

**MILWAUKIE CITY COUNCIL
WORK SESSION
MAY 1, 2000**

The work session came to order at 5:35 p.m. in the Milwaukie City Hall conference room.

Council Present: Mayor Tomei and Councilors King, Lancaster, Marshall, and Newman.

Staff: City Manager Bartlett, Assistant City Managers Bennett and Richards, and Planning Director Rouyer.

Information Sharing

1. The group discussed ODOT's current policy on matching funds for projects and its impact on cities.
2. **Councilor Newman** noted that the Southgate Cinemas was closed, and **Bartlett** said it has been for sale for some time and was probably closed to reduce expenses.
3. **Councilor Newman** commented on Urban Growth Boundary signs in Portland, and **Bartlett** said staff would have to contact Portland to find out what they mean.
4. **Councilor King** passed a construction sign on Sunnyside Road that simply said "Prepare to Celebrate" and suggested something like that on the riverfront.
5. **Councilor King** felt that not having a right-turn lane onto Hwy. 224 from westbound Harrison Street interfered with traffic flow. **Bartlett** explained that it was a multi-jurisdictional intersection, and a right-turn lane would probably take out Mike's drive-in.
6. **Councilor King** reported on the April 30 Kids First Town Hall at Rowe Middle School. From the discussions that took place, she did not feel the message had gotten through that there would be no bond measure in November 2000 and that the City Council was prepared to adopt a resolution on May 2 establishing the need to acquire the site for public purposes. Council and staff have worked hard to build consensus, but she felt Kids First continued to attack them. She thought it had also been made clear that the proposed tenants committee would be broad-based and include some citizen representation.
7. **Mayor Tomei** said she had invited Newman to be part of the Fire Oversight Committee.

8. **Mayor Tomei** received notice of openings on the Governor's Youth Advisory Committee. She would announce it at the Council regular session and also forward the correspondence to Milwaukie High School.
9. **Bartlett** provided information from the recent Oregon Downtown Development Association (ODDA) regarding Smart Growth incentives and Monmouth's legacy tree project.

Urban Forestry Ordinance

Roger Cornell, Mart Hughes, and Gary Nebergall joined the City Council discussion.

Nebergall wanted the City Council to understand how important it is for municipalities to make responsible decisions when they consider implementing urban forestry programs. He provided photographs of trees that were preserved under the regulations but died because their survival needs from the immediate environment were not considered. He felt developers should be allowed to plant replacements rather than trying to save trees in a non-supporting environment. Responsible citizens will make responsible decisions. He was also very concerned about the costs cities would incur for properly carried out forestry programs. Most of Nebergall's photos were taken in the City of Lake Oswego where a tree ordinance was recently adopted.

Nebergall also argued against a policy that was too binding and entailed a lengthy process. Sometimes there are trees that clearly need to be removed for nuisance and safety reasons. He pointed out some photos of fir trees that were damaged in recent wind storms and posed threats to homes.

Councilor Newman noted that one of the examples showed a tree that the municipality should have allowed to be cut down and replacement trees planted on another part of the property. He asked Nebergall if he saw this as an incentive or requirement.

Nebergall said that was a very complex issue that would take longer than the time allotted in this work session. In the photo, the tree was dead at the time of development, and he noted the decline in the number of trees in Mountain Park over the years.

Councilor Marshall asked Nebergall if he advocated for preserving neighborhood character or for clear-cutting and replanting.

Nebergall responded that it depended on the type of tree and its size and needs, but, at a minimum, development should stop at the tree's drip line.

Hughes asked if there could be a regulation that was reviewed during the application process that would allow development to proceed if it did not impact the trees.

Nebergall said there needs to be a commitment to saving the trees and not killing them during construction. He suggested a future discussion of standards that would assess the feasibility of saving a tree or group of trees. Turf and certain species of trees, for example, do not always get along because of differing water requirements. He thanked the City Council for listening and recommended that any program come from a grassroots group of people who actually work with the customers and their trees. Trees on private property are very important to people in Milwaukie. His only concern with the street tree element was who has responsible for caring for the trees and maintaining the sidewalks. Would there be liability issues for the City?

Councilor Marshall asked how a grove of trees would be impacted if some were removed for housing.

Nebergall said this, again, was a complicated questions. Interior trees generally have a more limited root system than those on the outside, so, if the exterior trees are removed, there is a good chance the inner trees will come down in a heavy wind.

Cornell's most controversial issue was private property rights, and he hoped to find a balance. Would the proposed ordinance give tree preservation precedence over a property owner wishing to subdivide his parcel?

Rouyer responded that the regulation was drafted to run concurrently with the development application. The applicant would have to comply with the regulations and get permission if he wished to remove four or more trees.

Cornell asked if it was the intent for the tree ordinance to limit or prohibit development.

Mayor Tomei said the intent was not to stop development but to protect the trees. It seemed as if the house would come first with the trees being cut if there were no other alternatives.

Rouyer commented that reasonable development would be allowed.

Hughes discussed a similar situation the Corps of Engineers faced with wetlands being subdivided and filled. It is important to look at the entire resource and not allow piecemeal development. Also consider the public interest when deciding whether or not to protect the resource. He did not feel the stewardship was there to protect the trees, so it would be important to look at the development aspect. He recommended developing some criteria for identifying significant trees.

Nebergall said education can help. People should not be so concerned about the trees that are coming down but instead consider if more suitable species can

be planted in their places. He suggested incentives for tree planting. People support the element relating to right-of-way trees, and he recommended the City show a good faith effort and go on from that point.

Hughes discussed native trees and suggested that some of them could be identified as significant and saved. Areas and groves could also be recognized as significant. One needs to look at the infrastructure for maintaining and preserving a tree as an extension of its environment. He suggested inventorying the significant trees in the City and determining how they can be preserved.

Councilor King advised also thinking about habitat and species preservation.

Nebergall said there could be some real issues with telling a property owner he needs to keep a tree for habitat. People have an idea of how they want their yards to look, and that means a lot to them. He discussed the issues involved with the Lake Oswego permit process for trees that are entirely dead or storm damaged.

Cornell still had concerns with property rights and regulating development.

Councilor Marshall asked Cornell if he felt a community has the right to set certain standards.

Cornell said he did, but it has to be a community decision. He was concerned about property rights being chipped away and limiting the owner's ability to subdivide property. Metro is emphasizing growth, so how can developers be told "no." Oregon City allowed him to remove a tree and plant three in its place. He understood that some could have been concerned about the visual change in their neighborhood. The proposed program created more bureaucracy, and he felt a better approach could be created through the development process.

Hughes felt there needed to be a process that people could buy into and that would help them understand that trees are a civic asset.

Nebergall commented that the street trees and sidewalks belong to the city until they are damaged, then it is up to the property owner to have things repaired. This needs to be discussed so people know where they stand and who is responsible for what.

Bartlett added that some cities have decided to take responsibility for the trees on certain street classifications such as collectors and arterials. Trees on the lower classified, more residential streets are the property owners' responsibility. This is an alternative the City Council may wish to consider.

Councilor Marshall asked the annual cost of maintaining one street tree.

Nebergall said tree care professionals charge \$45 - \$60 per hour per man, so he estimated it would cost several hundred dollars a year for a street tree depending on its location and species. He did not see how Milwaukie could support a

quality street tree program. On the commercial side, companies need to be able to make money and not have their hands tied. He wanted to see user friendly, not bureaucratic, planning efforts.

Cornell, Hughes, and Nebergall indicated they would be willing to participate on an ad hoc committee to continue the urban forestry program discussion.

Rouyer commented that Milwaukie got a \$5,000 grant to master plan and assemble the education element of the urban forestry program.

Councilor Marshall suggested that the ad hoc committee consider private property regulations and street trees.

Councilor King was interested in an incentive program such as a heritage tree designation that stays with the land. She asked if a tax incentive would be possible.

Bartlett said the City could look at some kind of rebate program, but it could not reduce property taxes that would affect other taxing entities. Property owners could also consider dedicating land.

Councilor Marshall said there was already a temporary tree ordinance in place, so he recommended the ad hoc committee meet and provide Council with input before any program was adopted.

Rouyer suggested the City Council provide some parameters for the committee.

Mayor Tomei wanted to protect street and historical trees, and she recommended the committee look at the large lot issue.

Councilor King was still concerned about groves of trees and believed education was the key.

Councilor Marshall understood Hughes' concept that resources should be preserved for the long term. The program should look at how to create or improve the resource.

Councilor Lancaster felt the intent was clear, but maybe an ordinance was not the best way to go about it. Street tree regulations should be more consistent. He was concerned that the property owners not always be at a disadvantage.

Councilor King suggested that perhaps street tree money could go to the Neighborhood District Associations (NDA) with maintenance being a group rather than individual responsibility.

Councilor Newman sensed the ad hoc committee of professionals would do well in advising the Council on how to reach the desired outcomes. He supported an incentive approach based on the goals the City Council wishes to accomplish.

Councilor Marshall added that the City Council will have to be clear about what it wants the committee to consider.

Bartlett asked if the City Council still wished to pursue a Tree City USA designation. If the City wished to proceed, it would not be necessary to include the private property element, and it could establish an incentive program.

Councilor Newman did not believe pursuing the designation should drive the planning.

Councilor Lancaster agreed. The important thing is to do what is right for Milwaukie, not pursuing national recognition.

Councilor King thought that if the City was spending the same amount of money, it might as well go for the recognition.

Rouyer said Milwaukie has set \$40,000 aside for the program, so it has already met one of the application requirements. Funds can be spent for a variety of activities including ordinance and master plan development and tree planting.

Bartlett commented that there are a number of public properties that are under-planted, but \$40,000 is not a lot of money.

Mayor Tomei felt the designation would show the City's commitment to the program.

Councilor Newman said, if at the end of the day Milwaukie meets its own requirements, then the City should apply for the designation, but it should not be the driver.

Councilor Lancaster recommended that the ad hoc group, if formed, immediately begin working on the education element of the program.

Councilor King thought the committee should also work on clarifying the nuisance element that Nebergall discussed.

Councilor Newman believed the first step should be to determine if the Council supported the Urban Forestry Program goals before launching a committee.

Rouyer said the Planning Commission's review and recommendation evolved from a lot of public comment. The goal of the program was to protect properties as they develop and re-develop.

Councilor Marshall said his goal was to protect the resource with the objective of encouraging and maintaining the tree resources.

Councilor King wanted an incentive rather than a regulatory program.

Bartlett suggested that Rouyer draft a charge document for Council review that included timelines and names of those who might be contacted about participating on the committee. The group should probably have six to eight members. The City Council could still consider adopting an urban forestry program in the fall.

Mayor Tomei felt that previous tree committee members should be included.

Cooperative Agreements with Metropolitan Area Communications Commission (MACC)

Herrigel discussed the problems she was encountering as one staff person trying to administer the AT&T franchise, handling registration and franchise requests, and continuing her work with the PEG and I-NET systems. She recommended that the City Council consider entering into two agreements: an intergovernmental agreement (IGA) with the Metropolitan Area Communications Commission (MACC) for customer service, legal, and financial administration of the AT&T franchise and a membership agreement that would transfer negotiating responsibility for Wide Open West (WOW) and other potential franchises.

She suggested that Milwaukie staff continue to monitor PEG access system operations, identify and purchase equipment to light the new I-Net fiber, and register telecom providers. She noted that there would be a new channel lineup beginning May 2, and, on May 17, all customer service calls will go to Beaverton instead of the local Milwaukie office.

Herrigel discussed the current expenses including her staff time along with legal and financial advisor fees. At this time, she has not had the time to enforce the AT&T franchise, so the City is probably missing opportunities for better service and responsiveness.

Mayor Tomei understood that the cost of contracting with MACC would be about the same as this year's expenses.

Councilor Marshall asked why negotiations were an ongoing cost.

Bartlett replied this was an age of telecom battles, and many new companies are trying to break into the market. Milwaukie has an open franchise to anyone who can meet the basic requirements.

Councilor King asked if Milwaukie would get a percentage of MACC's AT&T fines, and **Herrigel** responded that would be based on the contract.

Bartlett added that IGA and membership are renewable.

Councilor Lancaster thought this sounded like a solid recommendation at this point and strongly recommended an annual review.

Councilor Marshall had concerns that continually becoming part of larger groups eroded Milwaukie's identity.

Councilor King asked if there was anything that could be done about the increasing numbers of lines on utility poles and the resulting visual pollution.

Bartlett explained that, where possible, lines have been put underground, but, based on federal regulations, the City has to allow all comers. Essentially, local government is being preempted by federal laws. Only the City of Portland has the money and power to take on AT&T.

Information

Councilor Lancaster asked if the discussion with the School Board on the Jr. High site had to be done in executive session.

Bartlett said both parties can be more creative and less positional in executive session. Any decisions by either governing body would have to be made in open session. He recommended that the initial contact be in executive session.

Councilor Lancaster said this needs to be communicated clearly to residents.

It was moved by Councilor Marshall and seconded by Councilor Newman to adjourn the work session. Motion passed unanimously.

Mayor Tomei adjourned the meeting at 7:45 p.m.

Pat DuVal, Recorder