly with the number of cases prosecuted under the criminal forfeiture statutes. Protocols and procedures will be designed and developed to help expedite future asset and property judgements.
- We estimate revenue from criminal forfeiture action on a case by case basis. Unfortunately, there is no way to predict when or to what extent revenue will exceed prosecutorial costs.
- We anticipate minimal direct costs associated with criminal forfeiture prosecution and predict that any direct costs will be limited to prosecution and thus, potentially recoverable.

Work Load Impacts

- Minimal and limited to prosecutorial activities.

Alternatives

- None – Failure to act to cause forfeiture of assets and property obtained through criminal activity only serves to reinforce future criminal activity.

Attachment

- Intergovernmental Agreement between the City of Milwaukie and the Clackamas County District Attorney.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF MILWAUKIE AND THE CLACKAMAS COUNTY DISTRICT ATTORNEY TO PROVIDE LEGAL SERVICE TO SEIZE ASSETS DERIVED FROM CRIMINAL ENTERPRISE PURSUANT TO ORS CHAPTER 190, AND FOR THE DISPERSAL OF ASSETS AND PROPERTY SUBJECT TO CHAPTER 666, OREGON LAWS (2001) RELATING TO CRIMINAL FORFEITURES.

WHEREAS, the Milwaukie City Council understands and recognizes the importance of collaborative intergovernmental partnerships and agreements to facilitate the detailed prosecution of criminal activity; and

WHEREAS, the Oregon Legislature enacted Oregon law Chapter 666 authorizing intergovernmental agreements to prosecute criminal forfeiture; and

WHEREAS, the Milwaukie City Council supports community livability through active and effective prosecution of criminal activity;

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the Mayor to enter into an intergovernmental agreement with the Clackamas County District Attorney to act as forfeiture council for the City of Milwaukie pursuant to Oregon laws Chapter 666

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on March 19, 2002.

This resolution is effective March 19, 2002.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY and
THE CITY OF MILWAUKIE
REGARDING CRIMINAL FORFEITURE**

I. INTRODUCTION

The undersigned agencies and units of local government hereby enter into this intergovernmental agreement ("Agreement"), pursuant to the authority granted in ORS Chapter 190, for the dispersal of assets and property subject to chapter 666, Oregon Laws (2001) relating to criminal forfeitures.

II. PARTIES TO THE AGREEMENT

1. The City of **Milwaukie** (City) is a municipal corporation and a political subdivision of the State of Oregon.
2. The **Milwaukie Police Department** (Department) is an agency of the City, and for purposes of this agreement, a "seizing agency" as defined in chapter 666, Oregon Laws (2001).
3. Clackamas County (County) is a political subdivision of the State of Oregon, organized and existing under the laws and constitution of the State of Oregon.
4. The Clackamas County District Attorney's Office (District Attorney) is a department of the County; and is for purposes of this agreement, both a "law enforcement agency" and "forfeiture counsel" as those terms are defined in, Chapter 666, Oregon Laws (2001).

III. RECITALS

WHEREAS, the 2001 Legislature enacted Chapters 666 and 780, Oregon Laws (2001) as uniform statutory schemes providing the procedural and logistical framework for all non-federally based civil and criminal forfeiture actions occurring in the State of Oregon;

WHEREAS, the City and the District Attorney wish to engage in a cooperative and mutually beneficial arrangement to prosecute criminal forfeitures only, under the terms of Chapter 666, Oregon Laws (2001) (hereinafter referred to as "Chapter 666");

WHEREAS, the City and the District Attorney recognize that under the terms of section 15, chapter 666, the parties may enter into an intergovernmental agreement for the dispersal of funds

received as a result of the prosecution of criminal forfeiture actions;

WHEREAS, the District Attorney has the requisite expertise and resources to prosecute forfeiture actions taken pursuant to Chapter 666;

WHEREAS, the Department has the requisite and necessary resources to act as the seizing agency for purposes of this Agreement.

IV. AGREEMENT

1. The District Attorney will act as forfeiture counsel for the City for forfeitures relating to criminal forfeiture under Chapter 666.

2. Notwithstanding the manner of service of notices of seizure for criminal forfeiture, the parties agree that in all criminal forfeiture actions which involve property seized by a member or agent of the Department, the Department shall be the "seizing agency" as that term is defined in section 1(13), chapter 666.

3. When a final judgment of criminal forfeiture is entered against the defendant and all claimants in a criminal forfeiture proceeding pursuant to Chapter 666, the Department and City shall distribute the property and/or proceeds in accordance with Chapter 666. The following subsections are intended to clarify distributions and costs under this paragraph:

a. The seizing agency's costs shall include the actual out-of-pocket expenses and costs incurred by the District Attorney in prosecuting the criminal forfeiture action through its final disposition, including related appeals involving the forfeiture action, and such expenses and costs shall be reimbursed at the time of the final distribution of proceeds and/or property by the City. The District Attorney's costs shall include, but not be limited to, the expenses of consultants and experts, transcription, and other litigation costs, publication, service of notices, towing, storage and servicing or maintaining the seized property under section 6, chapter 666, but shall not include reimbursement for District Attorney staff time spent on prosecution of the forfeiture.

b. In the event that the final proceeds are less than the total of the expenses and costs incurred by Department and the District Attorney, each shall be reimbursed its

III. E. 6

proportionate amount for their costs incurred in section IV.3.a, supra, from the final proceeds received;

c. Of the balance available for official law enforcement use as set forth in section 16(3)(a), chapter 666, 50% shall be distributed to the District Attorney, and 50% to the Department. The parties reserve the right to seek recovery of their costs and expenses in contested cases as against third party claimants, whether individually or jointly sought.

d. At the conclusion of every County fiscal year (June 30th) that this Agreement is in effect, the District Attorney shall add up the District Attorney staff time spent prosecuting forfeiture cases (which estimated annual cost for the first year is approximately \$35,000), and shall add up the distributions received from all agencies and task forces pursuant to IV.3.c., supra, and the similar provisions of the District Attorney's agreements with other agencies and task forces. Fifteen percent of any excess of receipts over staff costs for prosecution shall be refunded to the contributing agencies and task forces in amounts proportionate to their respective contributions to the aforementioned distributions received by the District Attorney for that fiscal year.

4. In criminal forfeiture cases involving the storage of vehicles or other personal property at City or Department-owned storage facilities, the City and Department agree to cap storage expenses at \$1,000 per stored vehicle or property, and the District Attorney agrees to seek the timely disposition of criminal forfeiture actions. The parties further agree that the District Attorney shall not be liable for payments ordered as a result of damage occurring to items stored in City or Department-owned property during the pendency of a criminal forfeiture proceeding.

5. In the event the Department cooperates with other law enforcement agencies in specific criminal forfeiture cases prosecuted by the District Attorney as forfeiture counsel, the City and Department shall ensure that any agreements between the cooperating agencies regarding the distribution of proceeds shall include the distributions set forth in paragraph IV.3, supra.

6. In the event a court of competent jurisdiction orders forfeited property, proceeds, and/or related interest which was forfeited to the City or Department in a criminal forfeiture action returned to a claimant or transferred or otherwise conveyed to some third party, the District Attorney shall return its proportionate share of the property ordered returned, except

that the District Attorney shall not be liable for amounts ordered paid as a result of the Department's noncompliance with section 6, 6(a), chapter 666 unless such noncompliance was the result of an agreement between the Department and the District Attorney that the cash needed to be retained as evidence rather than being deposited in an interest-bearing account.

7. No party to this Agreement shall seek the criminal forfeiture of any "facility" which has been designated a "hazardous waste disposal site" or "hazardous waste storage site," as those terms are defined in ORS 466.005, or an "illegal drug manufacturing site" as that is defined in ORS 453.858 without first obtaining the prior written approval of the other parties.

8. The City or Department may elect not to liquidate any real or personal property subject to forfeiture under the terms of Chapter 666, provided written notice of said election is provided to the District Attorney no less than ten (10) days following the entry of a final judgment of criminal forfeiture. If the City or Department proceeds under this paragraph, it shall make the disbursements otherwise required by Chapter 666 and this Agreement from other City funds based on the fair market value, as agreed to by the parties to this Agreement, at the time of the entry of judgment of criminal forfeiture.

9. In cases in which the District Attorney is prosecuting a criminal case involving the seizure of assets, the Department may refer a related civil forfeiture case to U.S. Department of Treasury agencies for adoption only with the consent of the District Attorney. If a civil forfeiture case so referred is adopted by a U.S. Department of Treasury agency, upon receipt of the Department's equitable share of the proceeds, the Department shall pay to the District Attorney 20% of the net proceeds (i.e. forfeited cash or gross receipts from the sale of forfeited property less expenses, prior to distribution to federal or state agencies), which the District Attorney shall use for law enforcement purposes in accordance with the U.S. Department of Treasury's Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies, Guidelines for Seized and Forfeited Property, and the related Directives.

10. No criminal forfeiture action involving property seized by the Department which relates to a case criminally prosecuted by the District Attorney will be commenced by any party to this Agreement without the mutual agreement of the District Attorney and the Department, including referral of the forfeiture action to a federal agency.

III. E. 8

12. This agreement may be amended or altered at any time provided the County, City, Department, and District Attorney agree to such change(s) in writing.

13. This agreement shall continue on indefinitely, but may be terminated by either party with at least sixty (60) days written notice to the other.

14. This agreement shall be effective as of the date of signing by all parties.

For the City:

James Bernard, Mayor/City
Councilor

Date



Larry Kanzler, Chief of Police

3/7/02
Date

Approved as to Form:

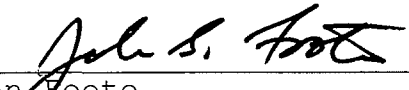
Timothy V. Ramis, City Attorney

Date

For the County:

Larry Sowa,
Chair,
Board of Clackamas County Commissioners

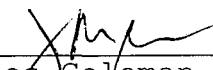
Date



John Foote,
District Attorney

1/15/02
Date

Approved as to Form:



James Coleman,
County Counsel

1-15-02
Date



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: MIS Team
Pat DuVal, City Recorder
Esther Gartner, IST Manager
Steve Smith, Finance Director

Subject: Management Information System Software

Date: March 6, 2002

Action Requested

Authorize City staff and City Attorney to negotiate a contract with Incode for management information system (MIS) software and implementation.

Background

During the FY 2001 - 2002 budget process, funds were approved for a comprehensive overhaul to the City's management information system with the goal of producing accurate, understandable, real time financial reports.

The first element of this transition took place in January 2002 when Council approved the purchase of new computer work stations and server hardware to support the desired citywide software system. Compaq equipment, 100 PCs and 7 servers, was purchased from the State contract and is currently being configured by IST staff.

The second element, software procurement, is the decision before Council at this meeting. To accomplish the project, \$200,000 was budgeted in City Recorder Capital Improvements for financial software and \$35,000 and \$70,000 in the IST Capital Improvements for municipal court and land use modules, respectively.

The software selection process began July 2001 with a departmental needs assessment. The desirability of an integrated system to support the City's

financial reporting requirements became evident, so the request for proposals (RFP) was written for a full range of financial, utility billing, municipal court, human resources, payroll, code enforcement, and land use/permitting modules. The preferred RFP response would be from a single vendor of a comprehensive, integrated system; however, due to the complexity of that request, the RFP also encouraged responses from vendors who could substantiate their ability to interface with other software packages and identify the costs of doing so.

The RFP identified 4 weighted criteria for the final staff recommendation:

- ◆ overall functionality of the software (25%);
- ◆ vendor qualifications and service (30%);
- ◆ overall suitability of the system (25%); and
- ◆ cost (20%).

The RFP was published for the first time in the *Daily Journal of Commerce* in October. The last day to submit written proposals was November 30, and a total of 9 vendors responded. An interdepartmental selection committee narrowed the field to 5 finalists who were invited to demonstrate their products for City staff evaluation. These vendors, specializing in local government software, were:

- ◆ Accela (land use module only);
- ◆ Eden Systems (all modules except court);
- ◆ Incode (all modules);
- ◆ Justice Systems (court only); and
- ◆ Pentamation (all modules except court).

Staff developed scripts or scenarios based on our current business practices, and vendors were instructed to follow these as closely as possible in order to demonstrate the ability to meet the City's needs. Employees attending the sessions numerically rated the performance and were encouraged to make written comments about the modules they observed. Vendor demos were completed February 15.

Subsequently, staff met 2 times to review the vendor ratings and comments and to discuss the pros and cons of each vendor product and service. Reference checks were made with other cities of similar size and structure to determine the overall quality of the software, follow through on promised product development schedules, commitment to customer service, and network requirements.

Based on the evaluation process, staff finds Incode software fits most of Milwaukie's functional needs, is conscientious in its customer service practices, will operate on the City's network, and can be purchased within budget. Attachment A lists the software and implementation costs.

Staff requests Council authorize negotiations with Incode of Lubbock, Texas, for MIS software to include financials, utility billing, municipal court, code enforcement, human resources, and payroll. At this time, the planning, engineering, and building departments are proposing to not purchase any software. They do not feel Incode meets some of the necessary development review functions, and the cost of interfacing with another land use package would be too great for a short-term solution. In order to keep with the original intent of "going live" with financial modules at the beginning of the next fiscal year on July 1, 2002, we recommend moving forward with the selected modules.

Concurrence

Given the parameters of the project, IST, Finance, Utility Billing, Human Resources, Neighborhood Services, and Municipal Court support this recommendation. The Police Department, though less directly impacted at this time, concurs with the concept of an integrated information system and sees an opportunity to streamline its current security alarm billing practices.

Fiscal Impact

The project will come within the 2001 - 2002 Adopted Budget amounts for Capital Improvement Technology Projects. Some funds will be carried over to the 2002 - 2003 budget since it would be unrealistic to expect final project acceptance before June 30.

Work Load Impacts

As the project is implemented, many departments will be involved with the data entry and conversion and most will receive training on modules used interdepartmentally such as accounts payable, purchasing, and cash receipting.

Alternatives

The Council may direct staff to negotiate with Incode for MIS software or to reject any or all parts of the Incode proposal.

Summary Investment

Summary Investment

InVision License Fees	118,100
- Estimated On-Site Assistance Fees	37,288
- Estimated Travel Expenses	17,366
- Estimated Final Implementation Training	4,720
- Estimated Final Implementation Travel	2,481
- Project Management	7,361
Data Conversion & Assistance Fees	44,969
Third Party Hardware & Software	4,498
Total Purchase Price	<u>236,783</u>

Annual Maintenance Fees

InVision Software Maintenance	29,525
Total Annual Fees	<u>29,525</u>

Monthly lease purchase payments - 60 months 4,714

Notes

1. Training, hardware installation, conversion assistance, and travel expenses are estimates only. Customer will be invoiced for actual expenses.
2. Annual maintenance fees begin seven (7) months after installation of the application.
3. Third party software maintenance is invoiced directly from the third party vendor.
4. Lease purchase payments are an estimate only.
5. Prices are subject to change 90 days from date of issue.
6. Some of the items listed in the price response contain multi-year warranties, others contain 90 day warranties. Therefore the annual maintenance amounts do not uniformly begin on a 12 month basis. Annual maintenance fees will take effect after the warranty period expires.

Riverfront Board Meeting Minutes**January 15, 2002**

Members present: Martin, Green, Wall, Cardinalli
Members absent: Stacey, Loaiza, Verbout
Visitors: Gary Klein, Michelle Gregory, Jason Wachs and Quality Team Members

Motion to approve minutes of November 16 (with one correction) and December 18 meetings (5-0).

Quality Team

Two representatives of the "Quality Team" from Rex Putnam presented the results of a project they did on sources of funding for Phase I of the Riverfront development. They discussed the process they had used and described some "Heritage River Grants" they had discovered during their research. They suggested that Shelby, one of their team members, would be a better source for more information on the grants. Herrigel said she'd follow up with Shelby, Ericka and their teachers to determine any further assistance the students might be to the Riverfront effort in Milwaukie.

Sternwheeler Proposal

Michelle Gregory, Milwaukie's Neighborhood Services Manager, reported on the Oregon Maritime Museum's (OMM) need for a new port for their sternwheeler and a site for their museum by May 1. Gregory said they are looking for 5,000-20,000 sq. ft of space for the museum. She also explained that the boat is not excursion worthy, it would primarily be a historic interpretive display. Bob Layfield, the OMM's Director is pursuing short and long term solutions for the sternwheeler and museum locations. Gregory noted that one point the OMM is not willing to negotiate is the name for the boat which is the **Portland** Sternwheeler – which may be a negative in terms Milwaukie's efforts to establish identity in the region.

Members noted the following:

- The name shouldn't necessarily be the driver of Milwaukie's interest in the boat (Green)
- The log dump and near the treatment plant would probably be best sites for mooring the boat (Klein)
- Johnson Creek is fairly sensitive as is Kellogg – care should be taken when locating mooring (Green?)
- The museum would be a tremendous attraction (the boat would only be a small piece) (Green)

Mitch Wall made a motion (seconded by Martin) stating that the Riverfront Board

VII. A 2

“supports energetically the pursuit of short and long term options for the mooring of the sternwheeler and a site for the Oregon maritime Museum in Milwaukie”. Motion passed 4-0.

Green expressed concern about siting a 20,000 sq. ft facility. He said he felt the facility should be west of McLoughlin and south of Kellogg Creek.

South Corridor Project

Michelle Gregory also gave the group an update on the South Corridor Project, a study that was initiated in 1999 to address increasing traffic problems in the Southeast portion of the region, specifically from downtown Portland to Milwaukie and from Milwaukie to Clackamas regional center and Oregon City. The local advisory group for this study is the Milwaukie Neighborhood leadership. Gregory noted that the study is in the supplemental EIS stage. Modes being evaluated include: busway, bus rapid transit, light rail and no build.

The neighborhood leadership group has been proactive regarding light rail during this process and have established a set of criteria (called the Fourteen Points) which they feel must be addressed to win the City’s support for a transit solution in the corridor. Gregory noted that a McLoughlin and an I-205 light rail alignment option are being studied.

Gregory said that the study has recently been slowed down by a communication from the Association for Portland Progress (APP), stating that they couldn’t support the study unless it included analysis of a Caruthers crossing, impact analysis on the Macadam area and the downtown Portland mall. She said expanding the scope of the project this way would increase the project cost by \$400 million. Preliminary estimates for light rail options were \$440 million. Adding APP’s pieces would bring the total up to \$800 million. Gregory said the project would probably go to the voters in Multnomah and Clackamas County. It remains to be seen whether the City will be supportive of the final study and proposal.

Gregory pointed out that part of the transit corridor plan is to locate a 400-car Park and Ride at or near the current site of the Cash Spot on McLoughlin Blvd. Members asked why the site had been selected given its distance from the light rail alignment(s). Gregory noted that the distance falls within Tri-Met "walking circle" ratios and that the McLoughlin site would attract cars from McLoughlin Blvd and divert on-street parking away Lake Rd. The McLoughlin parking structure would also capture some parking before it got all the way up to the Tacoma station, thus reducing impacts to the Ardenwald neighborhoods. .

Board members asked if the City could potentially provide parking for boat ramp users at this park and ride. Gregory noted that it would probably be underused on weekends – lending itself to weekend use by boaters, if designed to accommodate trailers.

Board members were “enthusiastically” supportive of the park and ride site and asked when (and how) it would be appropriate for them to channel their input into the process. Gregory noted that after a January 28 policy group meeting she expected regular technical updates from the project staff to the NDA's. She said that the Riverfront Board might contact Ed Zumwalt (Historic Milwaukie NDA Chair) to see if he might attend the Riverfront Board meeting to discuss McLoughlin and the Cash Spot site further. Herrigel said she would invite Ed to the February meeting.

Chair Rotation

Herrigel requested input from the group about potentially rotating the Chair position among Board members. Attendees suggested that we leave the Chair issue alone.

Meeting Date

Herrigel suggested that the Board select a regular meeting day each month for meetings. The group suggested the first or second Tuesday of the month – whichever did NOT conflict with Council meetings. **PLEASE NOTE: THE SECOND TUESDAY OF THE MONTH IS THE SELECTED DAY.**

Herrigel then reaffirmed that the group would continue to have food at 6:00 and to begin their meetings at 6:30 - SHARP.

Other Issues

- Herrigel said she would fill out a survey the Board had received from the Willamette Restoration Initiative regarding an upcoming conference and send it to Loaiza and Green to edit before submitting
- Herrigel recommended that the next meeting agenda be dedicated to the McLoughlin Project and addressing the Board's outstanding concerns. In March, she suggested the Board could begin crafting language regarding the reintegration of the boat ramp into the Riverfront Plan.
- Herrigel handed out Board and Commission applications and asked each Board member to fill one out and return it to Pat DuVal before (or at) the February meeting. Council will then reappoint the members in late February or March. Herrigel noted that positions would be appointed to one, two or three year terms for this round. Those attending decided that there were too many one-year terms and voted (4-0), (motion Green/Cardinalli) to increase Stephen Loaiza's term from one to three years.
- Herrigel showed the group a concept map of the Riverfront and Downtown area on which she has identified all the on-going projects and pertinent meeting or action dates for each. The group suggested that having a handout like this with updated info at each meeting would be helpful.

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, JANUARY 22, 2002

COMMISSIONERS PRESENT

Tracy Cook, Chair
Judith Borden
Barbara Cartmill
Rosemary Crites
Donald Hammang
Mike Miller

STAFF PRESENT

John Gessner,
Interim Planning Dir.
Lindsey Nesbitt,
Assistant Planner
Shirley Richardson,
Hearings Reporter

COMMISSIONERS ABSENT

Howard Steward

1.0 CALL TO ORDER

The meeting was called to order at 6:40 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 PLANNING COMMISSION MINUTES -- December 11, 2001

Donald Hammang moved to approve the minutes of December 11th as presented.
Mike Miller seconded the motion. MOTION CARRIED 5-0 with one abstention.
Judith Borden was not at that meeting.
Ayes: Cartmill, Crites, Hammang, Miller, Cook; Abstentions: Borden; Nays:
None.

4.0 INFORMATION ITEMS

4.1 City Council Work Session Minutes

4.2 City Council Minutes

5.0 PUBLIC COMMENT -- None.

6.0 PUBLIC HEARINGS -- None.

7.0 WORKSESSION ITEMS

7.1 Extension of time period to record final plat: Morris Minor Land Partition

Lindsey Nesbitt reported that in 1999 Kathleen and Roland Morris submitted Minor Land Partition and Variance applications for 10621 SE Home Avenue. The Variance was approved with an expiration date of September 13, 2000. A six-month extension for the Variance approval was granted in May 2000. The applicant is now requesting an additional extension for the Minor Land Partition and Variance approvals until January 31, 2004.

As part of the Minor Land Partition approval, the existing garage on parcel two must be removed and a new covered parking structure must be constructed on parcel one prior to the approval of the final plat. The ordinance requires that within one year after approval of the preliminary plat, the final plat shall be submitted to the Planning Director. It also indicates that if the subdivider wishes to proceed with the land partition after the expiration of a one-year period following the approval of the preliminary plat, the plat must be submitted to the Planning Commission and make any revisions considered necessary to meet changed conditions.

Staff has no objections concerning the requested time extension, but recommends that both the extended final plat filing date of January 31, 2004, and the Variance extension be subject to any changes that may occur in the Milwaukie Municipal Code before the final plat is recorded.

The applicant has indicated they do not have the means to demolish the garage on parcel two or construct covered parking on parcel one.

Donald Hammang asked if the zoning laws change between now and 2004, would the applicant be subject to compliance with the rules in effect at that time? **Ms. Nesbitt** stated that this application would be subject to any changes in effect at the time the final plat is filed in 2004.

Discussion followed on possible setback changes, that may result if the applicant may not being able to complete their partition. This is a large risk. It was asked if this many years for an extension has been granted in the past; also, if a requested two-year extension has been granted in the past?

Mike Miller voiced concerns about whether the application expired in May or September or whether it was active at all. **John Gessner** explained that one of the reasons for the extensions is cost. The applicants have been in contact with the City and extensions have been allowed to prevent further expense to the Morris'.

Concerns were raised about the number of times this application was extended and whether it was a void application at this point. Staff was asked to provide

information that confirms that this is an active application and the exact expiration date of the Variance.

Speaking: Kathleen Morris, 10621 SE Home Avenue, Milwaukie

Kathleen Morris stated that the reason this application has taken so long thus far is mostly because she was unaware of the process. At the end of each extension she stated that she learned of another condition that must be met. The condition to remove the garage on parcel two and construct covered parking on parcel one will be a financial burden to them. She has contacted her 401K representative and has been told that she cannot get funds out without a large penalty until 2004. That is the reason for the request for the extension to 2004.

Ms. Morris explained that if she does not get this extension they would be forced to construct a carport and store everything in the carport. This will be unsightly and she would prefer to wait until she can afford to build the garage.

Ms. Morris stated that they had a buyer for one of the parcels, but the buyer found out about the constraints and backed out of the sale.

Barbara Cartmill asked for the lot size and configuration? **Ms. Miller** stated that this is a 100x100 corner lot that was approved to be split in half with a variance for the side yard. The partition leaves another 45 x 100 lot.

Barbara Cartmill asked the Morris' what they thought about the fact that they have to adhere to the restraints that are in effect in 2004? **Ms. Morris** stated that she has a lot invested with the city and the engineer they are working with. She would not like to lose this money. She has spent a lot of time trying to get money together. You cannot mortgage a house that doesn't have a garage. She understands that there may be further restraints but is willing to take the risk.

Barbara Cartmill voiced concern that if there were a lot-size change, the Morris' would not be able to sell their property. There could be a number of changes that would affect this application.

Donald Hammang stated that he was uncomfortable about creating such a big window with the extension to 2004.

Mike Miller asked if the applicants would consider a shorter extension? **Ms. Morris** stated that she needs the two years to obtain the funds.

Discussion followed on the possibility of reapplying and how that would be different from the extension. The applicants could reapply and maintain the current zoning for 18 months. The reapplication fee would be \$2,000. This solution; however, could meet with resistance from the neighbors and if so, would have to

come back before the Planning Commission. This extension route is the continuation of a minor variance request that was approved as a type-two administrative decision.

Staff was asked to review the following three alternatives and report back to the Planning Commission at its next meeting:

- Granting the extension subject to zoning in place at the date of extension for two years.
- Staff draft up acceptable criteria to address this situation.
- Staff determines if this is an active application.

Barbara Cartmill moved to postpone the decision on the extension for the Kathleen and Roland Morris to February 26, 2002, to allow staff time to provide more information on the application. **Mike Miller** seconded the motion. MOTION CARRIED 6-0.

Ayes: Borden, Cartmill, Crites, Hammang, Miller, Cook; Nays: None.

7.2 Proposed Changes to Flag Lot and Other Development Standards

John Gessner reviewed with the Commission the proposed revisions. He presented the timelines for the final refinements:

- Final PC Worksession – Recommendations for Refinements
- Final CC Session – March 4, 2002
- PC Adoption Hearing – April 23, 2002
- CC Adoption Hearing – May 21, 2002

The following changes were reviewed and discussed:

- Flat lots and architectural quality. Flag lot standards to improve neighborhood livability and compatibility of flag lots with existing residential development.
- Irregular lot shape. New design standards to help improve the quality and appearance of manufactured and other new housing.
- Garages, bars, and outbuilding. Revised standards for detached garages and sheds to improve compatibility with residential scale development
- Residential covered parking. Eliminate the existing residential covered parking requirement.
- Definitions of “story” and “half-story.” Adopt definitions for “story” and “half-story.”
- New administrative provisions. Adopt new administrative provisions for Planning Director determinations and interpretations of the Zoning Ordinance on recommendation.

John Gessner showed a schematic of flag lot development and demonstrated the affect of the proposed code changes.

Having the front yards oriented to the street assures larger setbacks. The front yard is being changed from 20 to 30 foot setbacks. The side yard setbacks are being changed from 5 feet to 10 feet. Two buffers are required within 25 feet of the property line.

It is recommended that there be a prohibition against variances. Numerous variances have been granted. If the variances had not been granted, there would not be as many flag lots as currently exist. Flat lots will be treated differently from front lots. It is suggested that there be no variances granted for lot depth, width, and area. This should result in a drop in flag lots. As values rise, the city can engage in negotiations for transfer of land to allow development to occur.

Better buffers are required along the flagpole. Fencing requirements are being reconsidered. Adjoining property owners are recommending that setbacks be moved and flag lot owners can use fencing materials and dense vegetative plantings. People don't want to be able to see through the buffers. Perimeter plants to reduce visual impacts around flag lots are necessary for the benefit of adjoining property owners.

Changes include the requirement that there can be no more than 2 abutting flag lots to avoid the stacking of flag lots. This will require that the applicant give right-of-ways so that front yards will be fronting on public streets.

John Gessner reported that these refinements would be reviewed by neighborhoods for additional input and further changes. All of this will be reviewed by the Planning Commission before the final Council hearing.

Mobile Home changes are reflected in Sections 7.2-12 and 7.2-13 and require that the front door face the street. At least 12% of the area of elevation will require windows. Mobile Homes must be restricted. All buildings must have three of the design elements in the Code.

Section 7.2 addresses design standards for lots. **John Gessner** explained the possible jogs/changes in lot lines. There will be restrictions that lot line changes not exceed 10% of line.

Discussion followed on accessory units. **John Gessner** showed a visual of a large storage building next to a small home. These are the type of applications they are trying to discourage. Structures should not exceed 480 sq.ft. (reasonable 2-car garage). Total of all accessory structures on one site cannot total more than 600 sq.ft. The building height should be limited to 15 feet in total height. Increased setbacks are proposed so buildings are not on the property line and more towards the back of the lot. There is a minimum side and rear-yard setback of 5 feet.

It was the consensus of the Commission that more information is needed on some of these changes. It was asked that staff get more information on:

- Story and height requirements of other cities and present this information to the Commission for review and consideration.
- Legal procedures for appealing a Planning Director decision.
- Possible permits for changing car garages into living spaces.
- Off-street parking in lieu of garages/covered parking.

Staff will bring back draft changes regarding the recommendations made tonight. It was suggested that neighborhood associations be given an opportunity for input on these issues.

8.0 DISCUSSION ITEMS

Speaking: Rob Kappa

The flag lot issue has been 10 years getting to this point. He agrees with the direction of the Planning Commission except on the covered parking. He suggested more input on this issue. He suggested eliminating parking requirements in Section 7.23 rather than eliminating the covered parking requirement. He stated that he would like to see more discussion on design standards. Carports are tacky, usually constructed with poor materials that don't last long, and are just thrown together.

In Section 7.28, he stated that there should be a longer period of time to allow vegetative hedges time to mature. He is concerned that sometimes it takes trees and shrubs a length of time to grow and who is responsible for enforcement once the property is sold.

Mr. Kappa stated that he agrees a definition is needed in Section 7.210 because this definition is not understandable. It needs more work.

The director's interpretation procedure in Section 7.213 does not match the definition of the director's interpretation. The language needs to be clearer for the homeowner. The procedure should match the definition.

In the spirit of the 14 points developed by the Neighborhood Associations, **Mr. Kappa** stated that he feels these changes are headed in the right direction.

Speaking: Teresa Breesaw, 12744 SE Weedman Court, Milwaukie

Ms. Breesaw asked in regards to the flag lot and house being oriented toward street, why is it important that the front yard be facing the street? You can't see the

house from the street. She also voiced concern that there is no restriction on paving the entire front yard. With flag lots proposed, front yard paving may be possible. She doesn't want to see that happen.

John Gessner stated that he is in agreement with Mr. Kappa's recommendations. He stated that he will research Ms. Breesaw's concerns about paving of front yards and will draft standards to address this issue. He stated that the purpose of having the front yard oriented to street is to allow more separation between the existing home and flag lot.

Mike Miller noted that the front yard will become very important if do away with covered parking. This could result in whole front yards becoming a parking lot.

Rob Kappa stated that when trees are part of a property line, is it possible to make them part of property line so that owners on both side of line have responsibility of trees. **John Gessner** stated that property law governs this. The owner of property that has an extended branch has the right to cut the branch.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS / UPDATES
10.1 Election of Officers

Rosemary Crites moved to nominate Donald Hammang to the office of Chair. **Judith Borden** seconded the motion. MOTION CARRIED 5-0.
Ayes: Borden, Cartmill, Crites, Hammang, Miller, Cook; Nays: None.

Donald Hammang moved to nominate Judith Borden for the office of Vice Chair. **Rosemary Crites** seconded the motion. MOTION CARRIED 5-0.
Ayes: Borden, Cartmill, Crites, Hammang, Miller, Cook; Nays: None.

10.2 Matters from the Planning Director

John Gessner reported that an application would be before the Commission in the next six months to the year on the King Road Shopping Center Redevelopment. A new structure is being proposed to house the burrito place and a Safeway store. Kentucky Fried Chicken may be replaced with housing for retail and offices.

There is an application pending on the Palm property on Lake Road for a 19-lot subdivision. Title III standards will apply to this application.

VII. B.

John Gessner reported that the city has purchased the Safeway site and there will be a use study completed by end of February. This is yet to be presented to Council for approval.

John Gessner reported that a \$100,000 project grant has been approved by the state. This grant will deal with infrastructure issues related to north industrial area.

John Gessner reported that Kellogg Creek Dam Removal is a new program that came on line in 1998. The Army Corps of Engineers and Clackamas County have expressed interest and stated that money is available. There is a commitment on the part of city to be a sponsor. An Engineering Feasibility Analysis is needed to determine the engineering scope involving the replacement of the fish ladder. The next step is to get sponsors (ACE, sponsors, city) joining with in-kind services, disposition of real estate, etc.

John Gessner submitted an article provided by Howard Steward on the Doyle and Laurie Hov application. This issue will be discussed at the next meeting.

10.2 Design and Landmark Commission Report. **Rosemary Crites** reported that there is a Landmark Commission meeting scheduled to tomorrow night. She will have update at next Planning Commission meeting.

11.0 NEXT MEEETING -- February 12, 2002

11.1 ZA-01-04 – Code Changes to subdivision application procedures

11.2 ZA-01-05 – Repeal of ZO Section 1010 (Mandamus Authorization)

Barbara Cartmill moved to adjourn the meeting of January 22, 2001. **Judith Borden** seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 9:05 p.m.

Tracy Cook, Chair

Shirley Richardson, Hearings Reporter

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, FEBRUARY 26, 2002

COMMISSIONERS PRESENT

Donald Hammang, Chair
Judith Borden
Barbara Cartmill
Rosemary Crites
Mike Miller
Howard Steward

COMMISSIONERS ABSENT

Tracy Cook

STAFF PRESENT

Alice Rouyer, CD Director
John Gessner,
Interim Planning Dir.
Lindsey Nesbitt,
Assistant Planner
Ken Kent, Associate Planner
Michelle Gregory,
Neighborhood Serv. Coord.
Roosevelt Carter,
Program Services Coord.
Shirley Richardson,
Hearings Reporter

1.0 CALL TO ORDER

The meeting was called to order at 6:30 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 PLANNING COMMISSION MINUTES -- January 22, 2002

Barbara Cartmill moved to approve the minutes of January 22, 2002, as presented. **Mike Miller** seconded the motion. MOTION CARRIED 5-0 with one abstention. Howard Steward was not at that meeting.

Ayes: Borden, Cartmill, Crites, Hammang, Miller; Abstentions: Steward; Nays: None.

4.0 INFORMATION ITEMS

4.1 City Council Work Session Minutes

4.2 City Council Minutes

5.0 PUBLIC COMMENT -- None.

7.1 South Corridor Transit Options Study

[This item was taken out of agenda order. Item 6.0 – Public Hearings follows 7.1.]

Michelle Gregory handed out information to update the Commission on what has been going on since the Commission's joint worksession with the neighborhood groups. She also passed out the latest update from Metro on the South Corridor Transit Options Study. She explained the matrix representing the four major events that have occurred over the last six months, actions that have resulted, Milwaukie's position on those actions, and the general outcome on how the progress of the study has occurred since then. The South Corridor Policy Group, made up of elected officials from Oregon City, Clackamas County, Oregon Department of Transportation (ODOT), Tri-Met, Metro, Portland, and Milwaukie met in September. City Council member Brian Newman is the policy group representative for Milwaukie. The group reviewed all the public involvement and feedback that came from each of the jurisdictions up to the point of deciding what will go into the formal Supplemental Draft Environmental Impact Study.

Milwaukie's recommendations included two light-rail alignments that go through Milwaukie. One alignment follows the Tillamook Branch Line from the Tacoma Street area, through the north industrial area, down past the Junior High site, and terminating at Lake Road; and the second option not terminating at Lake Road. Another option comes down Main Street, crosses over the Southgate Theatre, and then behind the Junior High and to Lake Road.

Also, options were submitted of Bus Rapid Transit alternatives that come down the McLoughlin Corridor to Oregon City and a bus-way option from Portland to Milwaukie that turns into bus rapid transit through Milwaukie and then turns back into bus from Milwaukie's eastern border to the Clackamas Town Center. A no-build option also went forward.

In October and November refinement of the design options began with a lengthy review of methods reports for how the study will be done. Milwaukie staff participated in that review process to help refine the design and make comments on the processes that will be used to analyze different aspects of the study.

The most significant design refinements are highlighted in the information that was passed out. The proposed 1,000-space park-n-ride has been reduced to 600 spaces. At Washington and McLoughlin the proposal for a parking structure has been adjusted to accommodate Kellogg Creek restoration efforts for the future. With the bus rapid transit and bus way options, there are more design refinements that will go forward in the study.

With bus-way and bus rapid transit the Main Street alignment will wrap around the eastern edge of the Southgate Transit Center rather than the western edge as it

transverses now. This will accommodate bus-only ramps that will have to be built to get to Highway 224 from that site. Because of travel time issues for the whole route for bus-way and bus rapid transit through Milwaukie, and bike lane issues along Highway 224, there is a proposal to widen the right-of-way an additional seven feet on each side.

Signal changes include removal of signal at Monroe and Highway 224 and the access from Freeman Way to Lake Road will be a dedicated bus ramp.

Barbara Cartmill asked if the reduction in parking spaces at Tacoma Street was a response to the neighborhood concerns about traffic through Ardenwald? **Michelle Gregory** stated that the reduction was a combination of response from the neighborhood and the fact that there are additional park-n-ride facilities placed further south along the alignment.

In November, the Association for Portland Progress, submitted a letter stating that they would like to see additional design options added to the study. These options include a total overhaul of the transit mall in downtown Milwaukie, re-introduction of the Caruthers's Bridge option, and routing the line through the north Macadam area past Portland Statue University, through downtown Portland. Many concerns were raised and Milwaukie citizens responded with a letter to City Council saying they could not support the study if it was expanded to include the Portland requests. Council concurred and drafted a letter to the policy group. The Policy Group met in December and honored the request of Milwaukie and the southeast Portland neighborhoods. The Group directed staff to prepare a separate study to look at the downtown Portland request and have that study run concurrently with the South Corridor Study.

The January Policy Group meeting formalized the recommendation to have the original Supplemental Draft Environmental Impact Study (SDEIS) go forward as planned with a second study for Portland issues. At the February meeting there was a corridor-wide assembly of the local advisory groups from each segment of the study area to get an update on the process thus far.

Howard Steward voiced concern about the Portland study and the political muscle that may be involved in this study. He does not want to see all the work Milwaukie has done be affected by their requests. Discussion followed on the Shiloh decision regarding urban renewal and how it may affect Portland and Milwaukie.

John Gessner asked what the next steps would be on this project? **Michelle Gregory** stated that the study would be in analysis for the next several months. Staff is projecting that in the fall of this year the SDEIS will be finished and at that point it will be published for public review. There will be a formal comment period for about 45 days. After the comment period, the Policy Group then reviews the comments and technical analysis and begin making decisions on the locally

preferred alternative. This preferred alternative would probably be decided in the winter of 2002/2003. There will also be financial analysis on the options chosen.

6.0 PUBLIC HEARINGS

- 6.1 Applicant: Fishman Environmental Service
Owner: Howard Dietrich
Location: 9800 SE McBrod
Proposal: Lower Johnson Creek Riparian Enhancement Plan –
proposed riparian area expansion and enhancement along
740 feet of Johnson Creek.
File Number: NR-01-06
NDA: McLoughlin Ind. (Historic Milwaukie)

Chair Hammang opened the public hearing Natural Resource Review NR-01-06 to allow for expansion and enhancement along 740 feet of Johnson Creek that includes a storm water treatment facility. The criteria to be addressed are found in Section 314 - Manufacturing Zone; Section 322 - Natural Resource Overlay Zone; Section 500 - Off Street Parking and Loading; and Section 1011.3 - Minor Quasi-Judicial Review.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. He asked if any member of the Planning Commission visited the site; six hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear the matter.

STAFF REPORT

Ken Kent reviewed the staff report with the Commission. This is a proposal by Howard Dietrich to expand the riparian buffer along Johnson Creek. Slides were shown of the subject site and surrounding area. The channel was previously lined in the 1930's as part of a Work Progress Administration project. This current project is a relocation of the floodway approximately 34 feet to the east. It will include the construction of an 8-9 foot retaining wall with a fill slope extending at a 3 to 1 slope down to the existing rock lining of the Creek channel. The plan proposes to eradicate non-native plants and replant with native species and construct an infiltration pond to provide treatment for storm water resulting from the site.

A site plan was displayed that showed the configuration of the proposed project. The applicant must meet all the standards of Federal Emergency Management Agency (FEMA) and provide all appropriate engineering and documentation for the proposed floodway relocation.

Staff has identified the key issues to be addressed by the Planning Commission and believes the applicant has adequately addressed the approval criteria. Comments have been received from the Fire Marshall that addresses site access. Reduction of this access could be acceptable if the applicant upgrades existing fire suppression facilities in the existing building. Supplemental conditions have been provided to the Commission that addresses permitting issues and appropriate documentation of permits.

Staff recommends approval of this application with the findings and conditions as stated in the staff report.

QUESTIONS FROM THE COMMISSIONERS

Barbara Cartmill asked what prompted the application? **Mr. Kent** stated that the applicant's intent is to enhance the Creek and improve the treatment of storm water from the site.

CORRESPONDENCE RECEIVED

Mr. Kent stated that correspondence had been received from Kim Hatfield, Johnson Creek Watershed Council Coordinator, and has been provided to the Commission. They indicate that there are potential benefits of this proposal; however, there may be alternative methods that could better enhance the Creek.

APPLICANT PRESENTATION

Speaking: Habib Martin, Pacific Water Resources, 4905 SW Griffith Drive, Suite 200, Beaverton 97005

Mr. Martin stated that the minimum paved area is 12-13 feet. They are not aggravating the situation with the walkway. They are encroaching, but this is an existing condition. It is not economical for the applicant to do anything with the walkway at this time. He asked the Commission for their leniency.

Chair Hammang noted that the Commission could not rule on an issue raised by the Fire Marshall. This is something that must be addressed by the Fire Marshall. **Ken Kent** stated that there could be a trade off with the Fire Department.

Mr. Martin stated that he could reduce the slope on the buffer zone to 2 to 1 in this section to meet requirements. This will elevate the situation.

Speaking: Ken Overt, Pacific Water Resources, 4905 SW Griffith Drive, Suite 200, Beaverton OR 97005

Mr. Overt stated that the intent of the 20-foot buffer is to allow instances when there is a stalled car, a fire truck can still get by. These requirements are usually in public right-of-ways. They are not used around buildings unless it is an access way being used by cars, which in this case it is not. He suggested that his firm talk to the Fire Marshall and explain to see if this could be agreed upon with them. If the slope was changed as proposed, there will be only a 4-foot gain; they will never meet the 20-foot requirement.

Mike Miller asked if the wall were the proposed 12 feet, how would the Fire Department access and exit the area. **Mr. Overt** stated that it would be the same, as they would have before. He doubts if a fire truck could turn around in the 20-foot area.

Mr. Martin stated that in regards to Condition #4 and the Army Corps of Engineers, they have tried to stay above ordinary high water line. He asked if a permit has to be granted for the grading?

Speaking: Christie Gahlen, Senior Ecologist, Fishman Environmental, 434 NW
Sixth Avenue, Suite 304, Portland

Ms. Gahlen stated that the Army Corp of Engineers is overbooked at this time. Neither they, nor Division of State Lands do permits gratis anymore. They are not a basis for reviewing projects. Since this project does not impact any wetlands, it is not in an agency's jurisdiction. This condition is not appropriate.

Chair Hammang asked what is the purpose of this project? **Ms. Gahlen** stated that the purpose of the project is for enhancement. They will not be any encroachment on the wetlands. This project will put tree cover over the Creek, which is what the Johnson Creek Management Plan wants.

QUESTIONS FROM THE COMMISSIONERS -- None.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS

Speaking: Mart Hughes, 3006 SE Washington Street, Milwaukie

Mr. Hughes stated that he is the Chair of the Park and Recreation Advisory Board. He has had a chance to review this application and Johnson Creek Watershed Council's record. He agrees with the Watershed Council. This plan does meet the desires to see improvements in the environmental quality on Johnson Creek. However, the proposed plan does not go far enough and seems to be lacking. The Watershed Council has recommended removal of the rockwork. This plan does provide for vegetation and storm water treatment, but does not remove the

rockwork. Mr. Dietrich has done a good job on the storm water detention on the other side of the Creek. He would like to see more of that along the Creek. He does not see any reason to keep the soil on the banks of the Creek.

Mr. Hughes stated that Title III requires balance for cut and fill. The cut is beneficial but there is no need to balance that will fill. Retention of that soil on the Creek has created the need for a retaining wall, which is an unnecessary expense. The applicant should review this retaining wall to see if they could provide a better and more balanced restoration plan. It may be less costly to haul the material out and eliminated the need for the wall.

Mr. Hughes stated that he sees a lot of pros and cons on this development. He agrees that there needs to be some alternatives developed for this plan. Until alternatives have been developed, he does not feel the second criteria for approval has been met.

QUESTIONS FROM THE COMMISSIONERS

Ms. Borden asked why he believes that the rock wall should be removed? **Mr. Hughes** stated that Johnson Creek was the subject of a project in the 1930s. People were hired to drain swamps, and straighten creeks to allow for more farmland, pasture land, industrial land, etc. In retrospect, this project created a lot of environmental problems that we see today. The rock work is historical, but it is a glaring insult to the environment; it has seriously degraded the Creek. That project stopped the Creek from becoming a dynamic stream and has isolated the Creek from the flood plain. The recommendation is to remove this insult.

Ms. Crites asked if the intent of the rock is to keep the Creek from eroding? **Mr. Hughes** stated that the rock does keep the bank from eroding, but you want the Creek to move. Creeks cut into the bank and use this material to build bars and meander channels, which are the basis for willows and riparian vegetation is established and can flourish. Banks that are straight move water very quickly and create flood problems downstream. What the stream needs is wide storage areas along the Creek to hold the water during flooding situations. The rockwork eliminates the storage areas along the Creek. The WPA work decreased the capacity of the stream and eliminated the stream's ability to repair itself.

TESTIMONY IN OPPOSITION -- one.

ADDITIONAL COMMENTS FROM STAFF -- None.

APPLICANT'S CLOSING COMMENTS

Speaking: Christie Gahlen, Senior Ecologist, Fishman Environmental, Portland

Ms. Gahlen stated that their site is at the mouth of the stream; the rocks are not providing retention at this site. The site is in an urban environment where the channel is built up on both sides and the channel cannot go back to its prior condition. The rock wall here does not need to be removed. The Johnson Creek Watershed Council report for this stretch of stream states that improving the riparian habitat is really important. It mentions no changing of the stream.

QUESTIONS FROM THE COMMISSIONERS

Mr. Miller asked if Fishman Environmental had any contact with the Johnson Creek Watershed Council when they put this proposal together? **Ms. Gahlen** stated that she did not contact the Johnson Creek Watershed Council; she read their report. The report was reviewed and used for the applicant's section of the stream.

DELIBERATION AMONG COMMISSIONERS

Chair Hammang closed the public testimony portion of the hearing and opened the meeting to discussion among the commissioners.

Chair Hammang stated that he did not want to stand in the way of someone doing a good project. The cost of sprinklers could be onerous but he is concerned about second-guessing the Fire Marshall's decision. **Mike Miller** agrees and is aware of the 20-foot requirement to the road or installation of sprinklers.

It was the consensus of the Commission that this issue was between the applicant and the Fire Marshall.

Mike Miller stated his opposition to removing condition #4 as suggested by the applicant. This is a necessary requirement of the project. A suggestion was made to change the language in two places to read "...any necessary approvals..." instead of "...all the necessary improvements..."

Barbara Cartmill moved to continue Application NR-01-06, Lower Johnson Creek Riparian and Enhancement Plan, to the March 12th Planning Commission Meeting to allow time for the Fire Marshall to respond to the applicant's request on the buffer width. **Mike Miller** seconded the motion.

Ayes: Borden, Cartmill, Crites, Miller, Steward, Hammang; Nays: None.

Recess was taken at 7:48 p.m. and the meeting reconvened at 7:55 p.m.

- 7.0 WORKSESSION ITEMS
- 7.2 North Main Street Redevelopment

Speaking: Roosevelt Carter, 6106 SE Johnson Creek Blvd, Milwaukie

Mr. Carter reported that he works in the Community Development Department as a Program Services Coordinator doing project management. One of his projects is the North Main Street Redevelopment, formerly the Safeway project. He handed out a task schedule and comments from a worksession held in January. The City completed the purchase of this site in November of 2001. Johnson, Gardner and Eco Northwest of Portland was asked to do a market analysis to determine the best uses for the site. These consultants have been asked to look at the range of potential types of businesses that would best suite the site.

On January 12, a worksession/workshop was conducted and the public and interested parties were invited to attend. The Library Board, Historic Milwaukie Neighborhood Association, Masonic Lodge, Downtown Development Association, and the Riverfront Board gave testimony. There is a strong interest in a grocery store of some type was the leading comment as what they would like to see on this site. There was discussion about housing and the type of housing with a preference for owner-occupied housing as apposed to rental property. There were some concerns about parking and access to the site. The consultants handled the session, took comments, and this handout is a compilation of their notes, along with the City's notes.

The consultants were asked to review these comments with the City's Downtown Plan to see how they fit together with market realities. After the consultant's analysis, a developer will be picked to work with the City for a proposed design.

Mike Miller asked what happened with the information from previous planning for this project? **Mr. Carter** stated that previous work on this project was encumbered by Tri-Met and the transit mall and the City did not want to appear that there was anything pre-designed.

Barbara Cartmill asked if the Request for Proposal (RFP) would be made public? **Mr. Carter** stated that City Council would be asked to name a committee to work with staff to select a developer, rather than a public process.

7.3 Kellogg Lake Dam Removal

Mr. Carter handed out a staff report that JoAnn Herrigel gave to the City Council in January on the Kellogg Creek Feasibility Study. This is a consideration of the study of removing the dam that is across Kellogg Creek at McLoughlin Blvd. In 1999, Clackamas County Water Environmental Services put together a multi-agency team to review barriers to fish passage along the Creek. Participants included Oregon Department of Transportation (ODOT), Clackamas County, Oregon Department of Fish & Wildlife, Army Corps of Engineers, U.S. Fish and Wildlife Services, and the National Marine Fisheries. This team reviewed the limitations in the Creek that would preclude healthy fish habitat or passage in and out of the Creek. Harzer Engineering did a pre-feasibility study on the Creek. At

one of the meetings it was learned that The Corps of Engineers had money in their 206 Program that would allow for further study of the Creek and the potential for removing the dam.

The Corps needs a sponsoring agency to complete this project. The city owns land around and under Kellogg Lake, and since the Creek runs through the City, it is natural that the City sponsors the project. This item was brought to the Council and they agreed. A letter has been sent to the Corps requesting that they further study the cost of removing the dam on Kellogg Creek. This study will be done at no cost to the City. If after the study, the City decides to continue with the project, the Corp will provide 65% of the monies. It will be up to the City and other agencies to provide the other 35%. A letter has been sent to the Corps requesting that the City be a sponsor.

7.4 Title 3 Water Quality Standards

John Gessner stated that tonight is the kick-off meeting for Title 3 vegetative corridors. This project will result in permanent vegetative corridors around designated water resource areas.

This project will go through the usual process of work sessions to adoption approval. Examples of vegetative corridors were shown from a Title III map of Milwaukie.

Staff is looking for direction on the key implementation concepts.

- Applicability: All properties identified on Metro Title 3 maps as containing water resources must meet resource protection and development standards.
- Application Process: (To be determined, may be based on whether an activity is permitted, exempt, or limited.) Options include Administrative Review & Planning Commission review depending on scale and type of activity.
- Exceptions for actions that do not require a building or grading permit and routine repair and maintenance would not be subject to resource standards.
- Limited activities permitted including removal of non-native vegetation and additions or alterations within a water resource area that does not include any increase in the building's footprint. (Type of review to be determined.)
- Prohibited uses. (Type of actions to be determined)
- Vegetated corridors for protected water features: (1) 15 to 50 feet for secondary protected features and (2) 50-200 feet for primary protected water features depending on slope of abutting lands.
- Application requirements including "no practical alternative" analysis and mitigation plans.
- Development standards and mitigation including setbacks and vegetated corridor requirements.

Chair Hammang voiced concern that a homeowner or friends group that wants to rid themselves of the blackberries on their bank would have to go through a permitting process. **John Gessner** stated that removal of invasive species could fall under a maintenance category and would not require permission. It was suggested that there be a list of invasive plants.

John Gessner pointed out the Title III affected sites to the Commission. There are pockets of resources that are not now regulated. He questioned whether certain activities that have no impact should be subject to a lesser review process. Discussion followed on what would require a review process.

The Commission requested the matter be continued to another meeting. A draft will be brought back to the Commission on March 12th for review and consideration.

Alice Rouyer stated that it would be helpful to staff to grant some administrative provisions to make administrative decisions. She suggested adopting a definition for wetlands and the resources rather than adopting maps.

7.5 Conditional Use Sign Request for 4506 SE King Road

Lindsey Nesbitt reported that the applicant is requesting a 6' x 7'3" high freestanding sign. This sign is for a dental office located in the R-3 Zone. The proposed height of 7'3" exceeds the height limitation in the R-3 Zone. The applicant is requesting the height of the sign because of an existing fence that would hide the sign on one side. The lot to the west of the property has an existing 5'x6' conditional use sign which was approved by the Planning Commission.

Mike Miller moved to approve the request of Dr. LeRoy to erect a new sign subject to the recommended conditions of approval. **Barbara Cartmill** seconded. MOTION CARRIED 6-0.

Ayes: Borden, Cartmill, Crites, Steward, Hammang; Nays: None.

7.6 Arbors and Trellises

John Gessner stated that staff recommends continued work on pergolas, arbors, and trellises.

8.0 DISCUSSION ITEMS

Howard Steward voiced concern about the South Corridor Study and Portland's involvement with the process. He asked that our Congressman and Metro see what is being proposed and express concerns. **Alice Rouyer** stated that she is impressed with the strength of the voice coming from our neighborhood leaders and is also

impressed with how seriously the Metro staff and others are listening to Milwaukie. This is one of the first times in a long time that Milwaukie is saying very strongly what they DO want and being very clear. The neighborhood association leaders have been very effective.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS / UPDATES

10.1 Community Development Director Announcement

Alice Rouyer announced that she has been hired as Community Development Director. She will be recruiting for a new Planning Director. Staff has done a great job taking over in her absence the last couple of months.

10.2 Matters from the Planning Director

John Gessner reported that the Morris' application was found to be expired and there are no other options. Reapplying is the only alternative for the applicants.

10.3 Design and Landmark Commission Report. **Rosemary Crites** reported that there is a Design and Landmarks Commission meeting scheduled for tomorrow night. She will have an update at next Planning Commission meeting.

11.0 NEXT MEEETING -- March 12, 2002

Barbara Cartmill moved to adjourn the meeting of February 26, 2002. **Mike Miller** seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 9:05 p.m.

Donald Hammang, Chair

Shirley Richardson, Hearings Reporter

CORRECTIONS MADE AT TONIGHT'S MEETING TO THE:

**CITY OF MILEAUKIE
PLANNING COMMISISON MINUTES
TUESDAY, JANUARY 22, 2001**

Approved as presented.

Date 3/19/02

I wish to address City Council on Agenda Item # _____

Name Mitchell Winkler

Organization TROOP 376 Boy Scouts

Address 9404 S.E. Stanley

Phone 503-744-1233

Speaking in Support

Speaking in Opposition

Raising Questions

Providing Information

Comments We would like to help out for some
service time when possible.