

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JULY 17, 2001**

CALL TO ORDER

The 1866th 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
Larry Lancaster

Jeff Marshall
Brian Newman

Staff present:

Mike Swanson,
City Manager
Tim Ramis,
City Attorney
Dennis Lively,
City Engineer

Michelle Gregory,
Neighborhood Services Manager
Roosevelt Carter,
Program Specialist
Grady Wheeler,
Information Specialist

PLEDGE OF ALLEGIANCE

SPECIAL REPORT

Mayor Bernard invited the community to the Milwaukie Sunday Farmers' Market.

Tree Hugger Contest Winners

Wheeler announced the winners of the Tree Hugger Photo Contest from a selection of 25 entries. Jerry Knippel and Aaron Wheeler-Kay were awarded \$50 gift certificates to a local nursery.

CONSENT AGENDA

Mayor Bernard read the list of consent agenda items:

- A. City Council Minutes of July 2, 2001;**
- B. Job Classification;**
- C. Policy Regarding Disclosure of Circulation Records/Information to Parent of Children under 18; and**
- D. Annual Insurance Premium Purchase Order**

Councilor Lancaster asked if item D authorized continuation of the current insurance policy.

Swanson said that was correct. During the upcoming fiscal year, staff will evaluate the City's current carrier against the market.

It was moved by Councilor Lancaster and seconded by Councilor Newman to adopt the consent agenda. Motion passed unanimously.

AUDIENCE PARTICIPATION

Aaron Thompson, 3536 SE Wister Street, Milwaukie. He discussed the issue of recent tree cutting on public property at 35th Avenue and Wister Street. The neighbors prefer restoration of the sight and sound barrier between their homes and Hwy 224 as an alternative to a fine.

Councilor Newman asked, for clarification, if the illegally cut trees were on City property, and the neighbors wish to save those trees on private property.

Thompson said that was correct. The idea put forward to replace trees may be of greater benefit to all the neighbors. This issue is complex involving a proposed development on Wister Street; however, he wishes that to be a separate consideration. The development proposes cutting additional trees, and Thompson asked that no more trees be removed beyond what is necessary to build the houses. The neighbors want to retain the existing trees between their homes and Hwy. 224. He hoped some agreement could be reached with the current property owner in the spirit of what was originally the urban forestry proposal. He requested Jerry Baker, who contracted with the City as interim city engineer, continue as a liaison between the neighbors and the city engineer's office.

Thompson said the purpose of these suggestions is to mediate the tree issues rather than fine the property owner. He hopes the Wister Street development will be innovative but is concerned the plans will be changed and resubmitted as soon as Baker leaves. He suggested the plans be in some form of law.

Erin Klem, 11724 SE 35th Avenue and 11708 SE Wister Street, Milwaukie. The trees are valuable as a noise, sound, and sight barrier as well as wildlife habitat. She has noticed a difference in ambient temperature. Baker worked with the parties to develop a win-win situation, and she appreciated his efforts to save as many trees as possible. The trees in the right-of-way were illegally cut and removed. She suggested the wood be distributed to those in need.

Ramis said enforcement staff is present and will take this into account. He cautioned against the Council's hearing any further testimony since land use applications may be appealed to Council. It should not hear part of the case without hearing the other side.

Gloria Muzquiz, 3536 SE Wister Street, Milwaukie. Her sense of the Council's December 2000 decision on the local improvement district (LID) was that the property owner was directed to work with the neighbors. Baker is innovative, thorough and open to all concerns. Code enforcement is looking into the tree cutting, and she believes 9 trees were removed from the right-of-way. She reports observing logging trucks entering the property. She urged the City to retain Baker and support his actions with

full knowledge and support of all City government departments. Wister is not intended to be a through street.

Swanson noted there was an LID request in December 2000 which addressed the issue of the applicant's owning a majority of parcels. The request was denied, and since that time, the applicant has discussed various development scenarios with community development. Problems include access and right-of-way through the property. Frick has made several proposals, but he cannot gain access without cutting those trees. The City has an ordinance which applies to cutting trees in the public right-of-way. Last weekend, someone cut 9 trees in the right-of-way which Swanson understands were cut close to the ground then covered with mud and ivy. Code enforcement interviewed a number of people and will likely file an enforcement action against the person cutting those trees. Baker, who served as city engineer until Lively was hired in June, is involved peripherally, and the City has asked him to be available.

Councilor Newman asked if there would be a mediation option.

Ramis responded the City has broad authority to enter into stipulated agreements.

Councilor King understands the citizens want Baker to continue as part of the project to ensure the plan is implemented.

Swanson asked Baker to be available and explained Baker's role is to interpret codes and regulations not to advocate for either side.

Muzquiz understands these lots must have access in order to be buildable. The road will not go as far as it is planned and will not go through to Hwy. 224. Baker is helping resolve length, turnaround, safety, and access issues. Fining the person for cutting the trees will not bring anything back to the neighborhood. She suggested the City Council consider an exchange of property.

Jerry Knippel, 8911 SW Gravenstein, Tigard, was pleased to have won the Tree Hugger Contest and thanked the Council for the award.

Sara Weagant wished to address the Council.

Ramis told the Council the Weagant case is set for trial, and he understands City and property owner representatives are negotiating a resolution. He advised against hearing Weagant's comments because there is a juridical forum with legal representatives from both sides.

Weagant will ask the City Council and staff to review certain standards.

Ramis suggested it would be more appropriate to raise those issues after the case is resolved.

PUBLIC HEARING

Safeway Property Redevelopment

Mayor Bernard called the public hearing on redevelopment of the Safeway property to order at 6:45 p.m.

The purpose of the hearing was to consider public comment on the development parameters for the site. He reviewed the conduct of the hearing.

Staff Report: **Carter** presented the staff report in which the City Council was requested to adopt a resolution establishing development parameters for the Safeway property. The purpose of this item is to gain Council's approval for a proposed Housing and Community Development loan to purchase the property and direction on a marketing program, outreach program, and development plan.

Correspondence: David S. Strauss, 16418 SW 129th Terrace, Tigard, Oregon, 97224. He urged moving forward using the existing downtown plan.

Audience Testimony: None

Staff Comments: None.

Questions of Clarification: None

Close Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 7:50 p.m.

Council Decision: **It was moved by Councilor Marshall and seconded by Councilor King to adopt the resolution establishing development parameters on the Safeway property. Motion passed unanimously.**

RESOLUTION NO. 25-2001:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING DEVELOPMENT PARAMETERS FOR THE SAFEWAY PROPERTY.

Johnson Creek Boulevard Improvement Project Intergovernmental Agreements

Mayor Bernard called the public hearing to order at 7:55 p.m.

The purpose of the hearing was to consider intergovernmental agreements (IGA) related to the next phase of the Johnson Creek Boulevard Improvement Project. He reviewed the conduct of the hearing.

Correspondence: None.

Audience Testimony: **Gene Hatlelid**, 4277 SE Johnson Creek Boulevard, Milwaukie. He asked who in Clackamas County is assigned to resolve the plat issues. It is clear in the IGA the County is responsible for talking to each resident involved.

Swanson referred to the IGA with Clackamas County, paragraph 2.C in which the County agrees to meet with affected property owners to resolve the issues and provide technical support. City Engineer Lively will be the point person for Milwaukie.

Hatlelid said residents support the 1924 plat. Little additional engineering would be required to keep the project in the 40-foot right-of-way. Since this is an amendment to an earlier agreement, he felt it would be easy for Milwaukie to require the project stay in the existing 40-foot right-of-way. If that is not possible, the Milwaukie City Council should not approve this amendment.

Mayor Bernard will personally attend the Portland City Council meeting at which this agreement is discussed to carry Milwaukie residents' concerns.

Councilor Marshall asked in what capacity Hatlelid expected the City point person to act. It is not the City Council's responsibility to make the determination on which plat is correct.

Hatlelid agreed, but he wants someone working closely with the County to represent the residents. There are secondary issues such as square footage, taxes, and fences and trees on public property. He noted realtors have not been forthcoming about issues affecting property values.

Councilor Marshall agreed there should be someone to help facilitate but recommended residents and property owners seek legal counsel.

Councilor Lancaster felt the City needed to work closely with the County and hold it to the agreement.

Linda Hatlelid, 8617 SE 36th Avenue, Milwaukie. The project dynamics have changed significantly since the original agreement with the City of Portland. The properties have not been marked as citizens requested, so the full extent of the impacts are probably not yet known. She did not believe residents' questions have been fully answered, and City of Portland Senior Engineer Kesterson has not provided correct information. She is concerned about the County's intent to widen Johnson Creek Boulevard to five lanes. Drivers use bike lanes as travel lanes and increase their speeds. Livability decreases as traffic and pollution increases. The average number of vehicles using Johnson Creek Boulevard is already well over 14,000 per day. Keeping the project in the existing 40-foot right-of-way would save acquisition money. A 40-foot right-of-way provides enough space for a multi-modal road eligible for federal funding.

Hatlelid recommended 4-1/2 foot sidewalks because she believes the project fits the description of a constrained corridor as defined in Portland's design guidelines. Three-axle trucks should not be allowed in a residential neighborhood. Phase III is, in some instances, 20 feet closer to homes when in the 44-foot right-of-way. The Environmental Zone (E-Zone) goes to the centerline of the road, so the road can be brought back into its existing right-of-way. She was concerned Kesterson's information was not correct and is being used as a reason not to keep the road in its existing right-of-way. Although it seems as if only an additional 4 feet will be taken, the current design takes up the 22 feet in some cases. Those Councilors who vote for the 44-foot right-of-way show residents getting federal funding is more important than protecting neighborhood livability.

Rebecca Lillie, Brad Inman, SE Johnson Creek Boulevard residents. She is concerned about approving any agreement until the effects of the surveys are determined. She wants to ensure she is included as an affected property owner. **Inman** added, if the 1917 survey is used, 2 trees in the front of his property will become Clackamas County property. He is concerned there will be no reimbursement because Clackamas County believes it already owns some of the property.

Ramis commented the identified issue is the discrepancy between the 1917 and 1924 surveys. Affected property owners would be those impacted by the County's choice.

Swanson described the agreements. The first is an agreement between the City of Portland, City of Milwaukie, and Oregon Department of Transportation (ODOT) to provide additional funds for Johnson Creek Boulevard Improvement Project Phase III. The second is an agreement between the City of Milwaukie and Clackamas County meant to provide matching funds, resolve the issues related to the 1914, 1917, and 1924 surveys, and establish the understanding that road jurisdiction will be turned over to the City once it is brought up to urban standards.

Regarding the IGA with Portland and ODOT, **Swanson** explained it adds federal funding but does not amend any other provisions of the project prospectus. If the Milwaukie City Council approves signing, the IGA will go to the Portland City Council for action. ODOT will begin working with property owners on right-of-way acquisition after Portland's approval.

The IGA with Clackamas County will go to the Board of Commissioners. The County will resolve the issues arising from the 3 plats and meet with affected property owners. Construction on the project will not begin until 2002 at the earliest.

Lillie Moore, 4001 SE Johnson Creek Boulevard, Milwaukie. Several years ago Metro had a 15-month discussion on the SE Corridor. Milwaukie had 4 representatives among a much larger number of Portland groups. Metro already had its answer formed, and Milwaukie representatives were out voted, so, as a result, there has been very little impact on Portland properties.

Councilor Newman thought Hatlelid had good observations on limiting Johnson Creek Boulevard truck traffic. He also supported a traffic calming plan in the residential neighborhood and urged creating a traffic management zone as soon as possible.

Swanson said there has been a discussion about downgrading Johnson Creek Boulevard to allow flexibility in traffic calming. Any efforts would have to be coordinated with the City of Portland. He also discussed increased enforcement with the Police Chief.

Councilor Newman recommended the Milwaukie City Council indicate its opposition to further widening Johnson Creek Boulevard. He does not wish to funnel 4 travel lanes and increased capacity into a residential area.

Swanson said the County's 2020 Transportation Plan identifies the need for additional lanes between 82nd Avenue and Bell Avenue; however, there are no funds earmarked for the project. He agreed it would be appropriate for the Milwaukie City Council to prepare a letter to Clackamas County stating its opposition to the project.

Councilor Newman added this area is in Milwaukie's Urban Growth Boundary, and plans seem to proceed without the City's being consulted. He believed Milwaukie should communicate its position now. If the City pursues a traffic calming plan and investigates truck axle limitations, efforts should be coordinated with the County. He will join any delegation to the Portland City Council to communicate the Milwaukie residents' concerns. He will encourage Portland Councilors to give as much weight to property owners as they do to the E-Zone.

Councilor Lancaster understands right-of-way access was done mostly in a straight line. ODOT wishes to involve as few properties as possible, so there is little acquisition on the north side. If the road were moved north, impact to the properties on the south side would be reduced. Re-engineering costs would probably be nominal. He recommended narrowing the sidewalks in order to stay within the 40-foot right-of-way.

Swanson believed engineering costs could approach \$100,000, and Milwaukie would be responsible for the expense since the design has gone through many reviews and approvals over the life of the project.

Councilor Marshall recommended the existing S-curve remain in its current location. From his perspective, he would support bearing the engineering costs.

Councilor King wanted to assure residents that outreach efforts would continue and that they could get assistance in wise use of their mitigation payments. She also wanted as many trees replaced as possible. For long-term safety, sidewalks and bike lanes are needed on both sides of the street. The project might look at narrowing the sidewalks.

Councilor Newman encouraged forming a special traffic management area and initiating an innovative process involving the community on an advisory committee.

Swanson summarized the issues relating the IGA with Clackamas County: urge the County not to construct Johnson Creek Boulevard from 82nd Avenue to the Milwaukie City limits in order to retain the character of the neighborhood.

He summarized those issues raised in public testimony regarding the IGA with Portland and ODOT:

- a. Address the E-Zone issue and slope stability constraints for the section of roadway where the design moves the right-of-way to the south as far as 40 feet onto front yards.
- b. Re-engineer the design section to retain 40-foot right-of-way as closely as possible throughout the Project.
- c. Install sidewalks on north side at the time of the Project with costs paid from Project contingency as they will be required in the future for safety.
- d. Engineer the alignment of the roadway to retain the existing S-curve close to its present location.
- e. Provide for a complete review of a range of traffic calming proposals so that the safety of all citizens, in any travel mode, using Johnson Creek Boulevard is protected.
- f. Develop a plan to replace trees and foliage removed in construction and not on private property subject to compensation for takings during right-of-way acquisition. There are several trees in the current right-of-way that will be lost which we feel should be replaced.
- g. Develop a system to provide ongoing communication and outreach to the residents and property owners in the affected area including readily available assistance in mitigating the effects of the Project on residents along the Project.
- h. Initiate a "special traffic management area" for Johnson Creek Boulevard to deal with issues of speeding and large truck traffic.

Questions of Clarification: None

Council Discussion: None.

Council Decision: **It was moved by Councilor Marshall and seconded by Mayor Bernard to authorize the Mayor to sign intergovernmental agreements with the Oregon Department of Transportation (ODOT) and Clackamas County for the Johnson Creek Boulevard Project and making the issues noted by Swanson part of the motion.**

Councilor King, for clarification, added there must be sidewalks on the north side eventually. If citizens chose to have sidewalks at the time of the project, the project will pay for the installation. The citizens will be responsible for installation costs in the future.

Swanson said the sidewalk costs could come from project contingency.

Motion passed unanimously to authorize the Mayor to sign intergovernmental agreements with the Oregon Department of Transportation (ODOT) and Clackamas County for the Johnson Creek Boulevard Project and noting the issues outlined.

Mayor Bernard announced the City Council would meet in executive session pursuant to ORS 192.660 to discuss labor negotiations.

ADJOURNMENT

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

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

Pat DuVal, Recorder