



CITY OF

**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF AUGUST, 1991 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Bogle, Kafoury and Lindberg, 5.

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

On a Y-5 roll call, the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 1442** Accept bid of 3D Manufacturing Co., Inc., for furnishing three 1500 GPM Triple Combination Pumpers for \$585,684 (Purchasing Report - Bid 6)

**Disposition:** Adopted; prepare contract.

- 1443** Accept annual copier maintenance bids of American Business Machines for \$55,200 and Automated Office Machines for \$63,720 (Purchasing Report - Bid 7A)

**Disposition:** Adopted; prepare contract.

- 1444** Vacate two portions of N Decatur Street between N Pittsburg Avenue and N Burlington Avenue, under certain conditions (Ordinance by Order of Council; C-9757)

**Disposition:** Passed to Second Reading August 28, 1991 at 9:30 a.m.

**Mayor J. E. Bud Clark**

- 1445** Confirm appointments of Pat Harrington and Annie Painter and the reappointments of Isabella Chappell, Michihiro Kosuge, Virginia Willard and Clark Worth to the Metropolitan Arts Commission (Report)

**Disposition:** Confirmed.

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**1446** Confirm reappointments of Dale A. Fox, J. D. Kuhn and Eric G. Nickerson to the Business License Appeals Board (Report)

**Disposition:** Confirmed.

**\*1447** Issue Economic Development Revenue Bonds, 1991 Series A, in an amount not to exceed \$4,900,000 (Ordinance)

**Disposition:** Ordinance No. 164552. (Y-5)

**\*1448** Pay claim of Terrence Moore (Ordinance)

**Disposition:** Ordinance No. 164553. (Y-5)

**\*1449** Extend the current Excused-Time (E-Time) Policy for City employees for the period of July 1, 1991 through June 30, 1992 (Ordinance)

**Disposition:** Ordinance No. 164554. (Y-5)

**\*1450** Authorize the Personnel Director to execute a labor agreement between the City of Portland and the District Council of Trade Unions, relating to the City's implementation of the new state law regarding Commercial Drivers' licenses (Ordinance)

**Disposition:** Ordinance No. 164555. (Y-5)

**\*1451** Increase contract for structural engineering services for Autoport structural repair (Ordinance; amend Contract No. 26713)

**Disposition:** Ordinance No. 164556. (Y-5)

**Commissioner Earl Blumenauer**

**1452** Approve application for encroachment in the Public Right-of-Way at NW 1st Avenue under the Burnside Bridge Skidmore Building (Report)

**Disposition:** Approved.

**1453** Accept completion of the Columbia Blvd. Wastewater Treatment Plant maintenance and stores facility, approve Change Orders 2 through 8 and make final payment (Report; Contract No. 26257)

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**1453** Accept completion of the Columbia Blvd. Wastewater Treatment Plant maintenance and stores facility, approve Change Orders 2 through 8 and make final payment (Report; Contract No. 26257)

**Disposition:** Accepted.

**\*1454** Authorize extension to Legal Services Agreement with Williams, Fredrickson, Stark, Weisensee & Goldsmith, P.C. (Ordinance)

**Disposition:** Ordinance No. 164557. (Y-5)

**\*1455** Contract with KPFF Consulting Engineers for professional engineering services and provide for payment (Ordinance)

**Disposition:** Ordinance No. 164558. (Y-5)

**\*1456** Authorize an agreement with OTAK, Inc., to provide engineering design, plans, specifications and estimates for the construction of the 15th/16th, 16th Two-Way Project (Ordinance)

**Disposition:** Ordinance No. 164559. (Y-5)

**\*1457** Amend Agreement between the Portland Development Commission and the Bureau of Transportation to provide for additional work in connection with the 15th/16th, 16th Two-Way Project and provide additional funding (Ordinance; amend Contract No. 26434)

**Disposition:** Ordinance No. 164560. (Y-5)

**\*1458** Continue negotiations to purchase three sewer easements for the Adventist (#20) Sanitary Sewer Project, commence condemnation proceedings, if necessary, and obtain early possession (Ordinance; C-9743)

**Disposition:** Ordinance No. 164561. (Y-5)

**\*1459** Accept a sewer easement for the NE Sunderland Avenue and NE 33rd Drive Sewer Project, granted by the Port of Portland, at no cost to the City (Ordinance)

**Disposition:** Ordinance No. 164562. (Y-5)

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- \*1460** Accept two sewer easements for the NW Harbor Boulevard Sewer Reconstruction Project, granted by Multnomah County, James D. Callaway and Priscilla J. Lake, authorizing total payment of \$315 (Ordinance)

**Disposition:** Ordinance No. 164563. (Y-5)

- \*1461** Accept a sewer easement for the NE Airport Way II, NE 138th to NE 181st Avenues Water and Sanitary Sewer Project, granted by Winmar Pacific, Inc., authorizing total payment of \$1,372 (Ordinance; C-9704)

**Disposition:** Ordinance No. 164564. (Y-5)

**Commissioner Gretchen Kafoury**

- \*1462** Contract with Raphael House to provide assistance for victims of domestic violence in the amount of \$14,000 and provide for payment (Ordinance)

**Disposition:** Ordinance No. 164565. (Y-5)

- \*1463** Contract with Portland IMPACT for \$10,800 for operation of a family day shelter and provide for payment (Ordinance)

**Disposition:** Ordinance No. 164566. (Y-5)

- \*1464** Contract with REACH Community Development, Inc. (REACH) for \$218,500 for the Housing Reclamation project and provide for payment (Ordinance)

**Disposition:** Ordinance No. 164567. (Y-5)

- \*1465** Contract with Multnomah County for \$79,000 for the Emergency Shelter for Homeless Youth and provide for payment (Ordinance)

**Disposition:** Ordinance No. 164568. (Y-5)

**Commissioner Mike Lindberg**

- 1466** Approve change order on contract with Grasle Electric for installation of park lighting (Report; Contract No. 27111)

**Disposition:** Approved.

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**\*1467** Designate and assign certain City-owned Harney Park property as public street right-of-way for the widening of SE 67th and 70th Avenues and SE Harney Street (Ordinance)

**Disposition:** Ordinance No. 164569. (Y-5)

**\*1468** Lease of Oregon Department of Transportation property for use by Portland International Raceway (Ordinance)

**Disposition:** Ordinance No. 164570. (Y-5)

**City Auditor Barbara Clark**

**\*1469** Reduce systems development charge at 16211 SE Foster Road (Ordinance; amend Ordinance No. 161974)

**Disposition:** Ordinance No. 164571. (Y-5)

**REGULAR AGENDA**

**Commissioner Earl Blumenauer**

**S1470** Agreement with Tri-Met providing for City design and construction of corner ramps at certain bus stops (Ordinance)

**Disposition:** Cay Kershner, Clerk of the Council, said a substitute had been filed.

Commissioner Blumenauer moved the substitute. Commissioner Bogle seconded and the motion carried. (Y-5)

Commissioner Blumenauer said this agreement will allow the City an 80 percent match to build ramps for handicapped access around Tri-Met bus stops.

**Disposition:** Passed to Second Reading, August 28, 1991 at 9:30 a.m.

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**Commissioner Gretchen Kafoury**

- \*1471** Contract with the Ecumenical Ministries of Oregon for the Portland Housing Center for \$65,000 and provide for payment (Ordinance)

**Discussion:** Commissioner Kafoury brought Council up to date on the new Housing Center that opened in July. She said this \$65,000 is the contribution from Housing and Community Development and that the remainder of the Center's budget has been raised from other sources. She commented that the City is extremely fortunate to have Ecumenical Ministries take over this contract.

Rodney Page, Ecumenical Ministries Director, said they hope to take this money and translate it into homes for people who have never had them.

**Disposition:** Ordinance No. 164572. (Y-5)

**City Auditor Barbara Clark**

- 1472** Approve June 1991 sidewalk maintenance bills for assessment (Hearing on Report)

**Discussion:** The Clerk said one remonstrance had been filed and that the Auditor's Office recommended that it be referred to the Commissioner of Public Works and the balance of the assessments be approved. Commissioner Blumenauer so moved. Commissioner Kafoury seconded and the motion carried. (Y-5)

**Disposition:** Remonstrance referred to Commission of Public Works. Approved. (Y-5)

- 1473** Assess property for sewer system development charges through June 30, 1991 (Hearing; Ordinance; Z0131, Z0133, Z0134)

**Disposition:** Passed to Second Reading August 28, 1991 at 9:30 a.m.

- 1474** Assess the improvement of SW 47th Avenue, SW Vacuna Street, SW Coronado Street and SW Buddington Street, and construction of storm sewers (Hearing; Ordinance; C-9400)

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**Discussion:** Mayor Clark asked if anyone wished to speak, noting that a number of remonstrances had been filed.

The Clerk said the Auditor's Office recommended that they be overruled and the ordinance passed to Second Reading. Commissioner Bogle so moved. Commissioner Lindberg seconded and the motion carried. (Y-5)

**Disposition:** Remonstrances overruled. Passed to Second Reading August 28, 1991 at 9:30 a.m.

**1475** Assess property for sidewalk maintenance through April 30, 1991 (Previous Agenda 1437)

**Disposition:** Ordinance No. 164573 as amended. (Y-5)

**1476** Assess property for sewer system development charges through February 28, 1991 (Second Reading Agenda 1439)

**Disposition:** Ordinance No. 164574. (Y-5)

At 9:47 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF AUGUST, 1991 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Bogle, Kafoury and Lindberg, 5.

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

**1477 TIME CERTAIN: 2:00 PM** - Consider Findings in response to LUBA rulings in appeal of Joseph Angel of denial of a zone change to develop a Burger King at SE 39th and Hawthorne (Hearing; Previous Agenda 1167)

Pete Kasting, Chief Deputy City Attorney, said this is on remand from the Land Use Board of Appeals which found there were two problems with the original Council decision. First, LUBA found there had not been an adequate opportunity for the parties to rebut observations made by Council members about their site visits or to inquire into their possible ex parte contacts. Today that opportunity will be provided. Secondly, because LUBA felt there were some defects in the first set of findings, Council will need to reconsider the evidence before it and adopt revised findings.

Stephen Janik, attorney for LUBA appellant Joseph Angel, queried Commissioners Blumenauer, Bogle and Lindberg and Mayor Clark individually about their site visits and ex parte contacts.

Mr. Janik also asked if they considered themselves experts in making judgments about transportation levels of service. In response to his questions, Council members provided information as to the frequency and timing of their site visits as well as their observations about traffic flow and congestion. They also responded to questions about their ex parte contacts, and about their review of the record.

Mr. Sullivan, attorney for appellants Lois Wakelin/Gary Marshel, noted that one of the controversies in this case is whether the Council made independent judgments based on its own observations. He asked Council if any finding or conclusion was based solely on a Council member's own observations or



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contacts. He said unless he heard otherwise, he would assume they were not and that the observations were collaborative in nature rather than independent. He also asked that Council not take into account any of former Commissioner Koch's observations.

Council members replied that their decisions were not arrived at solely on the basis of observations made during their site visits.

Mr. Kasting asked Mr. Janik and Mr. Sullivan if they had adequate opportunity to inquire about ex parte contacts and site visits. Hearing no objections, he said rebuttal could then begin. Following that, the Council could move on to consider the findings.

Mr. Janik asked that Wayne Kittelson, Kittelson and Associates, be allowed to rebut the statements made by Council members about their observations.

Mr. Kittelson, Kittelson & Associates, said he noted that Council members in their comments relating to capacity had focused on a single approach, the traffic that passed by 39th. He said this was not a significant analysis of a signalized intersection such as 39th and Hawthorne, adding that the cumulative effect of all the traffic on all the approaches must be considered in deducing how well the intersection operates. He said the key thing that could not be picked up through site observations is how the proposed mitigation would affect the operation of the intersection. He recalled that two modifications had been recommended: 1) lengthening the signal timing and; 2) adding protected permissive phasing for the left turn into the proposed Burger King. He said both of these changes would significantly improve traffic at that intersection so that it would operate better with Burger King in place than it does now, without Burger King, and would also solve the problem of queue spillback. He said no other traffic expert presented independently collected traffic data for these movements and disputed the applicability of the data submitted by the opponents.

Mr. Sullivan said Mr. Kittelson's information is the same as he presented before and questioned the relevancy of his response to the observations of Council members. He said no one seriously disagrees that the intersection is at capacity and challenged Mr. Kittelson's argument that by just changing the signal time one could increase capacity and reduce the queuing. He said this argument is what Council rejected before. Regarding the data collection,

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Mr. Sullivan said the issue is not the data itself but the interpretation to be given to it. He then asked Robert Keech to respond to the traffic issues.

Mr. Janik asked why Mr. Sullivan should be given the opportunity to rebut observations made by Council members that support his position.

Mr. Sullivan said under ORS 227.178, all parties have the opportunity to respond.

Mr. Janik said there is a big difference between rebuttal and response and accused Mr. Sullivan of rearguing the case.

Mr. Sullivan said Mr. Keech's testimony, and the additional written materials he submitted, were in response to Mr. Kittelson's testimony. Mr. Kasting then agreed to accept for the record two written documents from Mr. Keech, which he labeled Exhibit A and B.

Mr. Janik objected to the addition of these documents. He said they are not rebuttal but appear to be new information beyond the scope of the remand.

Mr. Sullivan argued that the documents are rebuttal evidence and noted that Mr. Janik had asked for a set over to today so that Mr. Kittelson could be present. He said he therefore prepared a response to what they expected Mr. Kittelson would state.

Mr. Janik contended that LUBA said Council had to make statements about their site observations and ex parte contacts which his clients could rebut if they did not agree. He protested allowing Mr. Keech to rebut his rebuttal.

Mr. Kasting noted his continuing objection for the record.

Mr. Keech maintained that an analysis of traffic at 39th & Hawthorne indicates it is currently at or near an acceptable level of capacity and described various factors that constrain the traffic flow. He contended that the mitigation measures proposed by the applicant would aggravate the effect on traffic and safety, particularly at the uncontrolled crosswalk. He said he believes the applicant seriously underestimates the volume the drive-up window will have and called the single access a cause for concern.

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Ky Holland, Richmond Neighborhood Association, asked that three videotapes be placed in the record, including one clip that has been disputed. He said the other tapes were made in August.

Mr. Janik objected. He said the disputed tape was not part of the record before and the new tapes can in no way be taken as rebuttal. He said if they are allowed in the record, he will request a continuance in order to rebut new information.

Mr. Holland agreed to withdraw the tapes. He contended that safety issues make the left hand turn lane an unacceptable alternative to solving the turning problems at the intersection. He said there is no evidence that increased signalization will work and that the decision should not be based on a specific cycle time. He said they also have the same concern about the new lights proposed for the turning movements. He countered Mr. Kittelson's contention that they had conducted no independent traffic analysis and said there was no evidence that the 10 intersections that Mr. Kittelson offered as a comparison generated the kind of traffic volume that is generated here.

Mr. Kittelson disputed Mr. Keech's testimony and his understanding of capacity. He said it is good to be operating as close to capacity as possible because it causes less delay. He explained how capacity could be increased by increasing the cycle length of the turn light. He said the current cycle length is too short, which accounts for the congestion witnessed by Council members during their site visits. He said the narrowness of the lanes, the unprotected cross walk and other factors have been accounted for in the adjustments his firm has recommended. He referred to Commissioner Blumenauer's testimony about his site visit.

Commissioner Blumenauer asked what procedures applied at this hearing regarding the limits on rebuttal and cross-examination.

Mr. Kasting said the parties do have the opportunity to respond to evidence presented by other witnesses.

Commissioner Lindberg said this could be an endless process, noting that this is the second time Mr. Kittelson has testified.

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Mr. Kasting said liberal procedural opportunities are being provided to the parties because of indications that, otherwise, another appeal to LUBA would be in order. He told the parties to avoid a ping pong match with new evidence and rebuttal going back and forth.

Mr. Kittelson said he would focus on what Mr. Keech said and contended that Mr. Keech was in error when he claimed that protected permissive phasing, the use of a drive-up window or single access to the site would increase traffic safety problems. He asked Council members to let him know if such factors play a role in their decisions.

Commissioner Blumenauer objected to such open-ended assertions about what Council could and could not consider.

Mr. Kasting said the only issues Council can be questioned about are ex parte contacts and site visits. He said Council's analysis will be reflected in the findings it ultimately adopts.

Mr. Kittelson described the effect of increasing the cycle length. He said even a traffic expert must depend on more than site visits to determine adequate levels of service.

Mr. Keech responded to the issue about the increased cycle length. He said because there is more red time, more cars will accumulate and you will have longer queue lengths.

Mr. Kasting said he thought Mr. Keech was getting into repetitive testimony.

Mr. Janik objected to the testimony.

Mr. Keech said the concern about phasing was raised by City staff.

Mr. Kasting clarified what is in the record at this point. He said the record includes the original appeal and materials filed with the Council Clerk plus the evidence entered today, recognizing that some of it was objected to by Mr. Janik. He asked that the attorneys review the record.

Mr. Sullivan and Mr. Janik did so.

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Mr. Kasting indicated that the Planning Bureau needs to review the findings in light of the testimony presented today. When the findings are presented each side will be allowed 15 minutes to comment on them.

Commissioner Blumenauer asked for a written schedule of the times to be allocated to each party at the hearing on the findings.

**Disposition:** Continued to September 18, 1991 at 3:00 p.m. Time Certain.

At 3:53 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 22nd DAY OF AUGUST, 1991 AT 2:00 P.M.

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

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

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

**CONSENT AGENDA - NO DISCUSSION**

**Commissioner Mike Lindberg**

- \*1479** Extend park exclusion authority to those providing economic improvement district security services (Ordinance; amend Code section 20.12.265)

**Disposition:** Ordinance No. 164575. (Y-4)

**Commissioner Earl Blumenauer**

- \*1480** Grant revocable permit to Artquake to hang banners across SW Broadway south of Taylor Street and across SW Taylor west of Broadway from August 30 through September 3, 1991 (Ordinance)

**Disposition:** Ordinance No. 164576. (Y-4)

- 1478 TIME CERTAIN: 2:00 PM** - Appeal of Logan Ramsey, applicant, against Hearings Officer's decision to deny application for 18-lot PUD and subdivision located at NW Skyline and Newton Road (Hearing; CU 117-90/S 59-90)

**Discussion:** Cay Kershner, Clerk of the Council, said the appellant had requested a continuance.

John Brosy, David Evans & Associates, representing the appellant, asked that the matter be continued until the Planning Commission had completed its review of Policy 8 of the Northwest Hills Area Protection Plan and made a recommendation as to its interpretation. He noted Council had requested this review at the hearing on Mr. Ramsey's appeal last week.

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Ruth Spetter, Senior Deputy City Attorney, recommended against continuance, stating that Council should consider each appeal on the basis of the law in effect at the time the application was completed.

Mr. Brosy said they were not contesting the law, only its most recent interpretation by the Hearings Officer.

Commissioner Kafoury said the Hearings Officer's decision in this case was made on other issues than the interpretation of Policy 8 and recommended proceeding with this hearing.

Mayor Clark asked if it is appropriate to leave out testimony on Policy 8. He said he was bothered by the Hearings Officer's interpretation.

Ms. Spetter said yes, if there are sufficient grounds to make the decision without considering it.

Tom Bizeau, Bureau of Planning, gave the staff report. The applicant/appellant proposes to develop an 18-lot Planned Unit Development. Both Staff and the Hearings Officer recommended denial, stating that because of the commercial logging operation and buffering, the applicant did not meet Conditional Use criteria. In addition, because of problems with land suitability and development standards, they also found the project did not meet the intent and purpose of a PUD. While the Northwest Hills Study only covers a portion of the property, the Hearings Officer determined that its regulations were applicable to the entire property.

Commissioner Kafoury said the issue regarding filing before the Land Conservation and Development Commission has been resolved by the City Attorney.

Mr. Bizeau said the Bureau denied Mr. Ramsey's proposal because of the negative cumulative urban impact a development on such a difficult site would have in a rural area.

Logan Ramsey, applicant, said the issue regarding Policy 8 of the NW Hills Area study was not raised at the preapplication conference and if it had been their application would have been either withdrawn or revised. He contended that Planning staff is working hand in hand with the Friends of Forest Park and other environmental groups to prevent him and his family from using

their property in a reasonable manner. He said they are willing to forgo logging the property if they are allowed to subdivide it. He also said denying the continuance denies them due process and constitutes an illegal taking.

Mr. Ramsey said they have tried but been unable to reach a compromise agreement with Friends of Forest Park regarding conservation easements similar to those given other developers in the area. He said basically Friends of Forest Park has taken the position that no development can take place on this property.

Commissioner Lindberg asked if he had sat down with the environmental groups to see if they could arrive at an agreement.

Mr. Ramsey said after meeting with John Sherman and Arnold Rochlin regarding a land trade, he concluded that no compromise would be acceptable to them. He said if Council denies the appeal, the land essentially becomes park land.

John Sherman, President, Friends of Forest Park, 1912 NW Aspen, said they are eager to work with developers but believe this is an inadequate and unsuitable development.

Nancy Diamond, 806 SW Broadway, Suite 1000, attorney for Friends of Forest Park, asked that all the arguments they made on the appeal of CU 16-90 based on Ordinance 164517 concerning the Northwest Hills Natural Areas Protection Plan be applied in this appeal as well. She said the most important justification for denial of the application was the Hearings Officer's finding that the project is not feasible because of geotechnical problems, especially with regard to the septic sewer system.

Ms. Diamond said the Hearings Officer's decision did not constitute a taking of Mr. Ramsey's property as it only found that this particular application was deficient, not that all applications would be deficient.

Martin Boatwright, Boatwright Engineering, 2613 12th Street SE, Salem, OR, said this is a very difficult site, particularly in regard to building roads and installing sewers. He said the developer has not met the burden of proof to show that his project will not be detrimental to the area.



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Nancy Grossenbacher, 9350 NW Skyline Blvd., objected to the managed timber harvest and its effect on the neighborhood.

Leslie Blaize, 9630 NW Skyline, said the land will not support the number of homes Mr. Ramsey proposes and that the land should be considered rural, not urban.

Arnold Rochlin, Rt. 2, Box 58, 97231, opposed Mr. Ramsey's appeal. He said low level development continues to be available to Mr. Ramsey and he is not deprived of the use of his property.

Nancy Rosenlund, 5830 NW Cornell Road, also opposed the appeal. She said the Northwest Hills Area Study clearly states the City's intent regarding areas with volatile soils and high landslide danger.

In rebuttal, Mr. Ramsey asked if he would have additional time to add things to the record.

Mayor Clark said he could have an additional week to submit materials for the record.

Mr. Ramsey asked that this appeal be returned to the Hearings Officer to allow him to present the additional information.

Mr. Sherman presented Mr. Boatright's resume for the record.

Earl Grove, Forest Park Neighborhood Association, 607 NW Skyline Crest, said the Association's Board took the position that it would support Mr. Ramsey if his plan met certain conditions. He said it met none of the conditions they asked for.

Commissioner Kafoury moved to uphold the Hearings Officer's decision and deny the appeal. Commissioner Lindberg seconded.

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

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## REGULAR AGENDA

### Commissioner Dick Bogle

- 1481** Liquor license application for Robert E. Mann, dba Reflections Bar and Grill, 213 SW Ankeny St., Dispenser Class A liquor license (renewal); unfavorable recommendation (Report)

**Discussion:** John Werneken, License Bureau, said because of the high number of calls for police services in this area, the Bureau is recommending an unfavorable recommendation on this application. He said serious violations continue despite abundant warnings.

Chuck Bolliger, Police Bureau, said the Police were particularly concerned with an incident of unauthorized ownership. He said the operation has negatively impacted the neighborhood and made excessive demands on Police time. He described a number of fights and assaults in the establishment and said the problems at Reflections have remained constant and continuous.

Robert Mann, Reflections owner, said too many generalizations and ambiguities are contained in the License and Police Bureau statements. He said OLCC can verify that every time there is a problem at his club, he calls the Police immediately. He admitted he has food service problems but said they are improving. He said in order to alleviate noise problems he has closed off the alley on Ankeny.

Commissioner Lindberg asked staff if they believe the reason there were so many complaints was because the customers were African-Americans.

Officer Bolliger said it is not a racial issue. He said the problems result because of the kind of people who are drawn to an after-hours place.

Mr. Werneken said when he met with residents in the area, they all reported the kinds of noise cited by the OLCC but none mentioned race.

Mayor Clark said when you have this many incidents, it is a management problem.

**Disposition:** Unfavorably recommended. (Y-4)

- 1482** Liquor license application for Lung Fung Restaurant, Inc., dba Lung Fung Restaurant, 8001 SE Division St., Dispenser Class A liquor license (renewal); unfavorable recommendation (Report)

**Discussion:** John Werneken, License Bureau, said last year Council voted unanimously to give an unfavorable recommendation to this outlet. He said the license was eventually granted under a settlement agreement which called for the provision of security staff and other restrictions. He said conditions of the settlement have not been met even though the level of complaints is lower than in prior years.

Chuck Bolliger, Police Bureau, described Mr. Chern's involvement with Lonnie Baker, a convicted drug dealer, in narcotic trafficking activities.

Mayor Clark said he cannot make a decision based on the testimony of a convict.

Officer Bolliger described two drug incidents that occurred in the last year involving Mr. Chern and Mr. Baker.

Commissioner Bogle asked if Mr. Chern's voice had been identified on wire tap interceptions of conversations with Mr. Baker.

Officer Bolliger said yes.

Commissioner Lindberg asked if there were reasons for denial other than the alleged involvement in narcotics and the drug violations. He noted that last year's complaints centered around gang activity and assaults on Police.

Officer Bolliger said the drug violations are in direct contradiction to the Stipulated Agreement reached with Mr. Chern.

Pam Knowles, attorney representing Lung Fung Restaurant, said the restaurant deserves a favorable recommendation based on the improvements it has made. She said the Bureaus are making their case on the alleged statements of a convicted drug dealer and noted Mr. Chern's strong denial of any involvement with drugs. She said Mr. Chern has never been arrested or convicted of any crime and said she found it offensive that the denial be based on these allegations.

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Ms. Knowles said the Cherns have operated for 20 years catering to the Asian community without any problems. She said in the last two years the crowd has changed and Mr. Chern has admitted having problems dealing with this change. She reviewed Council's unfavorable recommendation last year which resulted in a Stipulated Agreement with the OLCC. Ms. Knowles said the licensee has taken major actions to improve the situation, resulting in a change of crowd and a significant drop in patrons.

Peter Chern, owner of Lung Fung's, said he told the authorities that he had no involvement in drug trafficking.

Mayor Clark asked about the date of the FBI investigation.

Officer Bolliger said the FBI drug investigation took place in 1988 but the interview with Mr. Baker took place in 1991. He said Police had no idea of his involvement until the information about Mr. Baker was released.

Commissioner Bogle voted for the unfavorable recommendation, noting the two arrests on the premises.

Commissioner Kafoury said she does not respect the testimony of a convicted drug dealer.

Commissioner Lindberg said he believes circumstances have changed dramatically in the last year and now it really comes down to the case against the owner, Mr. Chern. He said he was bothered about depriving him of his business when there had been no conviction.

Mayor Clark said he felt Mr. Chern has made good progress.

Council voted against forwarding an unfavorable recommendation. (Y-1 (Bogle); N-4)

Ben Walters, Deputy City Attorney, said the OLCC requests either a favorable or unfavorable recommendation from Council. He said if Council believes Lung Fung's should receive a favorable recommendation, a motion is required.

Gary McGrew, License Bureau, agreed it would be best to have Council go on record with either a favorable or unfavorable recommendation.

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Commissioner Kafoury moved to recommend a favorable recommendation. Commissioner Lindberg seconded. The motion carried. (Y-3; N-1, Bogle)

**Disposition:** Favorably recommended. (Y-3; N-1, Bogle)

**1483** Liquor license application for R & T, Inc., dba Old Colonial Inn, 2229 SE Hawthorne Blvd., Dispenser Class A liquor license (greater privilege); favorable recommendation (Report)

**Disposition:** Favorably recommended. (Y-4)

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

BARBARA CLARK  
Auditor of the City of Portland

*Cay Kershner*

By Cay Kershner  
Clerk of the Council