



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3RD DAY OF FEBRUARY, 1993 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

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

Agenda Nos. 110, 112 and 114 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 99** Accept bid of Heil Electric Company for purchase and installation of effluent channel flowmeter system for the Columbia Boulevard Wastewater Treatment Plant for \$49,779 (Purchasing Report - Bid 80)
- Disposition:** Accepted; prepare contract.
- 100** Accept bid of Portland Motorcycles, Inc., for furnishing seven police motorcycles for \$55,265 (Purchasing Report - Bid 81)
- Disposition:** Accepted; prepare contract.
- 101** Accept bid of Total Design Computing for Novell LAN upgrade project for \$58,033 (Purchasing Report - Bid 84)
- Disposition:** Accepted; prepare contract.
- 102** Vacate a portion of SW Orchid Street east of SW 15th Avenue, under certain conditions (Second Reading Agenda 74; C-9803)
- Disposition:** Ordinance No. 166203. (Y-5)

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103 Vacate a certain portion of N Larabee Avenue and a portion of N Cherry Street, under certain conditions (Second Reading Agenda 75; C-9808)

Disposition: Ordinance No. 166204. (Y-5)

Mayor Vera Katz

***104** Pay claim for Julie Linton (Ordinance)

Disposition: Ordinance No. 166205. (Y-5)

Commissioner Earl Blumenauer

105 Accept completion of the Columbia Wastewater Treatment Plant Composter Paint project and make final payment, less \$4,000 retainage, to Pacific Painting and Related Services, Inc. (Report; Contract No. 27411)

Disposition: Accepted.

106 Accept completion of the Lents Basin CSO Sump project, Phase 2 project, approve Change Order No. 1 and make final payment to Moore Excavating, Inc. (Report; Contract No. 27803)

Disposition: Accepted.

107 Accept completion of the Lents Basin CSO project, Phase 1 project and make final payment to Bengel Construction Company (Report; Contract No. 27759)

Disposition: Accepted.

108 Approve Change Orders No. 2 and 3, accept completion of SW Barnes Road retaining wall replacement, and NW 2nd Avenue near 107th Avenue bridge replacement, release retainage and make final payment to Batzer Construction, Inc. (Report; Contract No. 28035)

Disposition: Approved.

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- *109** Authorize the City Engineer to commence final negotiations for the purchase of property for the Multnomah/Hassalo Connection Street Improvement Project, authorize the execution of a real estate sales/purchase agreement or option and provide for payment (Ordinance)

Disposition: Ordinance No. 166206. (Y-5)

Commissioner Charlie Hales

- *111** Authorize purchase of 4 mid-size police four-door sedans and 8 mid-size four-door sedans through the Oregon State Price Agreement and provide for payment (Ordinance)

Disposition: Ordinance No. 166207. (Y-5)

Commissioner Mike Lindberg

- *113** Authorize application to Oregon Department of Forestry for a grant in the amount of \$6,450 for the development and programming of a community demonstration orchard (Ordinance)

Disposition: Ordinance No. 166208. (Y-5)

REGULAR AGENDA

- *110** Allow reinstatement and carryover of more than two years vacation accrual for one employee of the Bureau of Environmental Services (Ordinance; waive Section 4.16.040)

Discussion: Mayor Katz said this was pulled in order to discuss the policy regarding vacation accruals.

Linda Dartsch, Bureau of Environmental Services, said this is the first time in eight years that she felt compelled to bring such a case to Council. She said their usual policy with vacation time is to use it or lose it but because of the unusual circumstances they felt a carryover was justified this time. She said the affected employee is an inspector in charge of a mid-County sewer project who tried to time his vacation to accord with contractors and then sustained an on-the-job injury.

Commissioner Hales said he believes the carryover is warranted in this instance.

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Commissioner Blumenauer agreed, noting that only seven exceptions have been made to the thousands of incidents where vacation is lost. He said if Council wants to refashion the policy he welcomes an opportunity to review it.

Disposition: Ordinance No. 166209. (Y-5)

***112** Authorize contract between the Water Bureau and Beak Consultants for fisheries monitoring at Bull Run Lake (Ordinance)

Discussion: Mayor Katz noted that this was a no-bid contract that was extended to add \$15,000 to the \$9,999 original amount.

Jim Doane, Chief Engineer, Water Bureau, said fisheries monitoring was one of the stipulations imposed by the DEQ when it allowed the City to pump water from Bull Run Lake. He said the original contract called for writing a scope of work acceptable both to the Bureau and the Forest Service. When the scope was completed, they found that the work required would cost more than \$9,999.

Mayor Katz asked if they had an idea of what the entire contract would cost before they let out the no-bid, no-review contract.

Mr. Doane said they did not know what the cost would be because the scope of work was not defined.

Mayor Katz said she wanted to flag this because this was an issue raised in the Auditor's Report on Contracts.

Commissioner Lindberg said it is clear the Code requires going out for bids unless there are exceptional circumstances or an emergency.

Mr. Doane said this was an emergency and they had to literally find someone the next day to get the monitoring under way in time to pump the lake.

Commissioner Lindberg said the Bureau went to the company they knew could do the work.

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Mayor Katz voted no. Harry Auerbach, Deputy City Attorney, informed her that because it is an emergency ordinance, the item would fail if the vote was not unanimous. The Mayor changed her vote.

Disposition: Ordinance No. 166210. (Y-5)

***114** Call for bids to install pathway and roadway lighting in Ira Keller Fountain, Unthank, Kenton, Argay, Alberta, Woodstock, Ventura, Clinton and Normandale Parks, authorize a contract and provide for payment (Ordinance)

Discussion: Commissioner Hales asked for background information from the bureau about outreach to minority contractors, noting that this contract appears to call for small individual contract bids.

Nancy Gronowski, Bureau of Parks, said they followed standard policies recommended by the Purchasing regarding minority contracting. She said the whole package costs about \$500,000 and was put out as one contract, instead of several, to save paper work and administrative costs.

Commissioner Hales said in order to get more minority and female participation, the City may have to break the contract down into smaller components. That gets into cost issues and how much more the City is willing to pay to make the policy work regarding minority contracting. He said there are no minority contractors with the resources to compete for a \$500,000 contract for electrical work.

Commissioner Kafoury asked why this was an emergency ordinance.

Ms. Gronowski said that was the way these have been done in the past.

Commissioner Kafoury said she thought Purchasing should give Council a report.

Commissioner Lindberg said the Bureau looked to Purchasing to carry out the MBE requirements.

Deputy City Attorney Harry Auerbach recommended holding this over to 2 p.m. to find out from Purchasing if the emergency clause is needed.

Commissioner Blumenauer said Council needs to send a clear signal about its policy on this to bureaus which have been told to cut their budgets,

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streamline their paper work and speed things up. He said Council cannot have it both ways by now saying break the contract up and increase participation.

Mayor Katz said she would like to see a comprehensive review of how the City can allow female and minority contractors a better opportunity to participate.

Commissioner Hales said the policy issue needs to be addressed but he is reluctant to let half a million dollars out the door in the meantime. Commissioner Blumenauer suggested holding individual bureaus accountable for achieving minority and female participation, allowing them to use the targets as a management tool. He said he hoped Council would distinguish between minority contracting and what is happening internally within the City.

Mayor Katz said this will be continued to this afternoon.

Commissioner Lindberg noted two requests: 1) to have Purchasing respond to whether an emergency clause is necessary and 2) to have the Bureau address its overall MBE performance. He said if it was not an emergency the bureau could report later.

Mayor Katz said there has been a lot of discussion about what the City should do to achieve a higher number of female and minority owned businesses plus diversifying the work force. That will be coming before Council for full discussion at some future time.

Commissioner Blumenauer asked to see a one page summary of what Parks is doing with its contracting.

Mayor Katz said part of the budget process will include that information, both for professional services and construction contracts..

Commissioner Lindberg asked Ms. Gronowski to see what information is available over all.

Disposition: Continued to Wednesday, February 3, 1993 at 2:00 p.m.

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Mayor Vera Katz

115 File Hazelwood annexation with the Portland Metropolitan Area Local Government Boundary Commission (Resolution; Case A-1-93)

Discussion: John Bonn, Urban Services Manager, said this and the following two annexations clean up some irregular boundary segments which simplify service delivery and effectively annex the remainder of the Hazelwood Water District. He said the satisfaction level with City services in the East County area is quite similar to the rest of the City, based on a recent Auditor's Office survey. He said on this particular annexation case, the double majority numbers are larger than for many cases due to the effectiveness of the financial assistance plan for single family home owners in the Mid-County sewer project area. He said Agenda Item No. 116 could not be included in this annexation because of double majority requirements regarding intent areas.

Mayor Katz noted the contrast between previous projections that found annexations would be a financial benefit to the City and Mr. Bonn's report, which clearly finds that assumption is inaccurate and that such annexations could end up costing the City additional money. It also notes that the City may not have the resources to provide newly annexed areas the services they need.

Mr. Bonn said after the passage of Measure 5 an analysis was made of the City's ability to continue to annex and adequately pay for services. The analysis found that annexations are cost neutral and that the revenues generated are just about equal to the cost of providing services. In this particular case the City estimates the revenue at \$320,000 while the cost of service is approximately the same. Services included in the analysis included police, fire, parks, planning and nuisance abatement.

Commissioner Lindberg said the next question is whether there is a legal and moral commitment to deliver these all these services and not divert the resources to one service, such as police. He asked if the five services had been provided at the level originally shown in Mr. Bonn's analysis.

Mr. Bonn said in FY1991-92 a specific increase to the police budget was added to provide service to the annexed area. He said where the service was actually allocated is another story.

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Commissioner Lindberg asked if there was a measurable service level that would be clear to the people who are annexed.

Mr. Bonn said Police officers are placed where the demand is and in the case of East County, the demand is lower so there is less call for service. In terms of parks, none have been annexed in the past three years. The annexation would not trigger an immediate transfer to the City. In terms of planning and nuisance abatement, there has not been a dollar for dollar carryover but in the area of Fire, there is a contractual agreement providing for the transfer of revenue responsibility at the time of annexation.

Frank Cleys, 13511 SE Taylor Court, said the City may be getting the money but the annexed area is not getting the services. He criticized the lack of adequate police protection in East County and inadequate road maintenance. He noted

Boundary Commissioner opposition to checkerboard annexations and asked why the City could not wait until it can annex from 139th to Foster and have logical boundaries. He said this annexation will also deprive people of the services of the Hazelwood Water District.

Commissioner Blumenauer said this represents the continuation of a policy which will complete the annexation within a few months. He said Council extended a substantial benefit to people in the unincorporated area in terms of a subsidy for sewer hookups. He said there is the potential for improving parks and other services in this area and since there will be no difference in terms of tax rate, some of the islands can be eliminated. The alternative is to continue the pattern of fragmentation, which will make it harder for the police and other agencies to make rational plans. He said it is important to follow through on our commitments.

Commissioner Hales said there are some service issues that need to be looked at if the annexations continue, particularly police coverage.

Commissioner Kafoury said Council will have an opportunity to review this policy soon.

Mayor Katz said she would like more detailed information on the cost of services provided to these areas. She said she is nervous about promising services the City cannot deliver.

Disposition: Resolution No. 35102. (Y-5)

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116 File Hazelwood annexation with the Portland Metropolitan Area Local Government Boundary Commission (Resolution; Case A-2-93)

Disposition: Resolution No. 35103. (Y-5)

117 File Hazelwood annexation with the Portland Metropolitan Area Local Government Boundary Commission (Resolution; Case A-3-93)

Disposition: Resolution No. 35104. (Y-5)

118 Adopt the FY 1993-94 through FY 1997-98 General Fund Financial Forecast (Resolution)

Discussion: Tim Grewe, Director of Financial Planning, said a page was added to the original forecast dealing with discretionary matters and more detail on property tax revenues lost because of Measure 5. He also raised three items for Council consideration: 1) the specific package that will go to the voters regarding tax increment financing; 2) the level of support for the street lighting- program and; 3) the likelihood that an increase in water and sewer revenues may change revenue assumptions.

Disposition: Resolution No. 35105. (Y-5)

***119** Contract with OTAK, Inc., for professional planning and design services for \$150,000 and provide for payment (Ordinance)

Disposition: Ordinance No. 166211. (Y-5)

***120** Contract with David Evans and Associates, Inc., for professional planning and design services for \$150,000 and provide for payment (Ordinance)

Disposition: Ordinance No. 166212. (Y-5)

***121** Contract with Heil Electric Company for electrical and mechanical work in the 3rd & Alder Parking Facility for \$88,413 without advertising for bids (Ordinance)

Discussion: Mayor Katz noted that this was a no bid contract.

David Kish, Bureau of General Services, said after a lease was signed with Norm Thompson in November an ordinance was brought to Council to allow use of their general contractor, Collamette, for the remodeling. However, the

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City felt that Collamette's price for the electrical, heating and ventilator work was too high so that portion was separated out. He said they contacted several different firms and figured out which work had to be done immediately to keep the project on schedule and allow Norm Thompson to move in by May 1. Bid specifications are currently being prepared for the rest of the work and that contract will come back for Council approval.

Commissioner Hales asked if this was the last of the work that would be processed on an emergency basis with no-bid contracts.

Mr. Kish said he believed so but could not guarantee it. He said most of the tenant improvement work is the responsibility of Norm Thompson while the City is only responsible for the infrastructure part.

Disposition: Ordinance No. 166213. (Y-5)

Commissioner Earl Blumenauer

- *122** Call for bids for Willamette Basin, CSO Test Sump Project - Units 1 & 2, authorize contract and provide for payment (Ordinance)

Disposition: Ordinance No. 166214. (Y-5)

Commissioner Gretchen Kafoury

- 123** Consent to County animal control ordinances applying within the City and amend City's animal control regulations (Second Reading Agenda 95; amend Title 13)

Discussion: Commissioner Kafoury asked that this be returned to her office because additional issues have been raised by Multnomah County.

Disposition: Referred to Commissioner of Public Utilities.

Commissioner Mike Lindberg

- *124** Authorize a grant with Portland General Electric Company to augment the Sustainable Business Development Program (Ordinance)

Disposition: Ordinance No. 166215. (Y-5)

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- *125 Authorize a grant with PacificCorp dba Pacific Power and Light Company to augment the Sustainable Business Development Program (Ordinance)

Disposition: Ordinance No. 166216. (Y-5)

City Auditor Barbara Clark

- 126 Assess property for sewer system development charges through December, 1992 (Hearing; Ordinance; Z0271 through Z0304)

Disposition: Passed to Second Reading February 10, 1993 at 9:30 a.m.

- 127 Deficit assess benefitted property for the costs of constructing the Boyles Sanitary Sewer System (Hearing; Ordinance; C-9695A)

Disposition: Passed to Second Reading February 10, 1993 at 9:30 a.m.

- 128 Assess property for sewer system development charges through November, 1992 (Second Reading Agenda 98; Z0249 through Z0270 and Z0343)

Discussion: Dan Vizzini, Assessments and Liens Manager, said the property owner who testified before Council last week elected to remove the contract from the assessment roll and finance the cost at a later date. He said they will need to amend the assessment role to remove the contract and then bring the ordinance back to Council next week for final adoption.

Commissioner Blumenauer moved to amend the ordinance to delete the assessment of the individual who has withdrawn and pass this to second reading next week.

Disposition: Passed to Second Reading as amended February 10, 1993 at 9:30 a.m.

At 10:45 a.m. Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3RD DAY OF FEBRUARY, 1993 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

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

- *114** Call for bids to install pathway and roadway lighting in Ira Keller Fountain, Unthank, Kenton, Argay, Alberta, Woodstock, Ventura, Clinton and Normandale Parks, authorize a contract and provide for payment (Ordinance; continued from 9:30 a.m. session)

Carleton Chayer, Purchasing Agent, said about 75 percent of this project is made up of materials and, as such, does not lend itself to subcontracting. The major portion of the labor is electrical and there are two minority contractors capable of bidding on this project. Subcontracting work represents only about five percent of the work. He said breaking up the contract creates a problem because of the very high per unit cost of lighting fixtures, explaining that this contract was packaged to take advantage of the cost savings that would occur by buying a large quantity.

Charles Jordan, Parks Bureau Director, said that overall, the Parks Bureau has a 62 per cent FBE participation and 60 per cent MBE participation on its professional services contracts.

Mr. Chayer said the Purchasing Agent is responsible for outreach and for obtaining minority contracting participation on construction contracts. He said the difficulty is that the individual bureaus have different functions - some have great opportunities to involve minorities while others do not which makes it inequitable to apply across-the-board.

Disposition: Ordinance No. 166217. (Y-5)

- 129** **TIME CERTAIN: 2:00 PM** - Appeal of Markham Neighborhood Association against Hearings Officer's decision to approve the application of Roger Edwards and John Neimeyer for a ten-lot PUD/Subdivision and Environmental Review located at SW Taylors Ferry Road, north of Stanley Court (Hearing; 92-00435 PU SU EN)

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Discussion: Mayor Katz asked if any Council member wished to declare a conflict of interest and ex parte contacts.

Commissioner Hales announced that he and a staff member visited the site today but had no ex parte contacts. He described what he had seen at the site, which he visited to confirm the principal geographic features described in the site plan.

Pete Kasting, Deputy City Attorney, outlined procedures to be followed in the hearing and in order to make an appeal.

Tom Bizeau, Planning Bureau staff, outlined the PUD approval criteria in Title 33.269 plus approval criteria in Title 33.430 for environmental zones. Subdivision and partition regulations in Title 34 also apply. He noted that the Staff recommended approval of this development and the Hearings Officer approved the application. The neighborhood association appealed, contending that approval does not meet the purposes of the PUD or development standards in the Code. They also contend that neighborhood concerns were not addressed by the Hearings Officer and that is his decision lacked clarity.

Mr. Bizeau said the applicant outlined a preservation area in the middle of the site and indicated that vegetation will be preserved as much as possible. Housing was located as much as possible away from the environmental zone. The neighborhood has proposed an alternative plan with fewer dwelling units. Mr. Bizeau added that some aspects of the Hearings Officer's decision need to be clarified, noting that one condition (C-c) of approval misstated that Lot 6 and Lots 8-25 would be under the review of a tree preservation plan. It should have read that all lots will be in the tree preservation plan. Regarding a condition relating to a landscaping plan, the words " a landscape plan substantially in conformance to Exhibit J-6" should be added to Condition D of the report.

Commissioner Kafoury said she would so move when the findings are discussed.

Mr. Bizeau said another aspect which needs to be looked at is clarifying the findings in relationship to the mitigation plan and adding it into the conditions of approval.

Commissioner Lindberg asked about tree preservation.

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Mr. Bizeau explained that there are currently 81 trees on the site; 18 would be removed and mitigated for. Those being removed average 10 inches in diameter.

Mayor Katz asked about the specificity of the findings, noting that the Hearings Officer used a lot of words such as "reasonably, could, may". She asked if he normally qualified his language in this way.

Mr. Bizeau said it was not normal but the Hearings Officer was having trouble deciphering the information supplied. He said two intermediate rulings were made in an effort to understand all the facts presented. In the end he gave final approval on each of the criteria.

Mr. Kasting said if this case were appealed, LUBA would look at each approval criteria and determine if Council found that the criteria had been satisfied. Council needs to explain clearly why each and all of the criteria are satisfied and, regardless of which way Council votes, the findings will need to be made clearer and more specific.

Commissioner Blumenauer said the combination of new provisions dealing with environmental protections, admitted complexity and a relatively new Hearings Officer may explain some of his qualification. He said this is an unusual Hearings Officer's report.

Mayor Katz asked what that meant in terms of the findings.

Commissioner Blumenauer said he does not think Council should have any qualms about waiting to make a decision and allow enough time to adequately reflect its intent in the findings.

Commissioner Kafoury said Council has the authority to entirely rewrite the findings if it wishes.

Mayor Katz said her concern is that the Hearings Officer's report waffles.

Mr. Kasting reiterated that to the extent new provisions are being applied, both the Hearings Officer and the Planning Bureau have less guidance on how to implement them and may need additional analysis from Council.

Jeff Bachrach, 1727 NW Hoyt, attorney for the applicants, objected to the form of the appeal in that it violates Code Section 33.730. He said this is a very unusual Hearings Officer report, expressing his belief that most of the

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waffling grew out of the Hearings Officer's frustration in applying the Environmental zone regulations.

Mr. Bachrach said his frustration is shared by everyone involved because the environmental regulations are incredibly complex and incredibly difficult to understand and apply. That is why it has taken over a year to gain approval of a 10-lot subdivision. He argued that the E zone has been legally applied and new findings are needed showing that. He said Council needs to respond to the issues appellants raised and, since the Hearings Officer has approved the application, the appellants will have to site what criteria have been improperly applied. He said his clients are unsure exactly what appellant's concerns are, noting that originally it was density but that the 10-lots being approved are less than the City's density requirement of 13.

Randy Clarno, Alpha Engineering, land use and survey consultants for the project, described the meetings with the neighborhood association and city staff because of interim protection and E zones which were adopted after the application was originally submitted. He said they did a tree survey before designing the project and intend to site the houses out of the creek riparian and natural resources zone. After meetings with the Markham Neighborhood Association they revised their plan to save the redwood tree, reduce the project by one lot, add to the open space and reduce the total number of trees to be removed. Over half the building envelopes were also reduced in size. He said they believe they have complied with all Code and submittal requirements and addressed all approval criteria to the best of their ability.

Julia Meyer, President, Markham Neighborhood Association, said this proposal overdevelops the available land and is unacceptable if neighborhood liveability is to be maintained. She noted that the neighborhood even submitted an alternative plan for the site. They believe the Hearings Officer's report is flawed and careless and makes insufficient findings to support the criteria. The neighborhood believes this application is not a comprehensive design approach as called for in planned unit developments but relates more to subdividing because of the developer's interest in the sale of lots to individuals. She argued that the site plan is incomplete because of its failure to show sidewalk locations and size, street right-of-ways, common parking and garbage recycling locations, and building setbacks. She said there is no sense of gateway or the identity typical of PUDs.

Ms. Meyer said the Neighborhood Association is also asking for a bonding requirement to insure against inappropriate removal of trees because of applicant's previous tree removal. The neighborhood believes the minimum density requirement creates insensitive and awkward design and negative

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impacts on neighboring properties. She called for removal of Lot 1 from the development as they believe it will destroy a significant tree, violates the Code parking requirement because it is less than 20 feet from the boundary of the Motis property and cannot meet the required setbacks or exceed 40 percent lot coverage. She charged that there is no reasonable certainty that the difficult accessway off Taylor's Ferry Road can accommodate the Hearings Officer's and Fire Marshall's requirements. Finally, they do not believe that 10 lots can be created which will meet all of the development regulations and conditions of approval as outlined in 33.430.200 , including parking, exterior work activities, exterior storage and display, lighting, trash collection areas, noise, construction management or development season.

Ms. Meyer said the Hearings Officer's report contains many inaccuracies and omissions which are symptomatic of the insensitive and careless attitude taken towards this proposal and disregard for neighborhood concerns. She said the tone of the Hearings Officer's report is one of frustration about the lack of clarity and they believe it is weak, flawed, inconsistent and creates confusion.

Commissioner Lindberg asked whether the alternative proposal submitted by the neighborhood had lower density and if there was illegal tree removal.

Ms. Meyer said seven houses were included on their plan.

Mr. Bizeau said there was no illegal tree removal while the application was under review. He said he believed some fruit trees had been removed prior to application for review.

Ms. Meyer said trees were removed after the pre-application but prior to the application.

Mayor Katz asked if the alternative design was a comprehensive PUD or a subdivision.

Ms. Meyer said it was a PUD with a gateway into the development, similar to the one at Quail Park.

Mayor Katz noted that applicant is not the developer and asked why there was no comprehensive plan development for this area.

Mr. Kasting said the person who seeks approval of a PUD must still meet all approval criteria, whether they are the developer or not. They do not have to

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describe how the houses will look but they do have to show that the project is feasible and that there are engineering solutions to the problems presented .

Leo Williams, 3023 SW Collins Court, 97219, said the houses were not shown in relationship to adjacent buildings in the preliminary materials.

Mayor Katz asked if houses were designed on the site to meet the test of a PUD.

Mr. Bizeau said the applicant presented exhibits that showed types of buildings but no specific house designs were approved for the site.

Commissioner Lindberg asked what the requirement is.

Mr. Bizeau said the Code does not require specific house designs.

Commissioner Lindberg asked how this application compared to prior developments in terms of specificity and detail.

Mr. Bizeau said staff evaluated the proposal and found it took a comprehensive approach to the land and the way the houses were laid out on the property.

Mr. Williams cited drawing number 3 which show the Williams and Motis homes. They are not shown on drawing number 2 and argued that there is a requirement in the preliminary statements that calls for their inclusion. He said there should be some common area flanking Stanley Court so that a gateway can be created. Mr. Williams also showed slides to indicate the location of adjacent properties.

Mr. Kasting noted that Mr. William's drawings would be entered in the record as LW, Exhibit 1. A set of 36 slides is LW Exhibit 2.

John McCormick, 2950 SW Collins Court, 97219, cited examples of noncompliance with Code standards including the width of the road off Taylors Ferry Road where he called for creation of a single flag lot extending to Taylors Ferry Road. He also cited problems with the setback on lot 7 and lot 4, confusion about the private street coming off Stanley Court and its proximity to the adjoining Motis property and provision of what they believe is a common parking area next to the Motis resident. He said the neighborhood association has recommended conditions that address these issues and clear up the confusion.

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Virginia Motis, 2979 SW Stanley Court, 97219, objected to approval of the PUD. She cited an earlier intermediate ruling by the Hearings officer which said only four houses could be built on the property. Later the decision was changed and increased to allow ten houses. She said the building of the houses should be in compliance with the Environmental Protection zoning laws. She also objected to proposed planting of three Douglas firs within three to five feet of her property.

Mr. Bachrach asked for an opportunity for rebuttal.

Mr. Kasting said rebuttal is provided if requested and if some of the applicant's time is reserved for it. If a request is made to keep record open for seven days, issues can be addressed in writing. He said if Council wished, it could given additional time for rebuttal or ask questions.

Commissioner Kafoury asked what issues they contended.

Commissioner Blumenauer said since the rules were extended to allow Mr. Williams to show his slides, they might want to give the applicant additional time.

Mayor Katz gave the applicants five minutes to respond to Commissioner Kafoury's question.

John Neimeyer asked for three minutes to talk about the application process after the final decision is made.

Council agreed.

Mr. Bachrach said they heard a lot of issues today for the first time. Responding to Commissioner Lindberg, he said there was absolutely no illegal tree removal. He said concerns with density and design are based on aesthetic judgment as there is no design review in the PUD regulations regarding an entryway or uniformity in design. He said the desire of the neighbors to have fewer lots conflicts with the City's density policy which calls for 13 lots. He said this project has been designed and redesigned based on comments from neighbors, staff and the Hearings Officer. He said none of the specific approval criterion cited by the neighborhood concerned violations, noting that the conditions of approval, all of which will need to be met, are voluminous. He said developmental approval never comes with house design as part of the package -- that occurs later.

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Mr. Clarno said they took a comprehensive approach to the design and considered existing vegetation and trees on adjoining properties. He contended that the setbacks were met and that no variations are being requested for the underlying zone. He said they are also replacing the 18 trees being removed with 25 trees in order to mitigate any impact on adjacent properties.

Commissioner Lindberg asked staff about the proximity of the initial driveway to the Williams home and the possible elimination of the building unit on Lot 1.

Mr. Bizeau said the street location does not deal with the lot line location. The Hearings Officer felt that the location of the street on the final design exacerbated Lot 1 but it would still have to meet 40 percent requirement for building coverage and setback.

Commissioner Lindberg asked if the Hearings Officer recommended moving the driveway to create more of a buffer between the development and Mr. Williams' home.

Mr. Bizeau said the Hearings Officer wanted the driveway to be centered off Stanley Court and accepted the site design presented by the applicant, moving it away from the boundary line of the Motis property.

Commissioner Lindberg asked if it was right next to the house, as shown in Lot 4.

Mr. Bizeau said yes, but there is a strip between the property boundary and the road and that is the difference between the original application and the current one.

Commissioner Hales asked if Site Plan number 4 (submitted by Mr. Williams) matches what was submitted by the applicant.

Mr. Bizeau said yes but no houses were shown on the application..

Commissioner Hales asked if the improvements and lot lines are correct on the site plan as submitted. He asked if the site plan showing the front of Lot 1 as being the northeast dimension was correct as it appeared to him to be the southeast dimension. He said if what is shown is the front of the lot, it does not meet the 15 foot required setback.

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Mr. Bizeau said the front of Lot 1 is the actual boundary with the entire road and that Commissioner Hales is correct. He said it is considered frontage and both sides must meet the 15-foot setback, adding that they do not meet them for the envelope.

Commissioner Hales asked about the sidewalk requirement for a PUD, noting that no sidewalks are shown in the site plan.

Regarding setbacks, Mr. Clarno said there is a 15 foot frontyard and sideyard setback. The envelope submitted in the plan falls a few feet short of that, which is why the Hearings Officer says the applicant must meet the 15 feet setback or the lot will have to be removed. He said they intend to reduce the envelope by a few feet in order to meet that requirement. As for sidewalks, they propose a sidewalk on the westerly side which falls within the tract area allowed for the private street.

Commissioner Hales asked about Fire Bureau review of the Tract A flaglot configuration for the two northerly lots.

Mr. Clarno said he understood that Transportation would run the private street design system and the access onto Stanley Court by the Fire Bureau for its approval.

Commissioner Hales asked about the impact test cited by neighbors regarding compatibility in the preapplication requirements.

Mr. Bizeau referred to Title 33.269.310 (b) (2) which says that the application statement is to include a description of how a PUD relates to surrounding land uses. The Code section 33.269310, Item 4 (1) also applies.

Commissioner Hales asked if meeting the requirement cited in the first Code reference bears directly on approval.

Mr. Bizeau said information about existing land uses in and around the site was provided by the applicant. It is an informational requirement, not a design requirement.

Mr. Bachrach requested that the record be left open for seven days.

Mayor Katz said she was going to allow the appellant five minutes rebuttal. The Clerk announced that the record would be left open until 5:00 p.m., February 10.

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Ms. Meyer flagged the neighborhood's specific recommendations for the development as listed in her submission. She noted that in every case the neighborhood association has unanimously agreed on these points. While the Hearings Officer said the street must be centered it still does not address alignment.

Ms. Motis asked if there would be a seven day waiting period after today in which the neighborhood could also submit material.

Mayor Katz said if Council left the record open for additional written testimony for seven days then it will also need to leave it open for a short period, such as five days, to allow for rebuttal of evidence submitted during the seven day period.

Mr. Kasting said during the rebuttal period no new evidence may be submitted. The only thing that can be submitted is written response to what was submitted while the record was still open.

Commissioner Kafoury proposed that the staff review the new information presented today and match it up with the requirements. She moved to set this over to February 25. Commissioner Blumenauer seconded.

Commissioner Blumenauer said it would be useful to clarify whether public testimony has been concluded other than written submissions.

Commissioner Kafoury said yes, her motion would include the fact that public testimony has been concluded.

The Clerk said the five day rebuttal period would end February 16, at 5 p.m. because of the holiday.

Mayor Katz clarified that the motion returns this to the Planning Bureau for preparation of a matrix regarding the issues. She said she needs a clearer indication of what the implication is for Council when a Hearings Officer's decision is unclear and how it produces clear findings for the record.

Roll was called on Commissioner Kafoury's motion which passed. (Y-5)

Disposition: Continued to Wednesday, February 25, 1993 at 2:00 p.m.

At 3:55 p.m., Council recessed.

February 4, 1993

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 4TH DAY OF FEBRUARY, 1993 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

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

REGULAR AGENDA

Commissioner Charlie Hales

- 131** Liquor license application for Mezzaluna, Inc., dba Cafe Mingo, 807 NW 21st Avenue, Restaurant liquor license (new outlet); favorable recommendation (Report)

Discussion: Henry Emrich, Bureau of Licenses, said they have no records that indicate that this type of operation has been a problem in the past and therefore recommend a favorable endorsement.

Police Officer Chuck Bolliger said their favorable recommendation was based on a review of the police data system. He said in checking the blocks from Glisan to Kearney and from 20th to 23rd, he found that there were 58 alcohol-related incidents in 1992, most were for drinking on the street. He said this information is more of an indictment against package stores and those who sell liquor to go, rather than restaurants.

Mr. Emrich added that the restaurant already exists but without alcohol service.

Heath Silberfeld, 2336 NW Pettygrove, President, Northwest District Association (NWDA), said they wanted to address liquor licenses in general, rather than to specifically support or oppose this license.

Matthew Witt, NWDA Safety Committee Chair, said their concern is with the accelerated number of liquor licenses being issued recently in the neighborhood. He said there have been a lot of complaints about restaurant and bar activity and asked that all licenses be discouraged until a policy is developed.

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Mayor Katz asked if the NWDA had taken a stand against these particular establishments or against liquor establishments in general.

Ms. Silberfeld said they are taking this position because they believe there is a point at which such amenities have negative impacts. She said they have had problems with littering, vandalism, public urination, noise and other problems and have not received a good response from OLCC about them. She said they are concerned that 21st and 23rd will become entertainment ghettos and the quality of life there will deteriorate.

Commissioner Kafoury asked Commissioner Hales if he had any suggestions about how to deal with these problems.

Commissioner Hales said they are planning to meet with OLCC about the policy but the question is how to deal with individual cases in the meantime. He said some of the concentration issues are the same as occur in Kenton where Council made an unfavorable recommendation. He asked Mr. Emrich what the concentration was in Northwest.

Mr. Emrich said he did not have exact figures but it was one of the highest in the City.

Commissioner Hales asked what policy the bureau would recommend in this case.

Mr. Emrich said they are meeting with representatives from several broadbased groups and are looking at better ways to prove what they know to be problems and at better ways to interpret laws already on the books.

Commissioner Lindberg asked if there was a policy vacuum regarding the requirements for Council approval. He said it does not seem quite fair to make negative recommendations on these applicants unless there is some policy or guidelines to support them.

Gary McGrew, License Bureau, said they have been meeting with the NWDA and other parties regarding late night noise and similar problems and would like to set up a meeting with NWDA, the OLCC and Police Bureau to discuss these problems. They are also making efforts through community policing agreements with liquor outlets and working on the issue of liquor to go.

Mr. Emrich said the Bureau is also gathering research from other jurisdictions.

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Commissioner Blumenauer said it may be time to bring forward the evolutionary policy the Bureau has been working on with OLCC and others. He said Council should embody the standards in a resolution and use this as a basis to talk to OLCC about changes.

Mr. McGrew agreed.

Mayor Katz asked what the City will be doing because of the intolerable noise on NW 21st.

Mr. McGrew said a resolution might help deal with the problems, which vary, depending on the neighborhood, from late-night noise to public drunkenness. He said there are a number of ways to deal with them, including operation plans submitted by applicants and restrictions on closing hours.

Mayor Katz asked if the City could put restrictions on closing hours after the OLCC has granted a license.

Mr. McGrew said the City only has the ability to recommend such restrictions to the OLCC. He said Council could make a recommendation to the OLCC and prepare findings in support of it.

Mayor Katz asked if the Code allowed the Council to make an unfavorable recommendation when there are sufficient licenses already in a locality.

Mr. Emrich said that the license was not demanded by the public interest or convenience. However, he said that the presence of disturbing activities around the premises were not documented to the extent necessary to uphold the recommendation under State law. While there is sufficient language in the City Code to ask for denial of this license, the Bureau believes that it should make the recommendation that will have the best result in the end.

Mr. McGrew said the OLCC allows an applicant to show good cause to overcome a denial by demonstrating a favorable history of operating outlets in the City, as this applicant has.

Mayor Katz said Council added language into the Code in order to deny on the basis of neighborhood impact but the Bureau is making its recommendation based on what the OLCC might or might not do. She noted that was not the position taken last time by the Bureau.

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Mr. McGrew said in the last case they did not believe the applicant had good cause to overcome the unfavorable recommendation. They were not offering full service and showed no benefit for the neighborhood.

Mayor Katz said the Bureau is using another set of standards than she is using.

Commissioner Blumenauer said the difference is having the power to deny which the City does not have. It just has the power to recommend. Since Council's recommendation is just advisory, the Bureau has taken the position that it makes no sense to just routinely deny all applications, which would just make our recommendations to OLCC less significant. He believes the Bureau is focusing on worst situations so that OLCC will take notice when the situation is really bad.

Mr. McGrew said any applicant on this street that did not offer a full service food menu or offered late night entertainment would receive an unfavorable recommendation.

Commissioner Lindberg said he believes the standards and criteria are not absolutes, but rather matters of judgment. In some cases having a full-service restaurant is positive. He asked if they had placed conditions on these applicants to control late-night noise problems.

Mr. Emrich said they do not believe Cafe Mingo would cause problems if operated as proposed with early closing hours and an emphasis on food.

Commissioner Hales noted that no restrictions were recommended because of the underlying nature of the operation.

Commissioner Hales moved approval of the favorable recommendation for Cafe Mingo. Commissioner Lindberg seconded.

Mayor Katz said this is a problem area and suggested that the Bureau meet with the Neighborhood Association and return to Council with a recommendation for some overall policy to deal with these issues.

Disposition: Favorably recommended. (Y-5)

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Liquor license application for J.T. Barringer's, Inc., dba J.T. Barringer's, 519 NW 21st Avenue, Dispenser Class A liquor license (new outlet); favorable recommendation with conditions (Report)

February 4, 1993

Discussion: Henry Emrich, License Bureau, said the owner has a good record with the City and has demonstrated a willingness to respond to neighborhood concerns. He said the Bureau has no trouble believing that neighbors are being disturbed late at night but does have difficulty in documenting that it is related to alcohol. For a denial to be upheld under state law, such quantification is necessary. The Bureau believes that with the measures being taken in the neighborhood, the noise impact on neighbors will lessen and for that reason recommend that the licensee be restricted to operating as proposed and that closing hours be no later than 1 a.m. on week nights.

Mayor Katz asked if he had talked to officers on the street.

Mr. Emrich said he talked to one policeman on the street and to the crime prevention coordinator.

Mayor Katz suggested that he talk to the night shift officers who cover NW 21st.

Police Officer Chuck Bolliger said he has contacted those officers and their supervisors. He said documentation of any criminal activity is actually quite low. He said the Bureau has never had an area before where the major problem has been noise rather than public intoxication or violent criminal activity and suggested that a different set of rules was needed to deal with this.

Commissioner Lindberg asked if there was a prohibition against live music.

Mr. Emrich said they recommend no live music.

Mayor Katz asked why they would allow operations to last until 2:30 a.m. on weekends if noise is a problem.

Mr. Emrich said this is based on what they believe will be upheld under state law. He said noise is very hard to document because it does not show up in police reports, adding that some methods for documenting noise need to be developed.

Mayor Katz said noise complaints are hard to document because they are not 911 calls.

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Commissioner Lindberg asked about imposing a 1 a.m. closing at all times.

Mr. Emrich said that is a successful approach in other communities but he has only seen it done when it was applied to a whole area.

Mr. McGrew said the Bureau is arranging a meeting with all interested parties to discuss these issues. He said perhaps Northwest should be a different kind of impact area than Old Town and Northeast.

Mayor Katz said the neighborhood has been willing to accept high density but along with that comes issues of liveability.

Commissioner Hales moved to hold this over one week to review the policy issues. He said he was uneasy about granting yet another Class A dispenser license to open an establishment where people go primarily to drink, not eat.

Commissioner Blumenauer said he would like to hear the public testimony first.

Robert Rice, President of Goforths, said he and his partner have operated 10-15 restaurants in the Portland area for 19 years. Referring to Commissioner Hales' statement, he noted that Class A dispenser licenses are held by most of the fine dining restaurants in the State, not by places where the emphasis is on drinks. He said they met with NWDA and were told that, regardless of any presentation Barringer's made, NWDA had blanket opposition to all new liquor licenses in the neighborhood. He said they believe their menu and operation addresses itself very well to neighborhood residents. He also talked to Police to get a sense of what was going on, adding that their facility is not of a scale or design that would make it a hot spot. He said setting this over would be a hardship because of their need to move on purchase of an option on this site.

Commissioner Lindberg asked about closing at 1 a.m. on weekends.

Mr. Rice said they would be far more receptive to a blanket closing throughout the neighborhood.

Commissioner Hales asked if a one week setover would be a serious problem.

Mr. Rice said they had to ask for two setovers already on the option.

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Commissioner Hales said regardless of Council's recommendation, Mr. Rice would have the ability to go to the OLCC. He said Council is trying to maintain a consistent policy, be sensitive to the neighborhood and maintain credibility with the OLCC all at the same time. He said he was searching for some responsible policy short of denial.

Mr. Rice questioned if a one week set over was enough time to grapple with issues that the NWDA has been trying to deal with since last August.

Jane Kale, 2080 NW Johnson, spoke for 53 residents in the apartment building she manages. She asked Council to support the NWDA's request for a blanket stop to approving additional liquor licenses. She said in her experience the problems are liquor-related, caused by people who are intoxicated.

Matthew Witt, NWDA Safety Committee Chair, clarified the amount of time NWDA has been working on this issue. He said neighborhood associations operate with volunteers and under constraints regarding meeting times.

Janet Tubemasimila, 2219 SE 70th Ave., landlady at 2102 and 2103 NW Hoyt, said she has lost tenants and gets many complaints because of noise and other problems at the Gypsy and Casa U Betcha. She called for a cap on the number of drinking establishments allowed in the area.

Commissioner Hales moved to set this over for a week even though that is not enough time to fully address the policy issue. He said he is not sure this application meets the standards of Subsection 7 and 8 of the Code nor does the current plan meet his interpretation of OLCC standards for overturning a negative recommendation from a municipality. Commissioner Lindberg seconded.

Commissioner Kafoury said it is a bad signal to send to people who applied following the usual process and then find that suddenly Council has decided to change the policy. She said she strongly favors establishing a policy but believes it is unfair to decide to look at one in the middle of the process.

Commissioner Lindberg agreed that there is a policy vacuum and that a week is not enough time to develop an overall policy. However, in a week the operational plan can be reviewed and perhaps some conditions, such as earlier closing, can be considered.

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Commissioner Blumenauer said he came willing to accept the recommendation of approval from the License Bureau. He said he is sympathetic to additional limitations, such as on closing hours, but has no doubt that OLCC would approve this application, even with Council's recommendation of denial. He said it is appropriate for Council to state its goals but it is unfair to take a responsible operator and put him in limbo. He said he believes there is adequate evidence for a decision today and he would vote against further delay.

Mayor Katz called for the vote on the motion to set this over one week to allow staff to work with the neighborhood association and start a longer term process for reviewing all applicants in impacted areas around the City. (Y-3; N-2, Blumenauer and Kafoury)

Disposition: Continued to February 11, 1993 at 2:00 p.m.

At 3:10 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner

Clerk of the Council