



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 9TH DAY OF JANUARY, 1991 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Kafoury and Lindberg, 4.

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Harry Auerbach, Deputy City Attorney; and Officer Sheridan Grippen, Sergeant at Arms.

On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 30** Cash and Investment balances for November 22, 1990 through December 19, 1990 (Report; Treasurer)

**Disposition:** Adopted.

- 31** Accept bid of D. B. Alexander and J. Murphy Construction for nuisance abatement services for \$147,429 (Purchasing Report - Bid 60-A)

**Disposition:** Adopted; prepare contract.

- 32** Accept bids of American AVK Company and Pacific Water Works Supply Company for furnishing resilient seat valves, tapping valves and butterfly valves for \$79,873 (Purchasing Report - Bid 64-A)

**Disposition:** Adopted; prepare contract.

- 33** Accept bid of Ross Island Sand and Gravel Company for furnishing mixed concrete for \$433,610 (Purchasing Report - Bid 72-A)

**Disposition:** Adopted; prepare contract.

- 34** Accept bid of Beko's Weld-N-Wood for furnishing standard inlet frames and grates for \$21,550 (Purchasing Report - Bid 75-A)

**Disposition:** Adopted; prepare contract.

- 35** Accept bid of Ross Island Sand and Gravel Company for furnishing bagged concrete mix for \$16,664 (Purchasing Report - Bid 78-A)

**Disposition:** Adopted; prepare contract.

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**Mayor J. E. Bud Clark**

- 36** Reappoint Curt McCracken, Doug Peeples and Anne Sylvester to the Portland Traffic Safety Commission (Report)

**Disposition:** Adopted.

- 37** Nominate Sam Brooks, residing in the City of Portland, to serve as a member of the Metropolitan Exposition-Recreation Commission (Resolution)

**Disposition:** Resolution No. 34801. (Y-4)

- 38** Authorize City Attorney to file lawsuit to terminate lease and collect delinquent rent and taxes (Resolution)

**Disposition:** Resolution No. 34802. (Y-4)

- \* **39** Contract with Jan Van Domelen McGowan in an amount not to exceed \$10,000 for coordination and management services for the Mayor's Office of International Relations (Ordinance; waive City Code Chapter 5.68)

**Disposition:** Ordinance No. 163756. (Y-4)

- \* **40** Call for bids for computer hardware for Office of Finance and Administration and authorize contracts (Ordinance)

**Disposition:** Ordinance No. 163757. (Y-4)

- \* **41** Contract with IBM Corporation for system software for Office of Finance and Administration (Ordinance)

**Disposition:** Ordinance No. 163758. (Y-4)

- \* **42** Pay Portland Development Commission \$68,369 for signage project for four City of Portland parking garages (Ordinance)

**Disposition:** Ordinance No. 163759. (Y-4)

**Commissioner Earl Blumenauer**

- \* **43** Amend Comprehensive Plan Map and change the zone of a portion of property north of NE Halsey, between 34th and 35th Avenues, from R1S (Residential) to C2S (Commercial) (Ordinance; 8023-PA)

**Disposition:** Ordinance No. 163760. (Y-4)

- \* **44** Revocable permit to Overlook Neighborhood Association to hang a banner across N. Greeley Avenue near N. Going Street (Ordinance)

**Disposition:** Ordinance No. 163761. (Y-4)

- \* **45** Accept a sewer easement and addendum to sewer easement for the SW

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Terwilliger Blvd. west of SW Barbur Blvd. storm sewer project, granted by the Nature Conservancy; authorize the Commissioner of Public Works to initial and execute the addendum and authorize total payment of \$1,000 (Ordinance)

**Disposition:** Ordinance No. 163762. (Y-4)

- \* **46** Accept street light facility easements for the NE Emerson Court at NE 25th Avenue Street improvement project, granted by Mark W. and Patricia R. Cordell and Myron R. and Joan E. Johnson, at no cost to the City (Ordinance)

**Disposition:** Ordinance No. 163763. (Y-4)

- \* **47** Accept a street deed for the N. Delaware Avenue south of N. Webster Street improvement project, granted by Kaiser Foundation Hospitals, at no cost to the City (Ordinance)

**Disposition:** Ordinance No. 163764. (Y-4)

- \* **48** Accept a sewer easement for the Linn Park (#39) sanitary sewer system project, granted by Multnomah County School District No. 40, authorizing total payment of \$2,060 (Ordinance)

**Disposition:** Ordinance No. 163765. (Y-4)

- \* **49** Accept a sewer easement for the Linn Park (#39) sanitary sewer project, granted by James N. Brinkmann, authorizing total payment of \$315 (Ordinance)

**Disposition:** Ordinance No. 163766. (Y-4)

- \* **50** Lease air-rights over SW Sam Jackson Park Road to Oregon Health Sciences University for use as a pedestrian skywalk (Ordinance)

**Disposition:** Ordinance No. 163767. (Y-4)

**Commissioner Dick Bogle**

- \* **51** Amend contract with Unisys Corporation to maintain upgraded Computer Assisted Dispatch (CAD) system and the Mobile Digital Terminal (MDT) computer system at a cost not to exceed \$62,772, without advertising for bids, and provide for payment (Ordinance)

**Disposition:** Ordinance No. 163768. (Y-4)

**Commissioner Mike Lindberg**

- 52** Accept completion of engineering services by Murray, Smith & Associates for the Surface Water Treatment Rule Compliance Study and authorize final payment (Report)

**Disposition:** Adopted.

- 53** Accept Colt Construction Company installation of 16-inch water main in N. Marine Drive as complete and authorize final payment (Report; Contract No. 26337)

**Disposition:** Adopted.

- \* **54** Authorize an agreement with Jeff Sanders Golf Promotions for the purpose of hosting the 1991, 1992 and 1993 G.I. Joe's Northwest Open at Heron Lakes golf course (Ordinance)

**Disposition:** Ordinance No. 163769. (Y-4)

**City Auditor Barbara Clark**

- 55** Approve Council Minutes for August 1, 1990 through November 28, 1990 (Report)

**Disposition:** Adopted.

**REGULAR AGENDA**

**City Auditor Barbara Clark**

- 56** Revise City's initiative and referendum provisions to update and clarify procedures (Ordinance; change Code 2.04)

**Discussion:** Mayor Clark congratulated Auditor Barbara Clark for her efforts on these revisions.

**Disposition:** Passed to second reading.

- 29** **TIME CERTAIN: 9:45 AM** - Direct the Bureau of Water Works to cooperate with other water suppliers in the Portland Metropolitan Area and to provide leadership in meeting the region's future water needs (Resolution introduced by Commissioner Lindberg)

**Discussion:** Commissioner Lindberg said the Water Bureau has launched the broadest long-range planning effort in its history. The studies will focus on three factors: 1) new federal regulations regarding water quality; 2) projected population growth in the region and 3) growing environmental awareness which points to the importance of conservation.

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Ed Tenny, Water Bureau Director, said Portland's large and complicated system, which provides water to over 700,000 people, is at a historic point where significant change is needed. The two major issues to be faced are water supply and water quality.

Mr. Tenny stressed the need to develop regional partnerships to determine solutions and identify projects that can be done jointly. He noted that the planning efforts encompass studies of water quality, groundwater supplies, water demand and water source options, and also call for development of conservation and regional water supply plans.

Mr. Tenny announced the addition of Lorna Stickel to the staff to help with these studies and said passage of today's resolution will give their regional partners assurance that the Council backs these efforts.

Larry Cole, Mayor of Beaverton, applauded the City's efforts to date. Disagreeing with an editorial in the Oregonian calling for an amendment that names METRO as a partner, Mr. Cole said this is not an issue of turf, but an issue of planning from the bottom up between governments.

Gene Seibel, Administrator, Wolfe Creek Water District, said he feels strongly that planning has to be done by those who have the technical background to do so, and that the other districts look to Portland to provide leadership in this area.

Lloyd Anderson, Water Resources Advisory Committee, stressed the need to get a solid base of support for a system that will require major capital improvements.

Larry Sprecher, METRO, said Portland, as the major water supplier in the region, is playing a very responsible role in regional planning efforts. He said METRO wants to play an evolving and active role in the planning efforts, but that it has nothing in its budget approaching what Portland is expending in this area.

Commissioner Blumenauer called for formation of an inner bureau planning group to make sure the City is in accord internally as well as regionally. He called for discussion of the water planning efforts as they relate to planning, transportation and capital improvement issues. The Commissioner also said he thought METRO should concentrate its efforts in areas where no one else is able to do the job.

Commissioner Lindberg said Commissioner Blumenauer's suggestion regarding the inner bureau planning group was a good one.

**Disposition:** Resolution No. 34803. (Y-4)

At 10:46 a.m., Council recessed.

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 9TH DAY OF JANUARY, 1991 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Kafoury and Lindberg, 4.

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Ruth Spetter, Senior Deputy City Attorney; and Officer Sheridan Grippen, Sergeant at Arms.

- 59 Adopt the Balch Creek Watershed Protection Plan amending Comprehensive Plan Policies, the new Title 33 of the City Code, Comprehensive Plan Map, and City Zone Maps (Ordinance; Second Reading Agenda 24)

**Discussion:** Commissioner Blumenauer said this was an important beginning.

**Disposition:** Ordinance No. 163770. (Y-4)

- 60 Tentatively grant, with conditions, appeal of American Cancer Society, Oregon Division, applicant, against Hearings Officer's denial of a revocable permit for a parking lot at 0330 SW Curry Street (Findings; 8006-R )

**Disposition:** Findings Adopted. (Y-4)

- \* 61 Grant a revocable permit to American Cancer Society, Oregon Division, Inc., deedholders, to allow a surface parking lot for 17 cars at 0330 SW Curry Street, on Lots 7 and 8 and part of Lot 6, Block 143, Caruthers Addition, for a period of six years, under certain conditions (Ordinance; File No. 8006-R)

**Disposition:** Ordinance No. 163771. (Y-4)

- 62 Deny appeal of Arnold Creek Neighborhood Association and approve, with modification of conditions, application of Meadowview Associates and Elliott Wolfe Inter Vivos Revocable Trust for a 26-lot PUD at SW Stephenson and Lancaster (Findings; CU 71-90/S38-90)

**Disposition:** Findings Adopted. (Y-4)

- 63 Tentatively grant appeal of Renda Horn, Trustee for Margaret & Clyde Brummell, applicant, against Hearings Officer's denial of a conditional use for fill within 25 feet of a water feature at 2210 SE Lambert (Findings; CU 35-90)

**Discussion:** Cay Kershner, Clerk of the Council, said a request had been made by the Planning Bureau to continue this item to January 23.

**Disposition:** Continued to January 23, 1991 at 2:00 p.m.

- 57 **TIME CERTAIN: 2:00 PM** - Appeal of Sylvan/Highlands Neighborhood Association against Hearings Officer's decision to approve application of Pacific Western Development Corp. for a 16-unit PUD in an R10 zone located at SW Arboretum Circle, off W. Burnside (Hearing; CU 77-90/S 37-90)

**Discussion:** Cathey Briggs, Planning Bureau, said several issues about the validity of the appeal need to be resolved before Council proceeds with the appeal itself. A memo from Senior Deputy City Attorney Kathryn Imperati states that Council must decide if David Morrison has official standing to represent the neighborhood association and therefore receive a fee waiver on this appeal. If Council decides he does not, it then needs to decide if late payment of the appeal fee will be allowed.

Ms. Briggs said memos regarding Mr. Morrison's standing had been received from Stanley Loeb of Sylvan/Highlands Neighborhood Association and from Neighborhoods West-Northwest.

Nancy Biasi, Office of Neighborhood Associations, said she had been informed that the two neighborhood associations had merged but no updated by-laws or minutes reflecting this action had been received. Mickey Rosen, the designated contact person for Sylvan/Highlands is apparently not the person who signed the appeal form. Ms. Biasi introduced a letter from Ike Bay, Chair of Neighbors West/Northwest, indicating that the neighborhood had been dormant but that, based on the information they had received yesterday, Mr. Morrison is proper in his representation of the Sylvan/Highlands Neighborhood Association.

The Mayor asked if the neighborhood association's Planning Committee brought this forward or if this was an individual coming to them.

Ms. Biasi said apparently a sub-committee filed the appeal. She said the Neighborhood Office had no record of when elections may have taken place or when the action giving that sub-committee authority to file the appeal had occurred.

Mayor Clark said evidence is needed that the neighborhood actually took action as a neighborhood association.

Commissioner Blumenauer suggested allowing both sides to testify to try to resolve this issue. He asked someone from the neighborhood association to establish the context.

Mickey Rosen, President Pro-Tem of Sylvan/Highlands Neighborhood Association, said election of officers is to be held January 22 and she hopes to be elected president then. She said she was fully informed of David Morrison's actions and gave him permission with no knowledge that she had to sign any forms. She said she had discussed this with other people on the Board and got the information about how to file the appeal at a Neighborhoods North/Northwest meeting.

The Mayor asked if Mr. Morrison had called her up about filing the appeal and asked for permission to use the neighborhood's name. He asked if a committee had addressed this.

Ms. Rosen said Mr. Morrison had called her and then she talked to Vice President Stan Loeb about it but they did not have a formal board. She said she was appointed to represent the neighborhood when the two groups merged.

David Morrison, appellant, said when the neighborhood learned there was to be a hearing on this project, they met and asked him to represent them. He was authorized to do so by Mickey Rosen and later was told by the Office of Neighborhood Associations that the existing neighborhood association qualified for the purposes of this appeal. He said he represented the association in numerous meetings with the developers and at the October hearing. Following the hearing, he got information from the City on how to file an appeal and was told the appeal fee would be waived. He said he was also told by Mickey Rosen that he had been appointed to the neighborhood association board before the appeal was filed. He referred to the letter from Stan Loeb, neighborhood association vice president, confirming his appointment as acting chairperson for this appeal.

Steve Abel, Attorney representing applicant Pacific Western Development Corp., questioned whether this appeal truly came from a neighborhood association. He said when he called the Office of Neighborhood Associations he discovered the group had no bylaws and that there was no record of any activity in the last year or of any official action on the merger.

Mr. Abel said the issue here is whether this is an appeal by a recognized neighborhood organization or by a group of aggrieved neighbors who live immediately adjacent to the project. He said it is not known if there was a vote by the general membership on the appeal or who was there and who was given notice. He said for the fee waiver to apply, three requirements must be met: 1) the neighborhood association must be a recognized one; 2) the decision to appeal must be made by the Land Use Committee, the general membership or the Board; and 3) the appeal must be signed by the individual who is president or designated contact. He said none of these rules have been met and that it is clear to him that the neighborhood association does not exist and this is simply an appeal by a group of citizens.

Ed Sullivan, Attorney for the Sylvan/Highlands Neighborhood Association, said when the staff and Northwest Neighborhoods told them they could make the appeal, they followed that advice. In response to the three requirements noted by Mr. Abel, Mr. Sullivan contended that Sylvan/Highlands is a recognized neighborhood association and that the acting board and general membership did approve the appeal. They did not, however, list the correct contact person. Nevertheless, because the Board ratified the action and has undertaken to go ahead with the appeal, Mr. Sullivan asked Council to waive the fee.

The Mayor said it seemed to him that minimum standards on notification to



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the neighborhood must be met and that a great deal of process seems to be lacking here. He said the rules are in place so as to prevent individuals from popping up and taking advantage of the fee waivers. He asked for a motion either for or against.

Commissioner Kafoury moved to charge the fee and hear the appeal.

Commissioner Lindberg seconded.

Commissioner Blumenauer suggested that Council go ahead and hear the appeal but hold out for allowing the fee waiver if adequate documentation is provided that a real meeting was held and proper notice given.

Commissioner Kafoury said she was not hearing that a publicized notice had been sent. She said she would rather not spend any more time with procedural issues and get on with the appeal.

Commissioner Blumenauer said there ought to be an opportunity to receive either the fee or the evidence.

Commissioner Kafoury said she would be glad to amend her motion to include this if the neighborhood wants to bring in more evidence that there was a meeting and notice that would qualify them for a waiver. She said the City Attorney could make that determination.

The Clerk called the roll on Commissioner Kafoury's motion and Council voted unanimously to hear the appeal. (Y-4)

Cathey Briggs, Planning staff, said a letter had been received from the Sylvan/Highlands Neighborhood Association requesting a continuance.

The Mayor said Council consensus was to go ahead and hear the appeal. He also said he had visited the site.

Ms. Briggs said this appeal concerns a conditional use for a 16-unit PUD on an eight acre site with lots ranging from 9,500 to 20,000 square feet. The plan also calls for a common open space of almost two acres. Ms. Briggs said this parcel is the second phase of a PUD approved in 1977. She said approval of the second phase lapsed because final site approval was not sought within the specified time period. A new owner then purchased the land and is now starting over on the approvals.

Ms. Briggs showed slides and described the plans, noting that applicant had originally proposed a 30-foot buffer as a tree preservation area. Staff recommended approval with conditions, including a minimum perimeter of 30 feet of common open space along the entire site with no paving structures or clearing. This would have required relocation of the road and reduction of lot sizes. A condition requiring a tree inventory and preservation plan was also added.

She reviewed the Hearings Officer's decision and highlighted the conditions

that have become the subject of this appeal. These conditions included: street lights with minimal off-site disturbance; a lot-by-lot tree preservation inventory and plan; and a permanent 30-foot open space easement on a number of lots established in favor of the Homeowners Association. The Hearings Officer also found that the application was complete before Council adoption of the emergency ordinance regarding the forests.

Continuing her review of the Hearings Officer decision, Ms. Briggs noted that he also found that Statewide Goal 5 is not a relevant approval criteria in this case and that the City's Comprehensive Plan Goal 8 does not constitute mandatory approval criteria and cannot be used to fashion conditions of approval. Finally, he said the record supported the applicant's solution for use of the existing southernmost logging road and that the 30-foot setback recommended by staff was arbitrary.

Ms. Briggs said the appellants contend that the street location and street lights are intrusive and the setbacks are inadequate. They ask that the proposed road follow the northern, not the southern, logging road and favor the proposal for joint ownership of the buffer area as recommended by staff.

Mayor Clark asked about joint ownership.

Ms. Briggs said while the Hearings Officer's decision called for an easement in favor of the Homeowners Association, the area within the easement would actually be under individual private ownership, as opposed to being owned outright by the Homeowners Association.

Ed Sullivan, Attorney, addressed three issues: 1) the insufficiency of the geotechnic reports and the Hearings Officer's analysis of them; 2) improper interpretation by the Hearings Officer of Comprehensive Plan Goal 8 concerning open space and natural resources; and 3) the need for Council to provide for notice and an opportunity to comment on the final development plan. He said LUBA requires this and that it should be one of the conditions attached to this case.

Roger Redfern, Engineering Geologist, 1701 SE Ladd, said he has monitored several nearby sites and stressed the known instability of the area. He said the original 1978 geotechnical study was preliminary and inadequate, and that a lot more is now known about the ancient, deep soil instability than was known then. Further, the 1990 letter which updates the earlier study does not deal adequately with such factors as soil hazards, runoffs, drainage, and increasing development.

Steve Abel, Attorney for applicants, objected to the inclusion of the testimony about soils, as nothing about this subject was a part of the appeal notice. However, he said he would address it anyway.

He said only 16 single family residences are being requested in an R10 zone where approximately 30 houses could be built without forming a PUD. He said the applicant came in for a PUD because it wanted to create open space on about 48 percent of the site in order to retain its beneficial features, including trees and wildlife. It also wishes to reduce certain setbacks to minimize disturbance of the sites. He said the Hearings Officer decided to make the setbacks privately owned in order to ensure that the lots would not be drastically reduced and become unbuildable. He noted that the project was approved by the Hearings Officer after a great deal of testimony and said Mr. Grillo took a great deal of care to make sure he was applying the correct criteria to the particular facts of this site.

Regarding the issues raised by Mr. Sullivan, Mr. Abel said Rittenhouse-Zemen had concluded that the site was geotechnically sound for purposes of the initial feasibility. At a later stage, when permits are issued, there is an opportunity for the City to make sure the engineering is complete for each individual site. Regarding the applicability of Goal 8, Mr. Abel said the new Code now embodies the elements of the Comprehensive Plan so that if you satisfy the Code requirements you have also satisfied the Comprehensive Plan. As for appellant's request for another opportunity to be heard, there has already been ample opportunity and all the facts are available to make a decision as to whether this is geotechnically feasible, the only appeal argument of substance. Mr. Abel noted that every project must satisfy the project engineer as to its soundness and this has nothing to do with approving this phase of the PUD.

Ms. Rosen said she was the realtor involved in the sale of this property and that no sale was ever completed until a soils report had been done. At the time of the first phase of the PUD, the City committed to the existence of a 30-foot buffer zone between the houses in the development and those above it. Everyone who bought that property understood that and it seems strange that this is to be changed now.

Ms. Briggs said the Hearings Officer is recommending that there be a permanent 30-foot open space easement and indicates the lots where it would be. The easement would be in favor of the homeowners association. Another issue is whether the road is allowed in the 30-foot area.

Commissioner Lindberg said the buffer as originally conceived was to be a natural area. The easement is different.

Ms. Briggs said the easement would protect trees, provide a wildlife corridor and would not allow for removal of trees or construction of any fences, barriers, or structures.

Commissioner Lindberg asked if this met the same goals as the original concept.

Ms. Briggs said the condition of approval in 1977 read that no structure except for allowable fences shall be erected within 30 feet of the perimeter of the subject property. She said it is unclear if that meant it was commonly owned or a buffer. There is conflicting information about whether the road was there and whether it was allowed.

Isaac Kalisvaart, 4481 SW Fairview Circus, requested a continuance because the developer has indicated a willingness to sell the property. He said all the funds to purchase the property have been raised and a written offer has been made to pay the asking price. He said the neighborhood is not just a small group of adjacent property owners. At least 12 meetings have been held, with an average of 15 to 20 people attending.

Jim Thayer, representing the Friends of Forest Park, supported neighborhood efforts to buy and preserve this property as a wildlife corridor.

Mr. Morrison, appellant, said Mr. Jordan of the Parks Bureau had written a letter acknowledging the value of this piece of property as a park. Since that time, negotiations have broken down. He said the present road, as it now exists, can serve all the proposed lots without the construction of any road up above and recommended that no use be made of the uppermost southern or northern logging roads.

Commissioner Lindberg said he had checked with the Parks Bureau and, if the property were donated as a park, it would be left in a natural state.

Tom Willis, 619 SW Arboretum Circus, said there is lots of evidence that this is a landslide area, and called the road up there a disaster in the winter because of its steep grade.

Bill Furman, 4318 SW Fairview Circus, said the neighborhood has a very legitimate concern with erosion. He called for further study.

Mr. Abel, in rebuttal, said he heard nothing that changed the neighborhood posture but he would have no objection if they wished to perfect their appeal. However, he did object to the fee waiver.

In response to the buffer issue, he said the planned 30-foot buffer area is far more than the 10 feet allowed under the Code. He said it is a reasonable solution that balances the needs of modern transportation with the need to preserve trees. Regarding slide danger, he said Council could overturn the Hearings Officer's approval only if clear error was found in his report. As for the prospective sale, the only offer to date, to pay \$135,000 for eight acres, will not satisfy.

Commissioner Lindberg asked Mr. Abel if there conceivably would be an acceptable offer.

Mr. Abel said he had no authority to speak on this.

Mr. Sullivan, in his rebuttal, disputed Mr. Abel's contention that the soils

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issue had to be a part of the appeal notice in order to be considered. He noted that it had been raised both in the staff and Hearings Officer's report. The issue of open space relates to what is common open space which in this case adds up to about 20 percent with the rest in large lots.

Mr. Sullivan repeated his contention that the geotechnical reports are not sufficient. He also disagreed about the applicability of Goal 8, noting that Planning Bureau staff had added the condition in Condition 6 (i) stating that vegetation on W. Burnside and drainage reserves and open space must be left in its natural state.

Commissioner Lindberg noted that earlier Mr. Sullivan had asked for, but then withdrew, a request for a 7-day continuance. He asked if more time would be available to review the record.

Ruth Spetter, Senior Deputy City Attorney, said applicant's approval would be needed for an extension of time as she understood the 120-day appeal period had already passed. She said she believed no new information was presented.

Ms. Spetter said the soils issue did come out at the hearing although Mr. Redfern was not present to give his testimony.

Mayor Clark said he was ready to vote now.

Commissioner Lindberg said his preference was to continue the matter because of the complexity of the issues and perhaps visit the site.

Commissioner Blumenauer said he would never visit a site again after what happened the last time.

Mayor Clark said it seemed to him this PUD reduced the number of possible lots while increasing open space. No permits would be issued unless the geology is sound and while there is a lot of talk about landslides, all the people talking about them live on the landslide areas themselves.

Commissioner Lindberg said a continuance might allow time for a satisfactory offer to be made to purchase this property for a public park.

Commissioner Blumenauer said no one wants development on these lots if it is not geotechnically sound. He suggested adding a condition to provide notice to interested parties so they could review the geotechnic information prior to final approval. He moved to add a condition that would permit people to review and comment on this information so that the Bureau of Buildings makes the best possible decision.

Mayor Clark clarified that the decision would still be made by the Bureau of Buildings.

Commissioner Blumenauer said yes, it was a technical decision that people should get notice of and have a chance to review. There are people who can provide technical information to those charged with making the decision to ensure it is the best decision possible.

Commissioner Kafoury seconded Commissioner Blumenauer's motion. Commissioner Lindberg indicated his support but asked about a LUBA decision Mr. Sullivan had mentioned that required that the PUD come back to Council.

Ms. Briggs said she did not know about the LUBA decision but could explain about the final development conference that is a requirement of a PUD. She said this conference is treated like a pre-application conference and the Planning Bureau notifies the affected neighborhood association and bureaus. At the conference, all the conditions of approval are discussed as to whether or how they will be met and applicants submit additional information, such as geotechnical data. They are then advised if there are any deficiencies or if more information is needed. After that, the final subdivision plat is submitted and that is not subject to a final hearing or appeal. Notice is not given to the neighbors but is sent to the Neighborhood Association.

Commissioner Lindberg asked if projects were ever denied for geotechnical reasons.

Ms. Briggs said the geotechnical engineer has said there are engineering solutions available at a cost and that soil stability has to be satisfied prior to final approval.

Commissioner Blumenauer said that people in the bureaus do not take geotechnic objections seriously.

Ms. Spetter said in reading Mr. Sullivan's memorandum it struck her that he is saying that failure to provide an opportunity to review final plan approval is improper. In earlier cases, the court has sustained our process. However, since she is not familiar with the Finley case cited, she will check into it and advise if a hearing is needed.

Mayor Clark noted the motion on the floor.

Roll was called and Commissioner Blumenauer's motion to add a condition was passed. (Y-4) He then moved to tentatively approve the Hearings Officer's decision with the additional condition. He suggested bringing the findings back to Council in three weeks to allow time to review some of the legal issues. Commissioner Kafoury seconded.

Commissioner Kafoury voiced her interest in protecting critical natural resources.

Commissioner Blumenauer said he wanted to make very clear his intention that we follow very carefully the development information and that there would be no interest in pro forma review. Further, he expressed his support for purchase of the property as a park but said he did not think the Council could hold up their decision today.

Commissioner Lindberg said it appeared the legal requirements were met but he hoped something would develop in the next three weeks regarding private purchase of the property.

The Clerk said Ms. Spetter had asked that the matter of the fee waiver be clarified.

Mayor Clark and Commissioner Kafoury said Council left it up to Ms. Spetter's office to decide. Commissioner Blumenauer said we will either collect a fee or we will collect information that the things that were represented to have happened did happen. He said he did not see any urgency and that Mr. Sullivan can be relied on to either get the information or pay the fee.

**Disposition:** Tentatively deny appeal, with condition. (Y-4) Planning Bureau prepare findings for January 30, 1991 at 2:00 p.m. City Attorney decide fee waiver.

#### REGULAR AGENDA

- 58 Appeal of Emily Roe against decision to deny application for variances in order to divide a lot into two parcels at 3230 SW Upper Drive (Hearing; VZ 155-90)

**Discussion:** Suzanne Searle, Planning staff, said this is an appeal against denial of proposed variances for the splitting of one through lot into two parcels. For parcel one, access on a private street has been requested. Most of the variances requested are for parcel two, including lot, yard and garage setback reductions. Two continuances of hearings before the Variance Committee were requested by Hal Hewitt, representing Ms. Roe. The first was granted but, the second time, the committee decided they had enough information on the case to proceed. They denied all variances except the request for access on a private street. Ms. Searle said the Committee found that sale of a portion of the lot was done without due process and any resulting hardship was self-imposed.

The applicant is appealing, contending that without the variances the lot is unbuildable and that they should be granted because of the site's difficult topography.

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Hal Hewitt, representing Ms. Roe, protested the Variance Committee's refusal to grant the second request for a continuance. He said Ms. Roe lives alone and because of awkward access to her home felt she could not maintain a residence there any longer. However, she wishes to stay in the neighborhood and would like to build a house on the lower portion of the site. The steepness of the site and the high noise levels because of the proximity to Canyon Road create practical hardships in trying to meet development requirements in the Code.

Mr. Hewitt distributed photographs showing Ms. Roe's property and similar properties where comparable variances had been granted.

Emily Roe, appellant, said because of the difficult access she wished to move from her current residence and build a home on level ground on the lower part of the property in order to be able to stay in the neighborhood.

Barbara Page spoke on behalf of her son, Scott Page, 3025 SW Upper Drive, who had attended the first Variance Committee hearing which was continued before he was allowed to state his objections. Ms. Page objected to contravention of the current zoning designation and said most of the neighbors also oppose granting the variances. She noted that Ms. Roe's hardship was self-imposed because it was the sale of her own property that left her with a lot too small to build on.

Commissioner Kafoury moved to uphold the variance committee and deny the appeal. Commissioner Blumenauer seconded.

Mayor Clark said this case was very clear and that Council had to follow the law.

Ms. Roe and Mr. Hewitt asked for a return of the filing fee because Ms. Roe was not granted her second request for a continuance by the Variance Committee.

Mayor Clark said she could write a letter outlining her reasons.

**Disposition:** Appeal denied. (Y-4)

At 4:25 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

*Cay Kershner*

By Cay Kershner  
Clerk of the Council



**JANUARY 10, 1991**

**THURSDAY, 2:00 PM JANUARY 10, 1991**

Beginning Thursday, December 20, 1990, and continuing through January 31, 1991, the City Council will hold special sessions for the purpose of discussing the Budget. The meetings will be held Thursday afternoons from 2:00 to 4:30 pm in Council Chambers, 1220 SW 5th Avenue, Portland, Oregon 97204.

These meetings are planned as work sessions and no public testimony will be accepted unless otherwise directed by the Council.