

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
NOVEMBER 6, 2001**

**CALL TO ORDER**

The 1873<sup>rd</sup> 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  
Gary Firestone,  
City Attorney  
Alice Rouyer,  
Interim Community Development  
Director  
Michelle Gregory,  
Neighborhood Services Manager

John Gessner,  
Acting Planning Director  
Kenneth Kent,  
Associate Planner  
Roosevelt Carter,  
Program Specialist

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARD**

**Public Safety Appreciation Week Proclamation**

**Mayor Bernard** read a proclamation naming the week of November 19 - 25, 2001 as *Public Safety Appreciation Week*.

**Flag of 4 Planes**

**Jenna Welsh** described the project she and several of her Bilquist Elementary School classmates undertook in response to the September 11 attacks. Jenna, a 5th grade student, presented the Council with flags designed to represent the strength, patriotism, courage, and commitment of the American people.

**League of Oregon Cities 2001 Good Governance Award**

**Councilor Marshall** announced Milwaukie will receive the League of Oregon Cities 2001 Good Governance Award at the Annual Conference in Eugene. The City submitted its Neighborhood Grants Program to the awards committee.

**Downtown Design Guidelines Project Update**

Kent and Design and Landmarks Commission (DLC) Chair **Paul Klein** and members **Brent Carter** and **Barbara Cartmill** provided a status report on the Downtown Design Guidelines Project.

**Kent** summarized the series of meetings beginning in May 2001 which included 2 public work shops. The Ledding Library Board, local design community, and general public have provided comments during the process.

**Don Arambula**, project consultant, provided an overview of the guidelines developed through the public process. The purpose of the guidelines is to preserve the downtown heritage, enhance its appearance, and protect business investments. These design guidelines, in conjunction with the Milwaukie Downtown Plan and ordinances, will serve as regulatory tools to set standards and promote development that fits with the community. He discussed the importance of having an understandable process which provides a sense of what is generally acceptable while giving some discretion on a case-by-case basis. When applicable, development must respond to several guideline categories: Milwaukie character, pedestrian emphasis, architecture, lighting, and signs. Arambula showed desirable and undesirable examples of each category.

**Councilor King** noted the windows creating an open, inviting atmosphere were desirable, and she suggested addressing window coverings.

**Councilor Newman** complimented the Commission, staff, and consultant on the format and use of images to illustrate desired standards. He asked for a description of the application review process.

**Kent** discussed the different review levels depending on the extent of the proposed building changes. In each case, the guidelines will provide the basis of the review and ensure consistency. The DLC will carry out quasi-judicial reviews and determine any conditions of approval.

**Councilor Lancaster** was concerned about stifling creativity and suggested using additional images in the guidelines.

**Councilor King** was pleased to see the process included an opportunity for public comment on minor exterior alterations and was interested in extending this type of process to other areas of the City.

**Mayor Bernard**, as a building owner in the downtown area, was concerned about property owners having to pay fees for staff to review exterior paint colors. He questioned the need to pay a fee to in order to cover graffiti or repair minor exterior damage. Some downtown businesses may postpone property maintenance if they have to pay a review fee or become involved in a process which is too difficult.

**Kent** responded those types of issues have not been fully addressed at this point.

**Councilor Newman** thought it might be appropriate for some alterations, like painting, to be fee-less.

**Councilor Marshall** added at some point during the adoption process Council will make the policy decisions on what is required. He observed it is not uncommon for communities to determine acceptable colors.

**Councilor Lancaster** wants to make certain any fees the City charges are based an efficiently run system.

The group reviewed the project schedule and public input opportunities. Paul Klein, Milwaukie Downtown Development Association (MDDA) Interim President, said he became involved with the DLC to ensure a close overview of the design guidelines project and be supportive in finding a better path for the downtown.

## **CONSENT AGENDA**

**Mayor Bernard** read the list of consent agenda items:

- A. City Council Minutes of October 15 & 16, 2001; and**
- B. 2000 - 2001 Waterline Improvements Phase 2 Project Acceptance**

**Councilor Marshall** noted a correction on page 4 of the October 15 minutes. His statement should read "...City Manager Bartlett said officers needed special training before issuing citations."

**It was moved by Councilor Marshall and seconded by Councilor King to adopt the consent agenda. Motion passed unanimously.**

## **AUDIENCE PARTICIPATION**

**Sharon Phillips**, 11028 SE 28<sup>th</sup> Avenue, Milwaukie. She encouraged people interested in becoming involved with a cable access history project to contact her.

**Ed Zumwalt**, 10888 SE 29<sup>th</sup> Avenue, Milwaukie. He announced tickets are available for *Songs for September 11<sup>th</sup> -- The Milwaukie to Manhattan Aid Project*. The blues concert will be at the Southgate Theater on November 11.

## **PUBLIC HEARING**

### **Proposed Rezoning of 12250 SE 43<sup>rd</sup> Avenue from R-10 to R-7, Application ZC-01-01 -- Ordinance**

**Mayor Bernard** called the public hearing on the proposed zoning map amendment filed by Lowell Wittke to order at 7:10 p.m.

The Planning Commission considered the request at its September 25, 2001, public hearing, and the Commission recommends approval of the zoning map amendment. The Council hearing was de novo.

The purpose of the hearing was to consider the Planning Commission's recommendation to approve the zone change request for the property located at 12550 SE 43<sup>rd</sup> Avenue. Mayor Bernard reviewed the applicable criteria and the order of business.

Site Visits: Mayor Bernard, Councilor Newman, and Councilor King indicated they had visited or driven by the site.

Ex parte Contacts: Councilor Newman reported a conversation with Lake Road Neighborhood District Association (NDA) Co-chair Rob Kappa. During the course of the conversation, Kappa relayed the contents of a letter he submitted for this hearing.

Conflicts of Interest: None.

Jurisdictional Issues: None.

Staff Presentation: **Kent** provided the staff report in which the City Council was requested to adopt an ordinance rezoning the property at 12550 SE 43<sup>rd</sup> Avenue from R-10 to R-7 and adopt findings in support of approval.

The subject property is .37 acres located at the northeast corner of 43<sup>rd</sup> Avenue and Lake Road. Current zoning allows 3 lots, and the applicant wishes to change the zoning to R-7 to allow a maximum of 4 lots. Although the application provided a potential lot layout, it is not part of the application before Council at this hearing. Future development would require subsequent hearings before the Planning Commission. He described the surrounding zoning which is R-10PD and R-7 and R-10 on the south side of Lake Road.

**Kent** reviewed the criteria and the Planning Commission findings. The proposed amendment conforms with applicable Comprehensive Plan Goals, Policies and Objectives as well as the Metro Urban Growth Management Functional Plan. The anticipated development meets the intent of the proposed zone, and the conceptual development plan meets the standards of the proposed R-7 zone. The proposed zone change will serve as a transition between adjacent lower density R-10 zoned property to the south and adjacent high-density R-10PD to the north. Finally, the application was processed and public notice provided in accordance with Zoning Ordinance Section 1011.4 Major Quasi-Judicial Review.

Staff is not aware of any regional, state, or federal regulations that are applicable to the proposed zone change. Public Works Department review indicates public facilities are adequate to serve development of the site under the proposed zoning.

Based upon review of the criteria, the Planning Commission recommends the City Council approve the zone change as outlined in the staff report.

Correspondence: Rob Kappa and Teresa Bresaw submitted written comments to the City Council in opposition to the application. Bresaw was present to testify. Kappa commented as an individual and not as a representative of the Lake Road NDA. Kent provided a brief overview of the letter in which Kappa recommended the City Council deny the zone change because the need for additional R-7 zoned lots was not adequately demonstrated. Kappa also noted the proposal is not consistent with type, style, and density of the existing neighborhood and does not ensure an appropriate housing mix in the community. The houses are not oriented to the existing street and the increased density negatively impacts Lake Road traffic. The proposal does not enhance connectivity. Kappa suggested referring the application to the Lake Road NDA for a recommendation or to the Planning Commission for re-examination of the criteria based on new testimony.

Applicant Testimony: **Lowell Wittke**, applicant, reserved his comments until other testimony was heard.

Other Testimony in Support: **Forris Frick**, 11658 SE 35<sup>th</sup> Avenue, Milwaukie, Lake Road Land Use Committee Chair. He said most of Kappa's comments were outside the rezone decision before Council. The development is an upgrade to the entire neighborhood from the existing structure now on the property. He discussed the types of zoning and structures in the vicinity of the site. R-7 supports more people, and the lot size is likely more attractive to families with 2 working people. He recommended the City Council approve the zone change from R-10 to R-7.

Testimony in Opposition: **Teresa Bresaw**, 12744 SE Weedman Court, Milwaukie, summarized her correspondence. She was concerned the corner lot would bear the brunt of Lake Road traffic noise. Additionally, the corner lot would have only 49 feet on 43<sup>rd</sup> Avenue making the garage, rather than the house, the main focus. The other 3 proposed lots would share the same access driveway so would not be oriented to the street like the rest of the neighborhood. In her opinion, retaining the R-10 zoning would keep the property values high and respect the orientation of the existing homes to the street. Originally, Planning Department staff did not recommend the application be approved. The rezone to R-7 would be a detriment and would not fit the original and best design of the neighborhood.

Neutral Testimony: None.

Staff Recommendation: Staff recommends the City Council approve the zone change to the proposed project from R-10 to R-7 and adopt those findings as included in the ordinance.

**Councilor Marshall** asked what compelled staff to change its mind about the application. He understood the Planning Commission made its decision based on compliance with the current code.

**Kent** explained staff is supporting the Planning Commission's decision and presenting it to the City Council.

**Firestone** explained the Planning Commission's role is to make a decision on whether or not an application meets the criteria set forth in the code.

Applicant Rebuttal: None.

Council Questions to Staff: None.

Close Public Hearing: It was moved by Councilor Newman and seconded by Councilor Marshall to close the public hearing. Motion passed unanimously. Mayor Bernard closed the public testimony portion of the hearing at 7:40 p.m.

Council Decision: **Councilor Marshall** understood the Planning Commission looked at this application from a technical point of view.

**Councilor Newman** added the Commission's decision was value neutral.

**Firestone** said, if the City Council decides to deny the application, it must develop finding supporting that decision since this is a quasi-judicial application. There are criteria in the code for zone change applications upon which to base the decision.

**Councilor Marshall** referred to Objective 2 of the Comprehensive Plan which states in part that the City is to locate higher density residential use so the concentration of people will help support public transportation services and major commercial centers. This proposal does not support public transportation services as the Council envisions it to be in the future which includes light rail to the downtown area. In addition, there are no major commercial centers nearby which this development would support.

**Councilor Marshall** said Objective 4 of the Comprehensive Plan is not addressed. It states in areas of moderate and medium density, the rehabilitation of older housing is encouraged in lieu of large area clearance and new construction. Other issues not directly related to criteria but of importance to the Council is the fact Lake Road, as well as those routes to and around it, has traffic problems. This community struggles to meet its parks, road maintenance, and sidewalk needs, all of which will be increased by allowing higher density. The Council is reluctant, as a matter of policy, to encourage flaglot development. The proposal does not meet regional goals and does not provide connectivity. It should also be considered that the rezone reflects a 25% increase in density.

**Councilor King** was concerned rezoning from R-10 to R-7 would reduce the range of housing types in the City.

**Councilor Lancaster** said the City should provide a good mix of housing choices, and it is not clear there is a need for additional R-7 lots. There is a clear shortage of R-10 lots, and he feels it is more appropriate to retain the designation to round out the mix.

**Councilor Newman** referred to Chapter 4 -- Land Use, Objective 1, Policy 4 -- Neighborhood Element relating to whether or not an application is consistent with the surrounding development. He does not find it sufficiently compelling that the development diagonal from the site should warrant a zone change. He is more concerned with the zoning directly across the street and what surrounds the subject site on 3 sides. In this application, the adjacent zoning is R-10 and R-10PD.

**It was moved by Councilor Newman and seconded by Councilor Marshall to deny the application ZC-01-01. Motion passed unanimously.**

**It was moved by Councilor Marshall and seconded by Councilor Lancaster to direct staff to prepare written findings for denial based on the reasons stated during Council discussion at this hearing, to consider those findings at the November 20, 2001 regular City Council meeting, and to continue the hearing until that date. Motion passed unanimously.**

Mayor Bernard read the Land Use Board of Appeals rules.

## **OTHER BUSINESS**

### **Safeway Project -- Redevelopment Update**

**Carter** updated the City Council on redevelopment of the Safeway property. The site acquisition process is almost complete, and he anticipates closing in about 2 weeks. The group discussed a possible ceremony to mark the City's purchase of the property. Carter reviewed the next steps in the project and noted the City will reserve the right to reject all development proposals if found lacking. Staff received 3 market study proposals and will move forward with the contract shortly. The market study is funded by a \$15,000 grant.

### **Veteran's Day Events**

**Mayor Bernard** announced the parade and benefit concert on November 11, and **Councilor King** said Milwaukie High School is seeking volunteers to help with the veterans luncheon.

## **ADJOURNMENT**

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

**Mayor Bernard** adjourned the meeting at 8:05 p.m.

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Pat DuVal, Recorder