

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MAY 21, 2002**

4311

Call to Order

The 1886th 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

Jeff Marshall

Staff present:

Mike Swanson,
City Manager
Alice Rouyer,
Community Development
Director

Larry Kanzler,
Police Chief
Jim Colt,
Police Captain

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, AND SPECIAL REPORTS

CONSENT AGENDA

It was moved by Mayor Bernard and seconded by Councilor Newman to consider the intergovernmental agreement with Clackamas County to participate in the Transportation Utility Fee Study in the consent agenda. Motion passed unanimously among the members present.

It was moved by Councilor King and seconded by Councilor Newman to approve the consent agenda that consisted of the following:

1. City Council Minutes, May 7, 2002;
2. Authorize Request for Proposals for Towing Services; and
3. Authorize Intergovernmental Agreement with Clackamas County to Participate in Transportation Utility Fee Study.

Motion passed unanimously among the members present.

AUDIENCE PARTICIPATION -- None

PUBLIC HEARING -- None scheduled

4312

OTHER BUSINESS

Councilor Newman reminded the public there was still time to return primary ballots.

ADJOURNMENT

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

Mayor Bernard adjourned the meeting at 6:04 p.m.

Pat DuVal

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL AGENDA
MAY 21, 2002**

MILWAUKIE CITY HALL
10722 SE Main Street

1886TH MEETING

REGULAR SESSION - 6:00 p.m.

I. CALL TO ORDER
Pledge of Allegiance

II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

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 May 7, 2002

B. Authorize Request for Proposals for Towing Services (Colt)

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 Intergovernmental Agreement with Clackamas County to Participate in Transportation Utility Fee Study (Rouyer)

VII. INFORMATION

Planning Commission Minutes, March 12, 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.

CITY OF MILWAUKIE
CITY COUNCIL MEETING
MAY 7, 2002

Call to Order

The 1885th meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:05 p.m. in the City Hall Council Chambers. The following Councilors were present:

Larry Lancaster

Brian Newman

Staff present:

Mike Swanson,
City Manager

Larry Kanzler,
Police Chief

Tim Ramis,
City Attorney

JoAnn Herrigel,
Program Specialist

Alice Rouyer,
Community Development/
Public Works Director

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Mayor Bernard announced the Alan DeLay photo exhibit at the Milwaukie Center during the month of May and Milwaukie Museum trolley trail event on May 10.

CONSENT AGENDA

It was moved by Councilor Newman and seconded by Councilor Lancaster to approve the Consent Agenda that included:

1. City Council Minutes of April 15 & 16, 2002;
2. Resolution 10-2002: A Resolution of the City Council of the City of Milwaukie, Oregon, Recommending the Downtown Economic Improvement District Assessment Base Rate for the Fiscal Year Beginning July 1, 2001 and Classifying the Fees Imposed by This Resolution As Not Subject to Article XI, Section 11B of the Oregon Constitution;
3. Resolution 11-2002: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the Mayor to Sign an Intergovernmental Agreement with the Oregon Department of Transportation to Provide Funding to the Milwaukie Police Department to Conduct Motor Carrier Safety and Regulatory Inspections; and
4. O.L.C.C. Application for Gambrinus Company, 2400 SE Mailwell Drive (Rudie Wilhelm Warehouse).

Motion passed unanimously among the members present.

III. A. 2

AUDIENCE PARTICIPATION

Ed Zumwalt was concerned with Budget Committee members' comments about contracting with Lake Oswego for dispatch services. He feels the City is giving away too many of its services for which, in the long run, little money is actually saved. Zumwalt suggests Milwaukie market its services to other jurisdictions. He is proud of his town and would hate to see it disappear.

Councilor Newman hopes Zumwalt will take an active role in discussing what actions the City can be taken to increase its future revenues.

PUBLIC HEARING -- None scheduled

OTHER BUSINESS

Traffic Assessment Citation Fee -- Ordinance

Kanzler provided the staff report in which the City Council was requested to adopt an ordinance that would allow the Police Department to assess a \$10 citation fee on all persons who plead guilty or are found guilty of committing a traffic violation. Many of the drivers cited live outside the City limits, while it is Milwaukie taxpayers who support the department's operation. This is an effort to spread the burden of equipment and training costs for Milwaukie police officers.

It was moved by Councilor Lancaster and seconded by Councilor Newman to read the ordinance imposing a traffic citation fee and amending Municipal Code Chapter 10.12 by adding a new Section 10.12.040 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 Lancaster and seconded by Councilor Newman to read the ordinance imposing a traffic citation fee and amending Municipal Code Chapter 10.12 by adding a new Section 10.12.040 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 Lancaster and seconded by Councilor Newman to adopt the ordinance imposing a traffic citation fee and amending Municipal Code Chapter 10.12 by adding a new Section 10.12.040. Motion passed unanimously among the members present.

ORDINANCE NO. 1900:

AN ORDINANCE IMPOSING A TRAFFIC CITATION FEE AND AMENDING CHAPTER 10.12 OF THE MILWAUKIE MUNICIPAL CODE BY ADDING A NEW SECTION 10.12.040.

Repeal Residual Solid Waste Code Section -- Ordinance

Herrigel provided the staff report in which the City Council was requested to adopt an ordinance that would repeal Municipal Code Chapter 13.26 -- Residual Solid Waste. She reviewed the May 2000 AGG v Washington County injunction, and Milwaukie's subsequent adoption of Ordinance 1879. Staff recommends repealing Chapter 13.26 in order to enforce the original solid waste code.

It was moved by Councilor Newman and seconded by Councilor Lancaster to read the ordinance repealing Ordinance 1879 which created Municipal Code Chapter 13.26 -- Residual Solid Waste 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 Newman and seconded Councilor Lancaster to read the ordinance repealing Ordinance 1879 which created Municipal Code Chapter 13.26 -- Residual Solid Waste 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 Lancaster and seconded by Councilor Newman to adopt the repealing Ordinance 1879 which created Municipal Code Chapter 13.26 -- Residual Solid Waste. Motion passed unanimously among the members present.

ORDINANCE NO. 1901:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REPEALING ORDINANCE 1879 WHICH CREATED CHAPTER 13.26 TITLED "RESIDUAL SOLID WASTE" IN THE MILWAUKIE CITY CODE.

Other

Mayor Bernard, with the consensus of Council, appointed Mart Hughes as the Milwaukie representative to the North Clackamas Parks and Recreation Board. **Councilor Lancaster** recommended appointing an alternate.

Swanson announced the upcoming Budget Committee meetings on May 15 & 16 at 5:00 p.m. at Milwaukie City Hall for the purpose of public input.

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment of the regular session to discuss real property pursuant to ORS 192.660.

III. A. 4

Adjournment

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

Mayor Bernard adjourned the meeting at 6:25 p.m.

Pat DuVal, Recorder



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: James Colt, Police Captain
Subject: Towing Services Contract
Date: May 6, 2002

Action Requested

Authorize a Request for Proposal (RFP) for renewal and update of the Towing Services Contract.

Background

The current Towing Services Contract expires June 30, 2002 and has been in effect since November 1, 1997. The contract is an agreement between the City of Milwaukie and the current service provider, Olson Brothers Service Inc., dba, Olson Brothers Towing, to perform all police requested towing and storage services.

The Police Department depends on private sector companies as an adjunct to the primary responsibility to protect life and property. The tow company responds to the scene of traffic accidents, removing disabled vehicles and lessening the chance of further collisions. They remove accident debris resulting from collisions that, if left, would create a further hazard to the motoring public. Where applicable, the Police Department uses the towing provider as a means to remove vehicles that are disabled and blocking traffic. The same service is provided for traffic violations, parking violations, criminal law violations, and city ordinance violations. When needed, the service provider also tows city vehicles.

The Towing Services Contract provides a means for the City to oversee the services of the towing contractor and avoid problems that, in the past, have been associated with the industry. The RFP is a means to identify qualified contractors meeting or exceeding the City's contractual expectations.

Examples of the problems that a Towing Services Contract can help control or eliminate include:

- Inordinately high charges or rates
- Numerous add-on charges
- Charges for service not required
- Preventing access to personal property
- Rude employees and owners
- Employees with criminal histories
- Unkempt or unprofessional appearance
- Contractor theft or damage
- Sub-leasing
- Inadequate, sub-standard, or dangerous equipment
- Poor accessibility
- "Ambulance chasing"

Towing contractors are seen by citizens as representatives of the City when the tow is a result of Government action. The expectation is one of professionalism and customer service. The Towing Services Contract helps to maintain and control that expectation.

History

Prior to 1992, the towing responsibility was on a rotation basis, which created both service, administrative, regulative and rate difference problems.

In 1992, a Request for Proposal (RFP) was issued and Olson Brothers Inc., dba, Olson Brothers Towing was selected and contracted as the City designated towing company. Olson Brothers Inc. provided good to excellent service for the life of the five-year contract.

In 1997, upon expiration of the five-year contract, another RFP was issued and shortly thereafter a Request for Qualification (RFQ) was used to determine the tow contractor for another five years. Olson Brothers Inc. was again selected after meeting or exceeding all requirements of the process. Olson Brothers Inc. has continued to provide above average to excellent service during the life of the current contract.

Concurrence

Police Department Staff
City Attorney

Fiscal Impact

The annual budget is not affected. There are no associated costs to the City with this RFP, with the exception of city owned vehicle tows. The need for city owned vehicles to be towed is rare.

Workload Impacts

Temporary workload associated with the RFP.

Failure to administer tow responsibilities will create an unregulated response, the charging of unrestricted fees, loss of quality control, and the negative impact associated with these actions. Predictably, the complaints and the need to address such actions would directly effect the Police Department's workload.

Alternatives

None.



To: City Council

Through: Mike Swanson, City Manager

From: Alice Rouyer, Director of Community Development & Public Works *AR*

Subject: Intergovernmental Agreement for Countywide Transportation Utility Fee Study

Date: May 10, 2002 for the May 21, 2002 meeting

Action Requested

Authorize the Mayor to sign an intergovernmental agreement with Clackamas County to participate in a Countywide Transportation Utility Fee study.

Background

Clackamas County has invited the City's participation in a Transportation Utility Fee study. Local governments throughout the state are evaluating revenue options to manage lagging road maintenance attributed to the shortfall established by rising costs and declining gasoline tax revenues. Some local governments such as the City of Wilsonville and the City of Tualatin have already implemented a Transportation Utility Fee. In order to do this, both of these local governments spent several months determining the city-wide budget needs for road maintenance, developing a fair fee methodology and researching properties and land uses to be sure that the proposed fee assessments were correct.

The County's study will provide consultant assistance and a process to tackle some of the important policy and research issues required to establish a fee in the participating jurisdictions. At the conclusion of the study, the County hopes to have a uniform fee methodology among all the participating jurisdictions. In Milwaukie's case, this would be helpful in the event that the City were to annex unincorporated areas to the east. If the City and County were to adopt a similar fee, property owners would be paying similar fees in both jurisdictions. Participation in the study, however, does not commit the City to adopting any of the conclusions of the study. Participation in the study also does not commit the City to any particular method of fee collection or distribution of the revenues. All of these issues would be subject to City Council review and approval at various points throughout the study or at the conclusion of the study.

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The IGA commits the City to devote staff time and to contribute \$6,000 toward the study, projected to cost \$95,000 - \$100,000. The study will evaluate a variety of important policy and research issues for each jurisdiction participating. These include:

- 1) Rate design and equity (How should the fee be allocated? Separate fee for residential and nonresidential? Which categories of residential and nonresidential are appropriate?)
- 2) Determining what activities the fee will fund (road maintenance, road enhancements, etc.).
- 3) Determining how the fee will be collected.

Other local governments participating in the study are:

- Estacada
- Gladstone
- Happy Valley
- Lake Oswego
- Oregon City
- Clackamas County

Over the past two months, staff has evaluated how much it might cost for the City to implement its own Transportation Utility Fee. These tasks include determining the road maintenance budgetary needs, developing a fee methodology and determining a reliable assessment for property owners. Staff has estimated that given existing staff resources, it would cost approximately \$30,000 - \$40,000 for consultant and temporary employee assistance to complete this task. The \$6,000 cost of participating in the study is a fraction of this cost and will provide the City the same type of data needed to develop its own Transportation Utility Fee in the future.

Concurrence

Staff in Community Development, Engineering, Street Operations, the City Attorney's Office and the City Manager's office have reviewed the proposed IGA. If the Council authorizes the City to participate in the study, the project will be managed and coordinated by staff in Community Development.

Staff referred the question of participation in the study to the Citizen Utility Advisory Board at their April 3 meeting. Board members expressed concern that participation in the study would commit the City to County collection and distribution of the fee revenue. After studying the IGA further and consulting with County staff, our staff believes that participation in the study will not commit the Council to any future decisions concerning the implementation of a fee in Milwaukie.

Fiscal Impact

If the City chooses to participate in the study, the City's share in the cost of the study is \$6,000. Staff time will also be required to attend meetings and coordinate information between Milwaukie and the County's consultant team. It is estimated that the staff time at the beginning of the study will be more significant than later in the study, due to the need to compile Milwaukie property and land use information for the consultant team.

Recommendation

Authorize the Mayor to sign the attached IGA with ODOT to implement the grant project.

Attachments

Attachment 1: Intergovernmental Agreement

ATTACHMENT 1

**INTERGOVERNMENTAL AGREEMENT
BETWEEN**

**CLACKAMAS COUNTY DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT
AND
THE CITY OF MILWAUKIE**

I. Purpose

- A. This Agreement is entered into this _____ day of _____, 2002 between the Clackamas County Department of Transportation and Development (COUNTY) and the City of Milwaukie (CITY) for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides the basis for a cooperative working relationship to support the Countywide Transportation Utility Fee Study (STUDY) to help fund road maintenance.
- C. The COUNTY and the CITY agree that it is mutually beneficial to cooperatively participate in supporting the STUDY, both in terms of providing staff and financial support.

II. Scope of Cooperation

- A. Under this agreement the responsibilities of the COUNTY will be as follows:
 - 1. The COUNTY will contract with Financial Solutions Consulting Group, Inc. to conduct the Countywide Transportation Utility Fee Study (STUDY).
 - 2. The County will enter into contract with FSC with financial compensation not to exceed \$100,000.
 - 3. In such contract the COUNTY will assume the responsibility for overall project management, act as liaison with the TAC (Technical Transportation Advisory Committee), the Management Group and the Clackamas County Coordinating Committee and provide them with written study findings and recommendations for decision making in the development and implementation of a Countywide Transportation Utility Fee.

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4. The County's contribution to the STUDY will be based on the percent population of the unincorporated area times the cost of the STUDY.
5. The COUNTY shall provide reasonable and necessary staff to develop materials in a timely manner that support the consultants work in the countywide Transportation Utility Fee Study.
6. The COUNTY agrees to bill the CITY for its share of the consultant payment at the end of the STUDY process in the fall of 2002.

B. Under this agreement the responsibilities of the CITY shall be as follows:

1. The CITY agrees to provide reasonable and necessary staff to develop materials in a timely manner that support the consultants work in the countywide Transportation Utility Fee Study.
2. The CITY agrees to contribute up to \$6,000 in compensation to the County for the Countywide Transportation Utility Fee Study. This amount is based on jurisdictional population percentage times the overall cost of the Transportation Utility Fee Study.
3. The CITY shall make payment for the study to the Clackamas County Department of Transportation at the completion of the study, anticipated to be in the fall of 2002. The CITY agrees to remit payment to the County within 30 days of receipt of the County's billing.

IV. Liaison Responsibility

Pam Hayden will act as liaison from the COUNTY. The TAC representative will act as liaison from the CITY for the STUDY.

V. Special Requirements

The COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.

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VI. Amendment

This Agreement may be amended at any time with the concurrence of both Parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

VII. Term of Agreement

- A. This Agreement becomes effective when it is signed by both Parties.
- B. The term of this Agreement is a period beginning when it becomes effective and ending when the STUDY is complete, anticipated to be fall/winter 2002.

CITY OF MILWAUKIE

CLACKAMAS COUNTY

By: _____
Jim Bernard, Mayor

By: _____
Chairperson, Clackamas County
Board of Commissioners

ATTEST:

ATTEST:

By: _____
City Recorder

By: _____
Recording Secretary

Date: _____

Date: _____

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, MARCH 12, 2001

COMMISSIONERS PRESENT

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

STAFF PRESENT

John Gessner,
Interim Planning Dir.
Gary Firestone
City Attorney
Shirley Richardson,
Hearings Reporter

COMMISSIONERS ABSENT

None

1.0 CALL TO ORDER

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

2.0 PROCEDURAL QUESTIONS -- None.

3.0 CONSENT AGENDA

John Gessner reported that this would be a new line item "CONSENT AGENDA." This will be used in certain cases where there is no need for full discussion, but can be decided by consent. Minutes are one of these consent agenda items, as would be conditional use signs, etc. This will be used to help speed up discussions and decisions when the Commission feels it is appropriate.

3.1 Planning Commission Minutes of February 26, 2002

Barbara Cartmill moved to approve the minutes of February 26, 2002, as corrected. **Mike Miller** seconded the motion. MOTION CARRIED 6-0 with one abstention. Tracy Cook was not at that meeting.

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

4.0 INFORMATION ITEMS

- 4.1 City Council Work Session Minutes
- 4.2 City Council Minutes

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5.0 PUBLIC COMMENT -- None.

6.0 PUBLIC HEARINGS

6.1 Applicant: Fishman Environmental Services
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 that includes a storm water treatment facility.
File Numbers: NR-01-06
NDA: McLoughlin Ind (Nbrg: Historic Mil)

Chair Hammang reopened the public hearing on Natural Resource Review NR-01-06 to allow riparian area expansion and enhancement along Johnson Creek.

John Gessner reported that this issue was originally heard at the February 26th Commission meeting and was continued to March 12th to allow time for resolution of fire access issues. Staff has been working with the applicants and are continuing to meeting with them on clarification of what the Code requires, what discretion can be used, etc.

Mike Miller asked if the hearing would start at the deliberation among commissioners or if the applicant would have the opportunity to make a new presentation. **John Gessner** stated that staff recommended to the Commission that the hearing be left open exclusively for the discussion of the access width issues.

Barbara Cartmill moved to continue the public hearing for Fishman Environmental Services, NR-01-06, to the April 9, 2002, Planning Commission meeting. **Mike Miller** seconded the motion. MOTION CARRIED 7-0.
Ayes: Borden, Cartmill, Cook, Crites, Miller, Steward, Hammang; Nays: None.

6.2 Applicant: City of Milwaukie
Owner: N/A
Location: N/A
Proposal: Title 3 Erosion Control and Flood Management Regulations
File Numbers: NR-01-06
NDA: McLoughlin Ind (Nbrg: Historic Mil)

Chair Hammang opened the legislative hearing on Zone Amendment Review ZA-02-02 - Title 3 Erosion Control and Flood Management Regulations.

Chair Hammang explained the hearing format. He asked if there were any conflicts of interest or ex-parte contacts to declare? There were none.

STAFF REPORT

John Gessner explained that the overhead projector is not working therefore there are no overheads to review tonight. The staff report documents the history and the purpose of the regulations. These regulations implement the erosion control requirements and the flood management area requirements of Title 3. The City is required to adopt these regulations in accordance with the Metro Functional Plan.

The regulations are fairly narrow in their scope. The erosion control regulations build on the City's existing code, which has been in place for many years. Staff felt that this was a good opportunity to add "teeth" to the application procedures and enforcement. The changes are not required by Title 3, however, the City desires these changes to do a better job of administering and enforcing erosion control regulations.

The flood management regulations are new. The City has had code that limits the placement of structures within flood plains. This is done under an insurance program where property owners within the City are beneficiaries of insurance subsidies provided by the Federal Government. These regulations also try to preserve the flood storage capacity within flood plains by limiting the amounts of new fill that can be placed in flood plains.

There has been no public comment on these regulations within the recent notice period. When this was presented to affected property owners last year, comments were received and staff was able to resolve the concerns of the people who responded at that time. The community seems to be content with the current revised regulations.

QUESTIONS FROM THE COMMISSIONERS

Chair Hammang asked for clarification of Section 6.2 (43) -12 (E)? **John Gessner** stated that this paragraph is from the original flood hazard regulations. Where you have lots of one-half acre or less, and where there is an existing structure, variances would be acceptable providing that variance criteria are met. **Gary Firestone** reported that the intent of this regulation is to address the areas of town that already have a developed subdivision and one or two lots have not been built on. If this is the situation and you own one of those lots that did not get built, a variance can be granted for building even if it is in the flood plain. Complete denial of development can be construed as a "taking."

The idea of a half-acre is that if there is more than half-acre, maybe something else can be done with the property. Possibly the parcel can be developed with a portion of the property not in the flood plain. If there is less than a half-acre, a variance can be granted.

VII.

Mike Miller asked if this applied if someone were to purchase the lot from the original property owner? **Mr. Firestone** stated that the way it is currently written, ownership is not relevant.

Mike Miller asked if the Erosion Control Certificate (Page 6.2-54, Section 16.28.080) handicaps an individual as opposed to a commercial endeavor in that the business could afford the erosion control specialist where an individual may not be able to afford a specialist? **John Gessner** stated that the intent of this section is to provide incentives for larger projects. One of the incentives would be to have a reduced-permit value. For the smaller projects, a homeowner could put together an erosion control plan quite easily. There is not the need to go to the certified specialist. **Gary Firestone** stated that the homeowner would have a project that will have a lower permit fee to start with. With an erosion control specialist, it is easier and more cost effective for the City to deal with the good applications and applications that need work.

Judith Borden asked for clarification of the responsibility as indicated in Section 16.28.010, General Provisions. **John Gessner** stated that the idea here is to insure that enforcement action can be taken against the contractor as well as the homeowner when a violation has taken place. **Gary Firestone** stated that the city could enforce the regulation on the homeowner and the person directly responsible for the violation. This is used when the owner claims relative innocence.

Judith Borden pointed out a format error on Page 6.2-13 Section 16.28.010, (C-1).

Chair Hammang asked which definition addressed the remnants of Minthorn Creek as indicated on Page 6.2-16, Section X? Some people would argue that it is a ditch, but in fact it is the remnant watercourse. He asked if un-managed storm water runoff qualifies for drainage in this section? **Gary Firestone** stated that as long as the water is downstream from the point at which 50 acres or more drains, it is a protected water feature. **John Gessner** stated that this draft copy includes a lot of the original language of the code and he suggests that Section X be removed from this document and addressed with Water Quality Standards that deal with all streams and drainages.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS

Speaking: Paul Anderson, 4284 SE Somewhere Drive

Mr. Anderson stated that he received a packet from John Gessner. In this packet, it indicated that there would be maps available showing wetlands. He asked to see those maps. **John Gessner** showed Mr. Anderson where he could find the maps in the packet. He invited Mr. Anderson to come to the Planning Department and look at their maps showing the wetlands.

TESTIMONY IN OPPOSITION -- None

ADDITIONAL COMMENTS FROM STAFF

John Gessner noted that in the staff report there was a letter from Brenda Bernards, of Metro, confirming that the proposed regulations comply with Title 3.

APPLICANT'S CLOSING COMMENTS

John Gessner stated that staff recommends that the Planning Commission approve the application based on recommended findings that it does comply with applicable approval criteria found in Section 900 and 1011.5. This decision will be forwarded to City Council as a recommendation for review and decision.

DELIBERATION AMONG THE COMMISSIONERS

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

Howard Steward voiced concern over the revisions and comments made tonight. He questions whether there may be other issues. **John Gessner** stated that the items identified tonight would be corrected before the final draft goes to Council. Staff will do a final proof of the document, incorporate the revisions made tonight, and bring back a final document for Commission review and approval.

Tracy Cook moved to continue the public hearing for Title 3 Erosion control and Flood Management Regulations Municipal Code Amendments, ZA-02-02, to the March 26, 2002, Planning Commission meeting. **Mike Miller** seconded the motion. MOTION CARRIED 7-0.

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

7.0 WORKSESSION ITEMS

7.1 Title 3 Water Quality Standards: Adoption Process

John Gessner suggested doing an off-schedule worksession on this issue. Staff will contact the Commissioner regarding a date and time for this meeting. Notice will be given and it will be held in a facility where the public is invited to attend and participate.

This part of Title 3 goes beyond the Flood Management Regulations. Staff has identified who the stakeholders are and who will be affected by these regulations. A public process will be designed to help ensure addressing all the issues so there are no outstanding items that need further resolution. The Commission will forward their final choices to the

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Council knowing that the final decision will be a policy decision and not a technical decision that needs to be resolved. By the time the policy is adopted, staff wants to make sure that the policy direction is right and the technical approach has merits.

Staff would like to give the public the opportunity to review the maps and question them so as to minimize the conflict during public process and minimize conflict at the time someone comes in for a building permit. He presented a map of how staff sees the process happening and asked for comments or questions.

John Gessner stated that the staff report would be covered at the worksession. The key conceptual element is that Title 3 Water Quality Standards require vegetative corridors around identified water resources (streams, wetlands, and rivers). The setbacks vary depending upon the topography and people are going to want to know how these regulations affect them.

The second key element is that Title 3 does not prohibit development. If you have an existing site and there are no reasonable alternative but to encroach, it is permitted subject to providing mitigation and minimizing the impact. This protects the property owners and the City. Final details will be worked in the actual Code; how far does the City go in allowing encroachment and what sort of mitigation will be required.

One other issue is the process. What process should be used for getting approvals when there are Title 3 resources on a property? It can be based on distance, the relationship between the type of the impact and the resource, and quality of the resource.

8.0 DISCUSSION ITEMS

8.1 Summary of Planning Commission Recommendations

Barbara Cartmill suggested that when Commission recommendations go to Council on something that is appealed, that the Planning Commission provides a Summary of Recommendation. **John Gessner** stated that staff is planning on putting an addendum (summary) in the staff report to City Council which is the Planning Commission's reasoning for their decision. The Commissioners will receive a copy when these appeals happen.

Mike Miller asked what is the procedure for the Commissioners to go before the Council and speak on an issue that was previously heard before the Planning Commission? **Gary Firestone** stated that if a Commission member has acted on issue on, that Commissioner should not appear as an individual to testify at the City Council hearing. It is appropriate for the Chair or those in favor and those in opposition to submit something to the City Council or appear before the City Council to explain their reasoning. Once a Commissioner has voted on a matter, you cannot go outside that role and comment on

that issue as an individual. Once you take a position as a body, you have to continue to act as that body.

Mike Miller suggested that the Summary of Commission Recommendation include both the positive reasons and the issues of concern from those who were not in the majority. This way commissioner members would not need to appear for testimony at the Council hearing. **John Gessner** stated that staff could examine the findings to make sure they adequately reflect the Commission's action.

- 8.2 **Howard Steward** stated that he is concerned about the meeting scheduled this Friday with Metro. He feels that this will be a two-day session where everyone will be polite and important criticisms will not be raised. He has lost faith in the objectivity of Metro to the common good of everyone. He is concerned about Metro telling Milwaukie residents what to do. Discussion followed on how Metro seems to serve Portland's interests. Friday's meeting will be the opportunity for residents to voice their opinions; this is the time for the neighborhood associations to provide input. Commissioners can talk to Council members as citizens and express concerns for policy direction and it is Council's responsibility to carry those issues forward at the regional level.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS / UPDATES

10.1 Matters from the Planning Director

Pergolas, Arbors and Trellises. **John Gessner** stated that at the last meeting Commissioners were given a draft approach to allowing pergolas, arbors, and trellises. Staff is going forward to Council to allow them on limited circumstances. The regulations will validate what already exists in the city. The final draft will be provided to Council and come back to a worksession with the Commissioners on final code language.

Wittke Appeal. **John Gessner** reported that Council changed the Commission's decision on the Wittke Appeal (43rd and Lake Road). This case went to LUBA and the City filed its record. The petitioner at LUBA decided to withdraw the appeal. The City Council decision will stand; there is no zone change. The application will be re-filed in the future.

Design and Landmark Commission Report **Barbara Cartmill** reported that the Commission is still reviewing and refining the Design Review Handbook. The primary focus at the last meeting was sign ordinances. Discussions centered on murals and internally-lit signs. It was decided to draft language that does not permit murals and internally lit signs. Another meeting is scheduled for the end of March.

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11.0 NEXT MEETING -- March 26, 2002

11.1 CSO – 01-04 – Waldorf School –postponed

Donald Hammang moved to adjourn the meeting of March 12, 2002. **Judith Borden** seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 7:30 p.m.

Tracy Cook, Chair

Shirley Richardson, Hearings Reporter

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FEBRUARY 26, 2002

Minutes revised:

Section 10.3

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