



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 20TH DAY OF MARCH, 1991 AT 9:30 A.M.

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

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

Mayor Clark proclaimed March 25, 1991 as Medal of Honor Day and presented the proclamation to Bruce Hagensen, Mayor of the City of Vancouver.

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

CONSENT AGENDA - NO DISCUSSION

406 Accept bid of Hannan-Mossman Construction, Inc., for Crystal Springs Rhododendron Garden pedestrian bridge for \$64,551 (Purchasing Report - Bid No. 102)

Disposition: Adopted; prepare contract.

407 Accept bid of Hildebrand Concrete Construction, Inc., for concrete deck at Wilson Pool for \$72,480 (Purchasing Report - Bid 106)

Disposition: Adopted; prepare contract.

408 Vacate a certain portion of N. Beech Street, N. Kaiser Center Drive, N. Montana Avenue and two alleys, under certain conditions (Ordinance by Order of Council; Second Reading Agenda 334)

Disposition: Ordinance No. 163958. (Y-4)

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- 409** Vacate a portion of NW 27 1/2 Street south of NW Nicolai Street, under certain conditions (Ordinance by Order of Council; C-9706)

Disposition: Passed to Second Reading.

- 410** Vacate certain portions of SW Canterbury Lane and a certain portion of SW 49th Avenue, under certain conditions (Ordinance by Order of Council; C-9732)

Disposition: Passed to Second Reading.

Mayor J. E. Bud Clark

- 411** Recommend approval of Oregon Business Development Loan Fund project for McCormick and Baxter Creosoting Company (Resolution)

Disposition: Resolution No. 34825. (Y-4)

- *412** Amend Contract No. 25970 with Cogan Sharpe Cogan for Portland Future Focus services (Ordinance; Contract No. 25970)

Disposition: Disposition: Ordinance No. 163959. (Y-4)

- *413** Amend Contract No. 26052 with Bureau of Governmental Research and Service, University of Oregon for Portland Future Focus services (Ordinance; Contract No. 26052)

Disposition: Ordinance No. 163960. (Y-4)

- *414** Settle the claims and Bureau of Labor and Industries Complaint of Kevin Spelts (Ordinance)

Disposition: Ordinance No. 163961. (Y-4)

Commissioner Earl Blumenauer

- 415** Accept completion of Contract No. 26241 with K & R Plumbing Construction Co. for construction of the SE Harrison St. and SE 155th Place sanitary sewer (Report; Contract No. 26241)

Disposition: Adopted.

- 416** Accept completion of work under Contract No. 26547 and make final payment (Report; Contract No. 26547)

Disposition: Adopted.

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- 417** Declare the purpose and intention of the City of Portland to improve streets within the Saratoga/Dekum District HCD improvement project and construct sumps (Resolution; Street; C-9742)

Disposition: Resolution No. 34826. (Y-4)

- *418** Call for bids for the NE 13th Avenue combined sewer relief system, Phase 6, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 163962. (Y-4)

- *419** Call for bids for the NE 13th Avenue combined sewer relief system, Phase 5, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 163963. (Y-4)

- *420** Amend an Agreement with Oregon Department of Transportation, Highway Division, to provide right-of-way services for the N. Marine Drive, Rivergate to Interstate 5 project (Ordinance; amends Agreement No. 21590)

Disposition: Ordinance No. 163964. (Y-4)

- *421** Revocable permit to Portland Oregon Visitors Association (POVA) to maintain banners on street light poles from April 19 to April 29, 1991 (Ordinance)

Disposition: Ordinance No. 163965. (Y-4)

- *422** Accept a temporary construction easement for the Adventist (#20) sanitary sewer project, granted by Martha K. Houser, authorize payment of \$100 (Ordinance)

Disposition: Ordinance No. 163966. (Y-4)

- *423** Accept two sewer easements for the Adventist (#20) sanitary sewer project, granted by David A. Carlberg and Jodee A. Carlberg, and Laila N. Hadeed and Najla Hadeed, authorizing total payment of \$415 (Ordinance)

Disposition: Ordinance No. 163967. (Y-4)

- *424** Accept one sewer easement and one temporary construction easement for the Linn Park (#39) sanitary sewer system project, granted by Robert E. Runyan, Valerie J. Runyan and Ralph O. Coiteux, authorizing total payment of \$2,390 (Ordinance)

Disposition: Ordinance No. 163968. (Y-4)

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- *425** Accept two sewer easements for the Linn Park (#39) sanitary sewer system project, granted by Kim W. Shelton, Christine A. Shelton and Thomas L. Dean, authorizing total payment of \$1,168 (Ordinance)

Disposition: Ordinance No. 163969. (Y-4)

- *426** Release the City's interest in a portion of a certain sewer easement, located near SW 25th Avenue adjacent to SW Multnomah Boulevard (Ordinance)

Disposition: Ordinance No. 163970. (Y-4)

- *427** Accept a public walkway easement agreement for the NE 16th Avenue and NE Multnomah Boulevard Street improvement project, granted by Lloyd Center Hotel Associates, and authorize signature by the City Engineer (Ordinance)

Disposition: Ordinance No. 163971. (Y-4)

Commissioner Dick Bogle

- *428** Execute a contract between the University Hospital of the Oregon Health Sciences University (OHSU) and the City of Portland for baseline physicals (Ordinance; Waive City Code 5.68)

Disposition: Ordinance No. 163972. (Y-4)

- *429** Contract with Lucky Landing Moorage for fire prevention and suppression services (Ordinance)

Disposition: Ordinance No. 163973. (Y-4)

Commissioner Gretchen Kafoury

- *430** Authorize extension of Agreement with Portland Public School District No. 1 to pay the City \$9,963 for reimbursement of costs associated with employing a person as City-School Liaison (Ordinance)

Disposition: Ordinance No. 163974. (Y-4)

Commissioner Mike Lindberg

- 431** Accept construction of Willamette Park restroom and parking lot as complete and release final payment and retainage (Report; Contract No. 26298)

Disposition: Adopted.

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- *432** Authorize an agreement with Portland General Electric Company (PGE) which designates the Energy Office as an Energy Analysis Provider, allowing the Energy Office to receive payment from PGE for conducting energy analysis studies (Ordinance)

Disposition: Ordinance No. 163975. (Y-4)

- *433** Renew Agreement with Hollywood Lights for the period March 15 through December 31, 1991 (Ordinance; Agreement No. 26171)

Disposition: Ordinance No. 163976. (Y-4)

- *434** Call for bids for the construction of Conduit 3 relocation, Phase 2, at Johnson Creek in Main City Park located in Gresham, Oregon, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 163977. (Y-4)

City Auditor Barbara Clark

- *435** Increase maximum payment on contract with Phillip Grillo from \$10,474 to \$20,474 (Ordinance; Contract 26563)

Disposition: Ordinance No. 163978. (Y-4)

REGULAR AGENDA

Mayor Clark asked that the emergency ordinances be taken up first, prior to the scheduled departure of Commissioner Blumenauer.

- *438** Continue negotiations to purchase a permanent sewer easement and a temporary construction easement for construction of the Linn Park (#39) sanitary sewer system project, commence condemnation proceedings, if necessary, and obtain early possession (Ordinance)

Disposition: Ordinance No. 163979. (Y-4)

Commissioner Dick Bogle

- *440** Execute a contract with State of Oregon for regional Hazardous Materials Response Team services (Ordinance)

Disposition: Ordinance No. 163980. (Y-4)

Commissioner Mike Lindberg

- *442** Withdraw territory from Hazelwood Water District, Powell Valley Road Water District, Rockwood Water District and Metzger Water District, effective July 1, 1991 (Ordinance)

Discussion: Commissioner Lindberg said Commissioners, or their staff, had been briefed on these withdrawals since the hearing held last week.

David Johns, Water Bureau Urban Services Coordinator, noted the concerns expressed last week in Council about these withdrawals by the Powell Valley Road Water District. He said the Bureau believes the withdrawals are essential in order to protect the City's right to serve citizens in the future. He said the withdrawal does not preclude Powell Valley from continuing to serve the residents it now serves. He added that City representatives met with the Powell Valley Board last week and will continue to work with them to protect the City's interests as well as ensure that service is not disrupted.

Disposition: Ordinance No. 163981. (Y-4)

Commissioner Blumenauer left Council and Mayor Clark noted that he would be listening to the meeting and would return as soon as possible.

- 404** **TIME CERTAIN: 9:30 AM** - Make certain determinations and findings related to and adopting the First Amendment to the South Park Blocks Urban Renewal Plan (Ordinance introduced by Mayor Clark)

Discussion: Cay Kershner, Clerk of the Council, noted that a replacement Exhibit A had been distributed.

Commissioner Bogle moved to substitute the exhibit. Commissioner Lindberg seconded and the motion carried. (Y-3)

Patrick LaCrosse, Portland Development Commission Director, asked that this matter be referred to the Mayor's office until some of the uncertainties about tax increment financing and urban renewal that have arisen since passage of Measure 5 have been resolved by the state legislature.

Mayor Clark asked about the effect of possible legislative actions that might negatively impact other City programs.

Steve Bauer, Director of the Office of Finance and Administration, said this is just the first victim of legislative delay on the issue of tax increment funding. He said he is concerned that recent legislative

committee action taking tax increment out of the omnibus tax bill will seriously hurt the City in its efforts to fund such projects as the East Side public safety facility.

Mayor Clark noted that the \$5,000,000 in the proposed budget for the East Side emergency communications facility would have to be deleted unless legislation was passed allowing tax increment financing outside the \$10 limit.

Disposition: Referred to Finance & Administration as amended.

- 405** Endorse activities modeled after the Downtown Housing Preservation Program in Central City Urban Renewal Districts (Resolution introduced by Mayor Clark)

Disposition: Referred to Finance & Administration.

Mayor J. E. Bud Clark

- 436** Investigate the feasibility of marketing and selling property on SW Slavin Road (Report)

Discussion: The Clerk noted that Commissioner Blumenauer left a memo stating his position on this matter.

Diana Holuka, Property Manager, Bureau of General Services, said the property on SW Slavin Road has not been used by the City for some time and is a candidate for surplus designation. A developer who owns property on Rocky Butte has inquired about trading it for the Slavin property, with the Rocky Butte property then going to the Parks Bureau. She asked for time to investigate the feasibility of such a trade, adding that she plans to return to Council for review and approval, if appropriate, before final action is taken.

Ken Benshoff, President of the Rocky Butte Preservation Society, supported the trade. He said acquisition of this land at the top of Rocky Butte is important to preservation of a valuable resource. He said development of the Slavin Road property would create more housing and twice as much tax revenue for the City as development of the Rocky Butte property. He added that the Rocky Butte property would be left in a natural state and would not add to Parks Bureau maintenance expenses.

Mary Goldberg, Madison South Neighborhood Association board member, read a letter of support from the Association, calling this a unique chance for the City to protect a panorama ranked second in the City as a scenic resource.

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Bob Sweeney, 3126 NE 85th, also supported acquisition of this property for public use.

Commissioner Lindberg said he was pleased at this solution to what had been a long and difficult process. He recognized Ken Benshoff as the driving force in moving this proposal forward.

Disposition: Adopted.

- S-437** Authorize submission of FY 1990-91 Spring Supplemental Budget to the Multnomah County Tax Supervising and Conservation Commission (Resolution)

Discussion: Commissioner Bogle moved to accept the substitute resolution. Commissioner Lindberg seconded and the motion carried. (Y-3)

Disposition: Resolution No. 34827 Substitute. (Y-3)

Commissioner Earl Blumenauer

- 439** Create the NE 105th Avenue and NE Knott Street Local Improvement District and provide for constructing a sanitary sewer system (Hearing; Ordinance; C-9733)

Disposition: Passed to Second Reading.

Commissioner Gretchen Kafoury

- 441** Direct Bureau of Planning to consider new scenic resources for inclusion in Scenic Resources Protection Plan and direct consideration of these resources as part of design review (Resolution)

Disposition: Resolution No. 34828. (Y-3)

City Auditor Barbara Clark

The Mayor suggested moving Item 444 ahead of 443.

- 444** Assess improvements of streets within the SE Mitchell/68th District HCD improvement project and construction of sumps (Hearing; Ordinance; C-9658)

Disposition: Passed to Second Reading.

- S-443** Create the NE Airport Way water and sanitary sewer Phase II Local Improvement District and provide for constructing water and sanitary sewer systems (Previous Agenda 396)

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Discussion: Mayor Clark said Commissioner Blumenauer had informed him of his position in case he did not return prior to the vote. The Clerk said a substitute had been distributed early that morning. Commissioner Lindberg moved the substitute. Commissioner Bogle seconded and the motion carried. (Y-3)

Craig Prosser, Chief Deputy Auditor, said the substitute answers concerns about how to finance this LID following passage of Ballot Measure 5, which has removed the ability of the City to finance local improvements through Bancroft bonding without a City-wide vote. He said the other alternative, special assessment financing, is less secure than Bancroft bonding and they are also concerned because this project is a bare-land LID without the value-to-lien ratio common to LIDs in improved areas.

Mr. Prosser said the Auditor's Office is now developing policies on all future LIDS but, in the meantime, the bureaus involved have tried to determine a way this LID can proceed. They recommend that the LID be formed but that it be reviewed in about four to six weeks, before construction bids are awarded and after the LID policies have been approved, to see if additional financial security is required before proceeding. Mr. Prosser explained the directives added to the substitute ordinance to address these points. He said there were also some minor word changes requested by the City Attorney.

Mayor Clark said the basic point is that in a normal LID you have real estate that is worth a lot more to secure the improvements. In this case, you have bare land with no improvements so there is a smaller amount of equity to secure them.

Mr. Prosser said that is correct and they want to make sure the margin is sufficient.

Dan Vizzini, Assessment Manager, explained the apportionment method used for determining property assessments. He said a setback of 300 feet is used in industrial areas as opposed to 100 feet in residential neighborhoods, based on determination of the limit of local benefit to property owners. In Airport Way, services are being built beyond the local benefit and these oversizing costs are being borne by City bureaus which will then recoup them at a later date when areas outside the 300 foot boundary tap into the lines. He said the Airport Way LID is the first of many they expect to have in this area as it develops. He added that the total cost of the Airport Way is a little less than six million dollars while the local component is something less than four million dollars, with the difference being absorbed by the City.

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Regarding financing, Mr. Vizzini said the changes in the ordinance are an attempt to ensure that long-term financing will be available to property owners.

Paul Shirey, Portland Development Commission, responded to Commissioner Blumenauer's request last week to consider alternatives to proceeding with the LID. He said they believe the LID proposal to be the most efficient and cost effective means of delivering services to the properties in the area. He said costs will be significantly greater if done later and in some other fashion. He said payment now by property owners of 57 cents per foot will leverage a return for them of \$1.20 per square foot.

Doug Butler, Portland Development Commission, addressed the question of using money from the Holman project to help pay for the service extensions in Airport Way. He said the Holman area has insurmountable problems which demand public acquisition of the property. Subsequently, an Urban Renewal Plan Amendment was adopted by the City approving the acquisition and redevelopment of this area. He said tax increment funds have never been used for a project such as Airport Way. The appraisal done of the Airport Way LID shows that the added services will add a value of \$1.20 per square foot in two years. On top of that, no payments are required for two years and PDC will then offer financing for a 20-year period to those unable to pay off their liens. He said use of tax increment financing would result in additional profit passing straight through to the property owners, which PDC believes is inappropriate.

Commissioner Bogle moved to overrule the remonstrances. Commissioner Lindberg seconded and the motion carried. (Y-4)

Disposition: Remonstrances overruled; Substitute Passed to Second Reading.

At 10:35 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 20TH DAY OF MARCH, 1991 AT 2:00 P.M.

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

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

- 446** Appeal of Corbett/Terwilliger/Lair Hill Neighborhood Association against decision to approve application of GAPO, Inc., for a PUD and Subdivision located at SW Viewpoint Terrace, North of SW Iowa (Previous Agenda 400)

Discussion: Commissioner Bogle announced that he had visited the site on March 19, 1991.

Edward Sullivan, attorney for appellants, introduced Architect John Paape, 5711 SW Corbett, who analyzed the drawings submitted by applicant last week. He said his evaluation indicates that 12 of the 23 units on the eastern facing are very similar in size and massing to those Council found objectionable in the townhouse development on SW Montgomery. He said the initial submittal to the Hearings Officer called for skirting on these units but there now seems to be a change to stilts or some sort of pole assembly.

Stephen Janik, applicant's attorney, objected to reopening the record and allowing additional testimony because the record had already been closed except for the submittal of the drawing, as directed by Commissioner Blumenauer. He said it is inappropriate for Council to accept the new information given today, which it has no way of knowing is accurate. He said skirting, which is not part of their proposal, is a design issue and not a condition of approval for a PUD. He said if Council wanted to get some advice from the Design Commission on some of the design issues, his client would be happy to work on that process.

Commissioner Bogle asked if Council erred in listening to the new testimony.

Pete Kasting, Chief Deputy City Attorney, said Mr. Sullivan would argue that the points he and his architect made were in response to the drawings submitted by Mr. Janik last week. He said the statement has been made and Council now has to determine how much

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weight to give these comments and decide for itself if they are relevant.

Commissioner Blumenauer said he would like to make design review a part of this in order to avoid the kind of visual impact that they have seen on the SW Montgomery project. He moved to add the conditions listed in his memo which would provide for design and geotechnical reviews prior to issuance of any building permits and require a performance bond for construction of public improvements if completed after subdivision plat approval. Commissioner Bogle seconded. (Y-4)

Commissioner Lindberg asked if the request for Design Commission review meant that its members would vote to approve the project and, if that were so, could such a decision then be appealed to Council.

Commissioner Blumenauer said no, he is not interested in opening up the issue for four or five additional avenues of review, but only in order to get feedback to Council.

Mayor Clark said he hopes that, with good design, the kind of development on Montgomery Drive can be avoided.

Commissioner Blumenauer moved to tentatively deny the appeal and grant approval with the additional conditions. Commissioner Bogle seconded.

Commissioner Lindberg said compatibility with the neighborhood was his main concern and, while Commissioner Blumenauer's conditions help, he is still uncomfortable with the project and will vote no.

Disposition: Appeal denied tentatively; Approve application with conditions (Y-3; N-Lindberg); Prepare Findings for April 10, 1991 at 2:00 p.m.

- 448** Tentatively grant appeal of University of Portland and approve, with conditions, application for 5,000 permanent seats at the existing soccer field at 5000 N. Willamette Blvd. (Findings; Previous Agenda 367)

Discussion: Cay Kershner, Clerk of the Council, said a request had been made for a one week continuance.

Disposition: Continued to March 27, 1991 at 2 p.m.

Commissioner Dick Bogle

- 449** Liquor license application for Buzz and Sandi Siler, dba Marina Market at Riverplace, 1811 SW River Drive #600, package store liquor license, change of location; favorable recommendation (Report)

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Discussion: The Clerk said this should be continued to March 27 at 2 p.m.

Disposition: Continued to March 27, 1991 at 2 p.m.

- 450** Liquor license application for Le Rho Chateau Ltd., dba Bill's Kwik Mart, 3510 NE Martin Luther King, Jr. Blvd.; favorable recommendation, with conditions and a letter of warning (Report)

Discussion: Henry Emrich, License Bureau, said this outlet has had a troublesome history of altercations and use of excessive force as well as a pattern of failure to prosecute trouble-makers and eliminate street drinking in the immediate area of the store. He noted that in 1990 a person died because of an altercation at the store, adding that the grand jury declined to charge any person with any crime related to the incident.

Mr. Emrich said the licensee has agreed to hire professional security, stop selling fortified wines, and support the goals of the inner North/Northeast impact area. He added that the King Neighborhood Association opposes a favorable recommendation. The License and Police Bureaus, however, recommend a favorable recommendation with conditions and a letter of warning.

Rod Beard, Police Bureau, said the licensee has been making a sincere effort to improve the severe problems at this location. He said in the homicide incident, the grand jury determined that the cause of death was not the fight but the intoxication of the victim, who suffocated because he was too intoxicated to get up. He said the choice between a favorable and unfavorable recommendation was very difficult.

Commissioner Blumenauer said he thought the License and Police Bureaus had done a reasonable job of balancing the interests involved.

Commissioner Bogle said this was a tough decision but the store did provide a convenience for neighbors as Police Officer Beard had noted.

Mayor Clark said he appreciated the perserverance of the owners in trying to solve these problems.

Disposition: Favorably recommended with conditions and a letter of warning (Y-4)

Commissioner Gretchen Kafoury

- 451** Amend Comprehensive Plan Policy 3.6 (Neighborhood Plan) by adding the Policies and Objectives of the Brooklyn Neighborhood Plan (Second Reading Agenda 398)

Disposition: Ordinance No. 163982. (Y-4)

- 452** Amend Comprehensive Plan Map and the Official Zoning Maps for: Lots 7, 8, 9 and 10, Block 1, Smiths Subdivision, from CG to R2.5; Lots 1, 2, 6 and 10, Block 27, and Lots 5, 6, 7 and 8, Block 28, Feurers Addition, from CS to R2.5; and Lot 15, Block 1, and Lots 4 and 5, Block 4, Reynolds Addition, from CN2 to R1 (Second Reading Agenda 399)

Disposition: Ordinance No. 163983. (Y-4)

- 445** **TIME CERTAIN: 2:00 PM** - Appeal of the Bureau of Parks against the Hearings Officer's decision to deny their application for a conditional use to construct a new aquatics facility at Matt Dishman Community Center, 77 NE Knott (Hearing; CU 103-90)

Discussion: Pete Kasting, Chief Deputy City Attorney, noted that the opponents' attorney has raised the issue of contacts between Council members and other City employees relating to this appeal.

Commissioner Lindberg said, because the Parks Bureau is under his supervision and on the advice of City Attorney, he has had no contact with Parks Bureaus employees other than through the regular staff land-use briefing. He said his staff met with people on both sides to try to work out their disagreements.

Mr. Kasting said Council also needs to respond to the request for a remand to the Hearings Officer in order to review new evidence that has arisen since the time of the original hearing. Council may vote to do that or, alternatively, it may hold the hearing as scheduled today but also grant a continuance to allow the parties to address the new evidence at that later date.

Commissioner Lindberg said he opposed the remand and would like to proceed with the hearing today but keep the record open to respond to the new information on transportation.

Mr. Kasting said state law would require a continuance. He said unless a motion was made to remand the case to the Hearings Officer, the request would be deemed denied.

Tom McGuire, Planning Bureau, reviewed this application for a conditional use to expand pool facilities at the Matt Dishman Community Center. He noted that staff had recommended approval of the request and five of the seven variances, but had added six conditions relating to traffic and parking. The Hearings Officer, however, denied the conditional use and subsequently all the variances, stating that the traffic and parking impacts had not been adequately addressed. Appellants contend that the conditions

recommended by Transportation Planning provide a reasonable basis for approval through mitigation of impacts on the neighborhood. They also assert that the position of the Eliot Neighborhood Association was misrepresented to the Hearings Officer, citing a vote by the whole board to approve the conditional use with concerns.

Mr. McGuire reviewed the requested variances and said, if the application is approved, Council will also have to vote on the variances.

Charles Jordan, Parks Bureau Director, said they plan to construct a year-round covered pool at this site using 2.25 million dollars in funds approved in the Parks levy plus a \$250,000 donation from Nike and a National Park Services grant for another \$250,000. He described renovation plans for the facility and said they have no objection to a continuance to see if agreement can be reached with the neighbors.

Jim Figurski, Project Manager for the Matt Dishman project, disagreed with the Hearings Officer about the lack of traffic analysis, arguing that he had overlooked information in the application about the potential impacts to the neighborhood as well as the six conditions proposed by the Office of Transportation Planning. These conditions, he said, respond directly to neighborhood concerns and all are conditions the Parks Bureau intends to meet fully. He said additional information gathered since the hearing also shows that the impact will be insignificant and that estimated vehicle trips per day do not exceed the acceptable normal limits for a local service street. Also, since the time of the hearing, the Parks Bureau has met four of the six conditions requested, including preparation of a draft Transportation Demand Management Plan involving neighborhood associations in a process to monitor and review proposed methods to mitigate potential negative impacts.

Mr. Figurski asked for reversal of the Hearings Officer's decision and for approval of the requested variances.

Paul Norr, attorney representing Susan Hartnett and Howard Loucks, nearby residents, asked that the application be remanded back to the Hearings Officer to allow him to address the transportation plan and the seven major variances, which he did not address in his original decision. He said the traffic and transportation information was not available to the Hearings Officer and that is why he denied the application and did not review or analyze the variances. Mr. Norr said his clients are not opposed to the project but are looking for adequate mitigation and protection from its impacts. He requested that, if the matter is not remanded, a three-week continuance be granted to allow proper analysis of the new information, which was not filed in a timely manner.

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He said the arterial streets policy requires preparation of a detailed traffic study if traffic impacts of more than 20 percent to a site are projected. This was not done. If Council agrees to a continuance, he asked it not require testimony from the opponents until the next hearing. If Council does not remand the appeal, Mr. Norr asked for an unlimited amount of time for his presentation since neither the traffic information nor the seven major variances have been adequately addressed on the hearings officer level.

Mr. Kasting said state statutes provide that if an applicant submits documentation that was not available prior to the hearing, then the other parties have a right to a continuance to review and respond to the new information. The new documentation, in this case, is the traffic impact study. He said he was not aware of new documentation on the variances and believed Council could respond to these today. He noted that while Council imposes fairly tight limits on oral presentations, there is no limit on written material and in the past Council has directed parties in such cases to put it all in writing.

Mayor Clark asked if Council would end up listening to a bunch of empty testimony because there had been no time to analyze the traffic plan.

Mr. Kasting suggested Council may wish to listen to testimony from those present today but needs to continue the matter to allow responses to the traffic study.

Mr. Norr said the traffic impacts pervade every issue in this case, including the variances.

Commissioner Lindberg said he thought the traffic engineer in Transportation Planning had analyzed and approved the project initially.

Mr. Figurski said information was available about traffic at the initial hearing and that the Bureau of Transportation had recommended approval and cited specific conditions based on its analysis of the information provided.

Mr. Norr said if he was wrong and there was a traffic analysis in the Hearings Officer's report, he would like someone to pull it out and show him. He said all he saw was one sheet noting bureau approval.

Mr. Figurski said no traffic study was included in the conditional use permit application but the conclusions were included within that report and that is why, subsequent to the conditional use hearing, additional studies were done.

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Mr. Kasting clarified that, while there is some evidence in the record relating to traffic, Mr. Norr's point is that it was not sufficient to persuade the decision maker, in this case the Hearings Officer, that the approval criteria had been satisfied.

Council discussed their preferences for proceeding and Mr. Norr indicated that he would prefer to make his presentation at the next hearing. He requested that the matter be set over to April 10 and asked how much time he would be allowed.

Commissioner Blumenauer proposed allowing Mr. Norr and his traffic engineer a total of 20 minutes. The other Council members concurred and agreed to continue the hearing to Thursday, April 11 at 2:00 p.m., Time Certain.

Mayor Clark asked those who wished to speak today to give their testimony. Those who prefer can wait until the next hearing date.

Individuals speaking in support included:

Charles Flake, NE Coalition of Neighborhoods
Laurie Fenk, 841 N. Knott
Rosie Lovings, 5542 N. Haight
Betty Walker, 3124 NE 17th
Gary Hampton, 841 N. Knott
Kim Lathrop, 7230 SE Market
Martha Peck Andrews, 2025 SE Grand, member of Citizens Advisory
Task Force of Matt Dishman
Mike Doyle, 2337 NE 16th
Jerry Van Horton, 2313 NE Martin Luther King Blvd.

Supporters stressed the need for the new facility and its importance to the community. Many said the traffic impacts were being blown out of proportion.

Lee Perlman, 512 NE Brazee, supported the new facility but said staff did not do a sufficient job in trying to mitigate the impacts on the neighborhood.

Mr. Figurski asked for some time for rebuttal in order to clear up some misconceptions.

Mr. Kasting suggested waiting until all of the testimony has been completed. Commissioner Lindberg told him to put his comments in the form of a memorandum.

Mayor Clark suggested closing off the end of Knott at Rodney and putting in a skate board park.

Disposition: Continued to April 11, 1991 at 2 p.m. Time Certain.

- 447 Appeal of Fredrick M. Schuerman against Hearings Officer's decision to approve the application of Miken Development & Pony Soldier-Portland International for modified access/driveway/parking at NE 101st and Sandy Blvd. (Hearing; SRZ 58-90)

Discussion: Edgar Waehrer, Planning Bureau, reviewed this appeal concerning modification of an access drive at NE 101st and Sandy Boulevard. He said Pony Soldier and Elmer's, owned by Miken Development, were originally approved in 1989 with a full dedication of NE 101st back to the mobile home park in the rear. Miken was given the option of either developing 101st as a private roadway or as a publicly dedicated street. When the building permit was approved, Miken Development indicated a dedicated version of NE 101st on their plan. Subsequently, Hampton Inn submitted a proposal for the site immediately east of the rear portion of the Elmer's site. In their proposal they show the main entrances to be on 102nd but also show entry/exit points on the potential dedicated right-of-way on 101st. Miken then submitted another site review application revising its plans for 101st. At this time, they proposed to dedicate a portion of 101st and then provide a private drive connection to the mobile home park north of Elmer's. Staff said they would approve that if a lot line adjustment was made to include the private drive as part of the mobile home parcel in order to give it frontage on the public right-of-way. That administrative decision was appealed by Frederick Schuerman, developer of the Hampton Inn project, and upheld by the Hearings Officer. Mr. Waehrer said the result of approving this propoosal means that the Hampton Inn site has no access to the 101st and Sandy intersection.

Mr. Waehrer said appellant contends that full dedication of 101st was required as part of the building permit and that his plans relied on that portion being a dedicated street.

Mayor Clark asked who would pay for improvements if it were a full dedicated street.

Mr. Waehrer said he understood appellant had made an offer to pay for that improvement, although the details may be in dispute.

J. David Bennett, attorney for appellant, said this is not a sham appeal: all his client is trying to do is have a dedicated street where one ought to be. He said he cannot say that either of applicant's proposals do not meet the criteria, but believes that Comprehensive Plan goals are far better met under the original application than in the amended one. He said his client has offered to pay the cost of improving the entire fifty feet of the street. He said this not only

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would benefit his client but also the City and Miken Development, which would not have to pay for the improvement. He said if Miken had originally indicated that the street was not to be fully dedicated, Hampton Inn would not have designed their property showing access to it. He contended that Miken only changed its mind when it saw that Hampton Inn planned to use this portion of the street. Mr. Bennett said his client relied on access to the roadway when he drew up his plans and contended that there should be some point at which an applicant loses his right to amend an already-approved plan.

Mr. Bennett asked Council to reverse the Hearings Officer's decision and provide that the street be dedicated on condition that his client pay for all improvements of 101st back to the trailer park. He said if the appeal is denied, his client will still build there, making adjustments as needed and probably blocking access of the mobile park to 102nd.

Tim Ramis, attorney for Miken/Pony Soldier, said the original plan included a right-of-way all the way back but they then found it overlapped a publicly dedicated portion of the street, thus requiring a street vacation. To avoid this time-consuming process and avoid front-loading all the costs onto Elmers, they decided upon a solution that includes a 110 foot public street with the balance a private street that can be improved later. This meets all City criteria, as appellant admits. The other issues raised by appellant, such as compliance with Comprehensive Plan policies and charges of bad intent by Miken Development, were found by the Hearings Officer to be irrelevant in a site review case.

Mr. Ramis noted that the Hearings Officer had stated that the point of the appeal was to force one property owner to dedicate right-of-way in order to benefit another's project, a result the Code does not require. He asserted that Miken's revised design, by limiting left turns across Sandy, is actually superior to the original one. Regarding the issue of reliance by appellants on the original plan, Mr. Ramis said that during Hampton Inn's site review process, the Hearings Officer warned that 101st might not be developed as a public right-of-way, also noting that 101st was not necessary to their operation. Regarding Mr. Schuerman's offer to pay the costs, he said his client was unable to get anything specific. He said Miken would be willing to dedicate the balance of 101st as a public right-of-way on condition that Hampton Inn pay for the additional improvements and also dedicate right-of-way across the back of its property connecting 101st and 102nd.

Mr. Kasting said he did not see how Council could impose such a condition as part of this appeal.

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Mr. Ramis suggested developing a contingent condition which would require Miken Development to dedicate the property on 101st if, before the LUBA appeal runs, the appellant dedicates access across the back between 101st and 102nd and agrees to pay the cost of building the improvement.

Mr. Kasting said both technical and timing issues would need to be resolved and if Council decided it wanted to pursue the approach made by Mr. Ramis, any decision would need to be tentative.

Mr. Waehrer said if Council wanted to pursue that option, it might want to hear from the Bureau of Transportation because the overall publicly dedicated street system would still be incomplete and unconnected under this proposal. He said the key element is what happens to the portion of 101st that would of necessity need to continue north from the south edge of the mobile home park up to the proposed newly dedicated street at the north end of Hampton Inn.

The Mayor noted, and Mr. Waehrer agreed, that it looked like this portion was about 400 feet long.

Mr. Ramis said if the dedication were made by Hampton Inn across the back of their property, Miken would be happy to dedicate the rest of the portion they control, the extra 400 feet referred to.

Mr. Bennett said a distinction needed to be made between 101st and the connector between 101st and 102nd. He said 101st is already used as a roadway and 15 feet of it is already dedicated. The 35 feet that Miken would dedicate, and Hampton Inn would pay to improve, is not doing anything different than is already being done. However, he said, Miken is asking that his client give some of his property away for nothing for use as a connector and improve it solely for the benefit of Miken. He said he did not believe this was an appropriate condition. He said the parties could talk later about selling the land connecting 101st and 102, thus making the mobile home park property owned by Miken much more valuable. He said he believes Miken changed its plan not to save costs, but to force his client to dedicate the piece connecting 101st and 102nd.

Mr. Ramis said Mr. Bennett's plan only works if all the right-of-way is dedicated. He said if the parties cannot agree on this condition, the decision must be made within the Code requirements and the Hearings Officer's decision should stand.

Commissioner Blumenauer asked why the street should not be dedicated.

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Mr. Ramis said there is a very long history here but the critical problem is that unless the full area is dedicated, Miken will end up paying most of the cost. Hampton's proposal to pay for a small linkage up to their driveway is not a fair apportionment. His client believes it is appropriate to pay its fair share when it develops the back portion of its property but not now.

The Mayor said Hampton Inn offered to pay up to the point at the backend of the mobile home park.

Mr. Ramis said the real question is fair allocation overall which, at this point, they have been unable to achieve. If Hampton Inn builds a small portion going to their driveway and Miken has to build the rest all the way back and acquire right-of-way across the back portion and then build the improvements to the transportation system when that portion develops, that will not be a fair allocation of costs.

Commissioner Blumenauer said he was voting no. He said this was the first time the issue of reliance has come to his attention and, while this is a good point, he does not believe it is something Council can fix it the midst of a complicated dispute. He said the Planning Bureau might want to see if this is a legitimate Code issue. He said he agreed with the Hearings Officer's decision.

Commissioner Bogle expressed regret that the parties were unable to resolve their dispute, but felt he had no choice but to vote no.

Mayor Clark said it points up the difficulty of developing individual parcels. He said he hoped the parties could reach an agreement as it would serve the City best to complete the street system.

Mr. Kasting said the vote should be tentative to address the issues raised.

Disposition: Appeal denied tentatively (N-4); Prepare Findings for April 3, 1991 at 2 p.m.

At 4:40 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council

MARCH 21, 1991

THURSDAY, 2:00 PM, MARCH 21, 1991

DUE TO THE LACK OF AN AGENDA

THE MEETING WAS CANCELLED