



CITY OF

PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 31ST DAY OF MARCH, 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. 396, 421, 424 and 425 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

392 Accept bid of Dirt and Aggregate Interchange, Inc., for improvement of NE Russell Street, from NE 111th Avenue to its easterly terminus for \$49,566 (Purchasing Report - Bid C-9795)

Disposition: Accepted; prepare contract.

393 Accept bid of R.C. Machines, Inc., for furnishing drinking fountains for \$42,076 (Purchasing Report - Informal Quotation)

Disposition: Accepted; prepare contract.

394 Accept bid of Moore Excavation, Inc., for Willamette Basin East side Test Sumps - Unit 3 for \$40,200 (Purchasing Report - Informal Bid)

Disposition: Accepted; prepare contract.

395 Accept bid of Mocon Corporation for 12", 8", 6" and 4" water mains in SW Boones Ferry Drive, SW 19th Avenue and SW Carson Street for \$242,778 (Purchasing Report - Bid 88)

Disposition: Accepted; prepare contract.

March 31, 1993

397 Accept bid of Wentworth Chevrolet for furnishing seventeen pickup trucks for \$217,602 (Purchasing Report - Bid 99)

Disposition: Accepted; prepare contract.

398 Accept bid of White Bear West, Inc., for furnishing eight traffic scooters for \$123,736 (Purchasing Report - Bid 103)

Disposition: Accepted; prepare contract.

399 Accept bid of Landmark Ford for four 14,500 GVW trucks with hydraulic power source and service body for \$226,400 (Purchasing Report - Bid 105)

Disposition: Accepted; prepare contract.

400 Accept bid of Commercial Affiliates, Inc., for Justice Center Building, 15th floor carpet installation for \$44,436 (Purchasing Report - Bid 107)

Disposition: Accepted; prepare contract.

401 Accept bid of Brundidge Construction, Inc., for improvement of Willamette Basin east side test sumps units 4-6 for \$104,937 (Purchasing Report - Bid 111)

Disposition: Accepted; prepare contract.

402 Accept bid of Colt Construction Company for construction of the Rivergate Quarry drainage system for \$99,232 (Purchasing Report - Bid 112)

Disposition: Accepted; prepare contract.

403 Accept bid of Casper & Magera, Inc., for NE 62nd and Hancock Sewer Relief Phase 2 for \$511,156 (Purchasing Report - Bid 113)

Disposition: Accepted; prepare contract.

404 Accept bid of K & R Plumbing Construction Company, Inc., for SE Bybee Boulevard, Milwaukie Avenue to 17th Avenue sewer reconstruction for \$71,087 (Purchasing Report - Bid 116)

Disposition: Accepted; prepare contract.

March 31, 1993

Mayor Vera Katz

***405** Amend contract with Executive Diversity Services, Inc., for multi-cultural diversity workforce training (Ordinance; amend Contract No. 27871)

Disposition: Ordinance No. 166363. (Y-5)

***406** Authorize appointment of Kenneth Rust at a rate of pay above entry (Ordinance)

Disposition: Ordinance No. 166364. (Y-5)

***407** Pay claim of Denise Nichols (Ordinance)

Disposition: Ordinance No. 166365. (Y-5)

***408** Pay claim of Herbert Jones (Ordinance)

Disposition: Ordinance No. 166366. (Y-5)

Commissioner Earl Blumenauer

409 Declare the purpose and intention of the City of Portland to construct the HCD street improvements on N Saratoga Street from N Vancouver Avenue to N Moore Avenue (Resolution; HCD Street; C-9789)

Disposition: Resolution No. 35115. (Y-5)

410 Amend the Mid-County Financial Assistance Program to be consistent with Section 17.33.010 of the City Code (Ordinance)

Disposition: Passed to Second Reading April 7, 1993 at 9:30 a.m.

***411** Authorize an intergovernmental agreement with Multnomah County for the construction of sanitary sewer facilities as a part of a County roadway improvement project (Ordinance)

Disposition: Ordinance No. 166367. (Y-5)

***412** Contract with SJO Consulting Engineers, Inc., for design services and air quality monitoring at Guilds Lake Remediation Site (Ordinance)

Disposition: Ordinance No. 166368. (Y-5)

March 31, 1993

***413** Call for bids for the NE 25th Avenue from NE Fremont Street to NE Regents Drive Sewer reconstruction project, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 166369. (Y-5)

***414** Call for bids for the NE 13th Avenue Basin, CSO Sump Project - Unit 12, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 166370. (Y-5)

***415** Call for bids for the NE 13th Avenue Basin, CSO Sump Project - Unit 14, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 166371. (Y-5)

***416** Call for bids for the NE 13th Avenue Basin, CSO Sump Project - Unit 15, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 166372. (Y-5)

***417** Call for bids for flow meters for the Airport Way No. 1 Pump Station and Force Avenue Pump Station, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 166373. (Y-5)

***418** Call for bids for the Columbia Wastewater Treatment Plant drag chain housing replacement project, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 166374. (Y-5)

419 Intergovernmental agreement for jurisdictional transfer of North Interstate Avenue from the Oregon Department of Transportation to the City of Portland (Second Reading Agenda 384)

Disposition: Ordinance No. 166375. (Y-5)

March 31, 1993

Commissioner Charlie Hales

- *420** Authorize transfer of fiscal administration of Multnomah County Cable Fund by Intergovernmental Agreement (Ordinance)

Disposition: Ordinance No. 166376. (Y-5)

Commissioner Gretchen Kafoury

- *422** Authorize application to the State of Oregon Criminal Justice Services Division for Edward Byrne Memorial State and Local Law Enforcement Assistance Program funds in the amount of \$200,000 (Ordinance)

Disposition: Ordinance No. 166377. (Y-5)

- *423** Amend interagency agreement between the Department of Human Resources - Senior and Disabled Services Division and the Portland/Multnomah Commission on Aging to include matching funds (Ordinance; amend Interagency Agreement No. 10799-93-1)

Disposition: Ordinance No. 166378. (Y-5)

Commissioner Mike Lindberg

- *426** Amend contract with Montgomery Watson Americas, Inc. (formerly James M. Montgomery Consulting Engineers, Inc.), for an additional \$357,001 for additional engineering services for Phase Two of a Corrosion Control Study required for compliance with the Lead and Copper Rule, and provide for payment (Ordinance; amend Contract No. 28315)

Disposition: Ordinance No. 166379. (Y-5)

- *427** Withdraw territory from Hazelwood Water District, Gilbert (Powell Valley Road) Water District and Rockwood Water District effective July 1, 1993 and assume a portion of Powell Valley Road Water District's bonded indebtedness in the amount of \$1,416 subject to intergovernmental agreement (Ordinance)

Disposition: Ordinance No. 166380. (Y-5)

- *428** Authorize Superintendent of Parks to establish hours of closure for individual parks (Ordinance; amend Code Section 20.12.210)

Disposition: Ordinance No. 166381. (Y-5)

March 31, 1993

- *429** Enter into intergovernmental agreement with Department of Environmental Quality to study groundwater remediation (Ordinance)

Disposition: Ordinance No. 166382. (Y-5)

City Auditor Barbara Clark

- *430** Reduce sidewalk assessment to 9665 N Kellogg Street (Ordinance; amend Ordinance No. 165347)

Disposition: Ordinance No. 166383. (Y-5)

REGULAR AGENDA

- 390** **TIME CERTAIN: 9:30 AM** - Approve report and implement the N Smith/Columbia Way Neighborhood Traffic Management Program project (Report introduced by Commissioner Blumenauer)

Discussion: Commissioner Blumenauer said this is the first project of this sort that did not undergo a test period.

Donna Green, Project Manager, NTMP, said the overall goal is to improve liveability and safety by reducing high traffic speeds. This is part of the Reclaiming Our Streets policy adopted last month by Council. She showed slides of the affected area and reviewed the goals and objectives which include reducing traffic speeds and non-local traffic volume while improving safety for vehicles, bicyclists and pedestrians.

Elements of the project include a new signal at Fessenden and Columbia Way, two curb extensions and a marked crosswalk, restriping of the street from four to two lanes and the addition of a bicycle lane. A redesign of the N. Smith intersection is proposed to visually narrow the road and enhance pedestrian safety. Ms. Green said balloting results were: 154 yes, 90 no votes, or 63 per cent in favor.

Individuals speaking in support of the project included:

Richard Risner, 6949 N. Smith, 97203
Tom Bushard, 7102 N. Seneca, 97203
Donna McMullin, 7227 N. Smith, 97203
Larry Hollibaugh, 8006 N. Oswego, 97203
Mike Matteucci, N. Portland Neighborhood Association
Leora Mahoney, Chair, St. Johns Neighborhood Association

March 31, 1993

Supporters emphasized that the project will result in increased safety for motorists, children and pedestrians.

Disposition: Approved.

391

TIME CERTAIN: 10:00 AM - Support a priority north/south corridor and action plan for JPACT, RTC and Metro approval (Resolution introduced by Commissioner Blumenauer)

Discussion: Commissioner Blumenauer emphasized his appreciation to Council for engaging citizens in this process, including the regional rail summits, which has brought close to unanimous agreement from the parties involved.

Steve Dotterer, Office of Transportation, said there are five elements: 1) selection of the Milwaukie route as the priority route between the City and Clackamas County; 2) selection of the 1-5 corridor as the priority route to Vancouver; 3) proceed with both the North and South corridors concurrently; 4) consider light rail to the Airport as a non-priority route but keep working on it; 5) consider a second downtown alignment when the North/South alignments are completed. Mr. Dotterer said congressional support will be needed as federal funds of between \$500-700 million will be sought to pay for the project. Local matching funds will also be needed.

Commissioner Blumenauer noted that the Westside Light rail has a 75 per cent federal match but observers believe that any future projects will be lucky to get 50 per cent.

Craig Lommicki, Mayor of the City of Milwaukie, urged support for the Milwaukie I-5 North route.

Dr. Larry Griffith, 12530 SE Knapp, said his main interest in extending light rail is to keep it cost-effective. He stressed the need for reliable funding and called for light rail to be placed where it will generate the most traffic, noting that as each of these projects becomes more expensive, it becomes less cost effective.

Ray Polani, 6220 SE Ankeny, Chair of Citizens for Better Transit, said the North/South transit line probably should have been the first priority for light rail, considering the congested traffic on the Minnesota freeway and McLoughlin Boulevard. He reminded Council that this is a regional facility and should provide service that is time competitive with the automobile. He said the temptation of adding too many stations, widening highways and

March 31, 1993

piggybacking other projects onto light rail should be resisted. The foremost concern, however, is funding. He discussed current legislation aimed at reallocating transportation dollars.

Dan Long, Willamette Area Transit Resources (WATR), 2068 NW Lovejoy, asked Council to consider water transit, specifically the use of high-speed, large capacity boats along the Willamette. He said this could serve both Milwaukie and Lake Oswego and tie the two communities together. He said the system would be flexible, costs would be moderate and no right-of-way condemnation would be involved.

Lee D. Leighton, 6113 SE 17th Ave., 97202, said neighbors in the Westmoreland/Sellwood area are concerned with alignments and traffic impacts, particularly the impact on the Sellwood Bridge.

Mike Mattecucci, 214 NE Thompson, said neighborhoods in North Portland are very interested in the placement and design of stations that will be a part of the alignment to the North. He said light rail to Vancouver should cut down on traffic to the Coliseum and he is happy to see funds from Washington State being used in this project.

Commissioner Blumenauer said a light rail station will be part of the Arena design.

Charles Flake, Liveability Chair for N/NE Coalition of Neighborhoods, said the Coalition unanimously approved the concurrent North/South routes.

Darin Attebury, City of Vancouver, expressed support for this recommendation from the Portland Planning Commission. He said they also favor concurrent support of the Milwaukie corridor at the same time the I-5 corridor is built.

Chuck Green, Clark County Transportation Engineer, also supported the I-5 route and a concurrent application to federal government.

Bill Bradley, Columbia Willamette Greens, 1905 NE Going St. 97211, recognized Mr. Polani's assertion that light rail be time competitive but said attention must be paid to communities along the corridor. He said his organization believes that Martin Luther King Boulevard deserves particular attention and one way to do this is by routing some stations along it. He said a line along Sandy would be an appropriate route to the Airport.

Ernie Munch, representing Red Lion Hotels and Inns, supported selection of I-5 corridor and agreed with the need for another downtown alignment.

March 31, 1993

Pam Arden, Kenton Neighborhood Association, stressed the need for mass transit to serve the neighborhood, a need that was raised often as part of the Albina Community Plan discussions. She also asked that neighborhoods be an integral part of the planning process, asserting that citizens in the I-5 corridor were not included in the initial study.

Frank Pollack, 438 N. Hayden Bay Dr., said Hayden Island residents favor the route North but hope that a towering structure over the river will not be a part of the project.

Disposition: Resolution No. 35116. (Y-5)

396

Accept bid of Larsen, Inc., for Burnside East-South sanitary sewer system for \$1,232,431 (Purchasing Report - Bid 95)

Discussion: Commissioner Blumenauer said he wanted to comment on this report because of prior difficulties with Larsen, Inc. and the neighborhood. He said they have been working hard to make sure the problem has been solved. He stated that for this contract Larsen will not be using the property at 111th & Harold for rock crushing activities or stock piling of materials. He said a Stipulated Agreement will be signed within two weeks calling for cessation of such activities as well as for removal of equipment and stockpiled gravel and rock. He entered the Understanding in the record.

Disposition: Accepted; prepare contract. (Y-5)

***421**

Restore accrued vacation to two non-represented employees of the Bureau of Fire, Rescue and Emergency Services (Ordinance; waive City Code Section 4.16.040)

Discussion: Commissioner Hales noted increasing concern by Council with the Fire Bureau's past practice of carrying vacation hours forward for management personnel beyond the two years allowed others. He said he has determined that this practice be discontinued but would like this one to be grandfathered in as it was done with the expectation that the old policy would apply. He said this should be the last one.

Disposition: Ordinance No. 166384. (Y-5)

***424**

Amend existing agreement with the US Forest Service for water quality monitoring in the Bull Run Watershed to extend through March, 1993 (Ordinance; amend Agreement No. 28274)

Disposition: Ordinance No. 166385. (Y-5)

March 31, 1993

- *424** Amend existing agreement with the US Forest Service for water quality monitoring in the Bull Run Watershed to extend through March, 1993 (Ordinance; amend Agreement No. 28274)

Disposition: Ordinance No. 166385. (Y-5)

- *425** Agreement with the US Forest Service to jointly implement the Bull Run Water Quality Monitoring Plan, as modified by the revisions of 1991, through September, 1993 (Ordinance)

Discussion: Joe Glicker, Water Bureau, said with these agreements the City actually gets money from the Forest Service.

Frank Gearhart, 2103 NE 24th Court, Gresham, Citizens Interested in Bull Run, said they have no trouble with the monitoring process as such but are concerned that the entire water shed, including the Little Sandy, is not being monitored. He said PGE and two paper companies have filed for enormous pre-1913 water rights which, if granted, would have a tremendous impact on future water shortage. He said they were informed by PGE that the company planned to exercise these claims in order to cover losses from closure of Trojan. He said this could tie water issues up in litigation for several decades and, in the meantime, a serious look should be taken now at providing a third reservoir in the Bull Run.

Mr. Glicker said this agreement does not deal with any monitoring on the Little Sandy. He said since Council passed the Bull Run management resolution last year, the Bureau and other parties have been working on a planning process to see how it should be implemented. One of the issues involved is the Little Sandy. He said he did not think the Forest Service would be willing to cost-share monitoring on the Little Sandy now and would not recommend having the City pay the full cost and do it now, given the regional planning process underway.

Disposition: Ordinance No. 166386. (Y-5)

- 431** Request from Mark D. Turnham, Portland Postal Employees Credit Union, for Council review of sewer assessment (Previous Agenda 346)

Discussion: Mark Turnham, representing the Portland Postal Employees Credit Union, said the Union only received notification a month ago that it would be assessed on this property.

March 31, 1993

Commissioner Blumenauer said he would like to have a week to see if some adjustment could be made consistent with Bureau policy. He said the Bureau cannot reassess the neighbors or go into the General Fund but he would like to see if some project money could be redirected to mitigate the effect in this case.

Disposition: Continued to April 7, 1993 at 9:30 a.m.

***432** Accept grants from Metro for four restoration projects (Ordinance introduced by Commissioners Blumenauer and Lindberg)

Disposition: Ordinance No. 166387. (Y-5)

Mayor Vera Katz

433 Update the Council on State and Federal legislative activities and progress on City of Portland legislative priorities (Report)

Discussion: Marge Kafoury, Office of Government Relations, reviewed some of the major bills being considered including the urban renewal package, which has passed both houses, and the elections bill which, if passed, would place the City's measure on the June ballot. Other bills she reviewed concerned the dedication of state beer and wine tax revenues, measures preventing the imposition of entertainment or motel/hotel taxes, the transportation finance package and the assessed valuation cap issue. She said the City has introduced enterprise zone legislation as well as legislation granting forgiveness of back property taxes on the Dominion properties.

Ms. Kafoury explained the status of measures concerning the transfer tax, annexations, system development and other issues of importance to the City.

Commissioner Lindberg said Multnomah County legislators are meeting with Council members and County Commissioners every three weeks. He said Council members have also been going to other cities to let them know the City's agenda.

Disposition: Placed on File.

434 Amend Code Chapter 5.68, Professional, Technical and Expert Services Contracts (Ordinance; add 5.68.015; amend 5.68.020, 5.68.030, 5.68.030, 5.68.040 and 5.68.060)

Discussion: Mayor Katz said this is an opportunity to open up competition in a small area for professional and technical services contracts (PTEs). It

March 31, 1993

has a small affirmative action element and requires some documentation. She said a larger package will come later with recommendations to do a cost-benefit and other analyses.

Jessica Marlitt, Mayor's Office, said State statutes are very general about PTE contracts, as is the City Code. For contracts under \$10,000, no specific guidance is given about selection and solicitation. This ordinance would require three informal quotes in order to open up the competition; one of the quotes should be from a female, minority or disabled business. For contracts over \$10,000 the same rules apply even though a selection committee is required. A one-page worksheet will be used to provide this information.

Carleton Chayer, Purchasing Agent, said competition for small contracts is appropriate as is inclusion of female and minority businesses. He said Purchasing plans to assist bureaus in streamlining the process so it does not become a burden.

Disposition: Passed to Second Reading April 7, 1993 at 9:30 a.m.

435 Pay claim of Douglas L. Larson (Previous Agenda 357)

Discussion: Commissioner Lindberg requested referral to his office.

Disposition: Referred to Commissioner of Public Affairs.

Commissioner Earl Blumenauer

436 Support the Oregon Transportation Plan Legislative Package (Resolution)

Discussion: Commissioner Blumenauer said since time was running out this morning, he would like to reschedule this for discussion at another time.

Disposition: Referred to Commissioner of Public Works.

***437** Authorize a contract with Harza Northwest, Inc., to provide professional consulting services for development of conceptual plans and redesign of stream restoration work on main stem Fanno Creek (Ordinance)

Disposition: Ordinance No. 166388. (Y-5)

March 31, 1993

Commissioner Gretchen Kafoury

438

Express City Council intent to join lawsuit filed by Legal Aid and Northwest Pilot Project concerning the General Services Administration's proposed plans to build a federal courthouse at the site of the Hamilton and Lownsdale hotels (Resolution)

Discussion: Commissioner Kafoury said she agreed to hold over the vote until next week. The Mayor's Office has been in contact with Senator Hatfield and is still hopeful a solution can be found. However, the City Attorney will continue preparing the case as the hearing is April 12.

Individuals speaking in support of the City's participation in the law suit included:

Chuck Currie, Burnside Advocates, 1230 SW Salmon
Bill Muir, Multnomah County Community Action Commission
Debbie Wood, Central City Concern
John Simmons, Transition Projects, 435 NW Glisan
Sam Galbreath, Advocates Group
Lee Lacey, Downtown Community Association

They said the loss of housing will exacerbate the problems of the homeless and put increasing pressures on four major shelters which are already full.

Susan Emmons, Northwest Pilot Project, said while there are no written commitments from the GSA, other written materials do support the commitment by the federal government to replacing the lost housing. She said out of a \$132 million project, \$2 million in replacement housing is not asking too much, noting the many promises the Project and the City had from HUD for the 194 housing certificates. Now, she said, the government is stalling. Ms. Emmons argued that the suit will be stronger if the City agrees to join.

Commissioner Lindberg questioned Ms. Emmons and Mr. Galbreath about receipt of the \$2.2 million grant and the availability of the housing units.

Ms. Emmons said they got a donation of the 511 NW Broadway building in June and a \$2.2 million grant in September. GSA, HUD, PDC and the local advocates met to decide what it would take to replace 194 units and determined that it would be the building, the \$2.2 million, and 194 Section 8 certificates. With the change of administration, the housing certificates were lost and the advocates believe that after the GSA decided to close the building, they had no other choice but to move ahead with the lawsuit.

March 31, 1993

Commissioner Lindberg said he thought there were actual housing units available for the 194.

Ms. Emmons said the relocation rights of those already living at the Hamilton is an entirely separate issue than the desire to replace the housing stock. She said GSA made a commitment to keep the building open to September 1 and they expected to have the Hamilton and Lownsdale housing stock available all summer.

Commissioner Hales asked if the \$2.2 million is a commitment in the federal budget to spend that amount on replacement housing, noting that the money has not been disbursed.

Ms. Emmons said predevelopment will not start until they get the remaining resource. The \$2.2 million is committed to the City and is certain money.

Commissioner Lindberg said \$2.2 million would not be sufficient without the housing certificates.

Ms. Emmons said it does not have to be Section 8 certificates; it could be \$2 million instead.

Mr. Galbreath said these numbers were derived in concert with PDC based on their experience in the Downtown Preservation Program.

Commissioner Kafoury moved to set the item over one week. The Mayor so ordered.

Disposition: Continued to April 7, 1993 at 9:30 a.m.

S-439 Adopt regulations declaring certain activities on business properties a public nuisance and providing for remedies (Second Reading Agenda 277; amend Code Title 14)

Discussion: Cay Kershner, Clerk of the Council, noted that a Substitute had been filed.

Kathryn Imperati, Senior Deputy City Attorney, described the changes in Section 14.120.010 which include expanding the definition of business property to address multi-tenant buildings where only one building is a problem, rephrasing of subsection f (pattern of disruptive activity) in response to comments that a strict numerical formula proposed would allow businesses which are a problem to evade enforcement. In Section 14.120.030 notice provisions have been expanded to require notice to the owner,

March 31, 1993

notice provisions have been expanded to require notice to the owner, manager or operator of a business. In 14.120.040 new subsections have been added to allow stay of proceedings under certain conditions and to include a potential defense when an owner can show they have exercised reasonable diligence to abate the nuisance themselves.

Ms. Imperati referred to a letter by Brad Woodworth, representing Tracy Blakeslee, who objected to basing enforcement action on activities relating to prostitution and argued that certain State statutory provisions needed to be incorporated into the ordinance. Ms. Imperati said she is not entirely persuaded that Mr. Woodworth is right but after conferring with him, is proposing an additional amendment to the substitute ordinance. She said she could bring back a revised substitute this afternoon that contains the additional language. She said it would add a new Subsection D to Section 14.120.040 stating that for any action in which enforcement is based on one or more acts constituting a violation relating to prostitution, the Court, if satisfied of an owners good faith, shall not order that the property be closed if the owner had no knowledge of the existence of the activity and has made reasonable efforts to abate it. Ms. Imperati said she would add two subsections to say that if an order of closure has been entered based on these kind of violations and the owner applies, within a one year period of time, the order of closure would be cancelled. With respect to enforcement based on one or more prostitution activities, any party can demand a jury trial.

Mayor Katz ordered that the matter be continued to the afternoon session.

Commissioner Lindberg asked if Council would agree to some type of evaluation, perhaps in six months.

Commissioner Kafoury and Ms. Imperati said they would be glad to report back to Council then.

Commissioner Hales asked what the intent of the amendment was.

Ms. Imperati said it was intended to preclude the Court from issuing a closure order for an owner who had no knowledge of improper activity taking place on or outside his property.

Lanny Swerdlow, 13 NW 13th, 97209, operator of City Night Club, said he believes the word customer should be more narrowly defined. He said while business operators may eject customers they can not always get them to move on and it is important not to penalize business owners in this instance.

March 31, 1993

Commissioner Kafoury said she gave the definition to Ms. Imperati for review.

Brad Woodworth, 1500 SW First, attorney for Oregon Entertainment Corp., said he was happy to see some of their amendments incorporated in the revised ordinance. He said it needs additional work, however. For instance, there is no accountability mechanism; in related ordinances the Commissioner in Charge must authorize enforcement activities and may enter into voluntary compliance agreements before enforcement is undertaken. The definition of pattern of disruptive behavior has gotten worse, he argued, and suggested that the definition stick to "a history of serious and persistent problems". He said the changes made regarding prostitution activities, making them consistent with State statutes, are important procedural protections and should be extended to all the other activities as well. He said a list of factors given to the court to consider as remedies should also be included. Guidance should be given the Court if it wishes to consider a lesser remedy.

Commissioner Kafoury said the City Attorney and a staff work group has explored all these issues. She said she has agreed for a review in six months and if changes are needed, they can be made at that time.

Mayor Katz asked why some of the parallel provisions dealing with the previous chronic nuisances were not included.

Regarding the issue of having the Commissioner in Charge authorize the proceeding, Ms. Imperati said that was not added simply because that added one more layer to the enforcement action process, which they wanted to keep as simple as possible. On the definition of a pattern of disruptive activity, she explained that she attempted to come up with enforcement alternatives in response to testimony asserting the original definition was too strict. As to the list of factors, she said it appears in the other nuisance ordinances (chronic disorderly conduct and specified crime property) under the penalty provisions and since this ordinance does not provide for the imposition of penalties, she did not feel that list should be included. However, she said she would be glad to include it if Council felt it was appropriate.

Commissioner Lindberg said he would make a motion this afternoon to call for the Commissioner in Charge to sign any proceeding action in order to give more checks and balances.

March 31, 1993

Commissioner Hales agreed that this is a serious enough sanction to require some gatekeeping action from the Commissioner in Charge.

Disposition: Substitute continued to March 31, 1993 at 2 p.m.

City Auditor Barbara Clark

440 Assess benefitted property for the costs of the improvement of SW 49th Avenue from SW Vermont Street to 550 feet south (Hearing; Ordinance; C-9784)

Discussion: Dan Vizzini, Auditor's Office, said one remonstrance was filed which the Office of Transportation is recommending be overruled.

Commissioner Blumenauer moved to overrule the remonstrance. Commissioner Lindberg seconded and the motion carried. (Y-5)

Disposition: Remonstrances overruled. Passed to Second Reading April 7, 1993 at 9:30 a.m.

441 Assess benefitted property for the costs of construction of the NW Skyline Boulevard Water Main from 3500 feet north of NW Thompson Road to NW Reed Drive (Hearing; Ordinance; C-9761)

Discussion: Dan Vizzini, Auditor's Office, said one remonstrance was received and his office agrees with the property owner in this matter and recommend that Council accept the remonstrance and amend the assessment roll.

Commissioner Lindberg moved to accept the remonstrance, reduce the assessment and prepare a substitute assessment roll for the local improvement district. Commissioner Hales seconded and the motion carried.

Mr. Vizzini said the property owner has a continuing problem with the Water Bureau and he recommended directing the Bureau to resolve that issue.

Mayor Katz stated that passage of the ordinance will occur with the clear understanding that the Water Bureau will resolve the issue raised by the remonstrator regarding the charges for the main extensions.

Disposition: Remonstrances accepted; prepare substitute assessment roll. Passed to Second Reading April 7, 1993 at 9:30 a.m.

March 31, 1993

442 Contract with the Poorman-Douglas Corporation for bill generation and mailing services and provide for payment (Second Reading Agenda 386)

Disposition: Ordinance No. 166389. (Y-5)

At 12:30 p.m., Council recessed.

March 31, 1993

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 31ST DAY OF MARCH, 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; Kathryn Imperati, Senior Deputy City Attorney; and Officer Sheridan Grippen, Sergeant at Arms.

S-439 Adopt regulations declaring certain activities on business properties a public nuisance and providing for remedies (Second Reading Agenda 277; amend Code Title 14)

Discussion: Kathryn Imperati, Senior Deputy City Attorney, explained the amendments she had made at Council's direction at the morning session. The changes include adding a definition of Commissioner in Charge, revising the definition of customer according to Mr. Swerdlow's proposal and incorporating procedural provisions that appear in the chronic disorderly conduct and specified crime property ordinances. These include having the Commissioner in Charge authorize the City Attorney to file an enforcement action. She also incorporated the language suggested by Mr. Woodworth in order to make it consistent with State statutes.

Commissioner Kafoury moved the substitute which incorporates Ms. Imperati's changes. Commissioner Lindberg seconded.

Disposition: Passed to Second Reading April 7, 1993 at 9:30 a.m.

443 Appeal of Meadowview Associates, applicant, against the Hearings Officer's decision regarding adjustments to a previously approved PUD/Subdivision, located at the extension of SW Dickinson Street, between SW 12th and 17th Avenues, south of SW Dickinson Street (Hearing; 92-00809 PU AD)

Discussion: Tom Bizeau, Planning Bureau, said this case relates to building coverage, setbacks, density, environmental review and tree preservation and is dealt with in Title 33 and 34, particularly regarding PUDS and subdivisions. He said this proposal for an eight lot PUD and subdivision originally came before Council as a seven-lot development which had been denied by the Hearings Officer for lack of adjustments for open space and building coverage. Council remanded it to the Hearings Officer who then approved it for a seven-lot PUD.

March 31, 1993

Mr. Bizeau said the original application was for six lots but the Planning Bureau asked that the total ownership be included which brought in an additional portion. That addition changed the perspective of the Office of Transportation in terms of street dedication for sideways. Appellants' issue regarding density is that they should be allowed eight lots, as allowed by the Code, rather than the seven allowed by the Hearings Officer. Staff agrees with the Hearings Officer because the lower lot configuration will better conserve the natural features on the site. Appellants also contend that the maximum five-foot front yard setbacks imposed by the Hearings Officer, primarily because of the extensive fill required in the back are not justified by the Code. Staff concurs with the Hearings Officer. He said the Environmental Zone boundary does not apply to this site because the application was filed prior to adoption of the boundary but it does apply to any individual buildings on the lots since there were no footprints approved at the time. Council could approve footprints (as shown in the slides) that would exempt the applicant from going through environmental review in the future. Applicant is also concerned with the tree preservation plan since an arborist has now found that trees originally slated for preservation are diseased and should be removed. The Hearings Officer allowed that, which will give applicant one additional lot in the area. The new tree preservation plan will protect trees in the drainage area.

Susan Feldman, Bureau of Planning, discussed the building coverage issue, a point not raised by the applicant. She said the Planning Bureau disagrees with the Hearings Officer's finding that adjustments which increased the allowable building coverage were not necessary, arguing that the common open space and streets should be included in calculating building coverage even once they are individually owned. The Bureau believes this interpretation fails to support the reasoning behind building coverage standards which attempt to ensure that buildings footprints do not overwhelm the site and that buildings will define the character of the area. Planning believes that the site consists of the residentially developed portion of the PUD, excluding rights-of-way and open areas and should be applied on a lot-by-lot basis. She cited Code Section 33.910 which defines site as the portion of the ownership proposed for development. The Bureau recommends that if Council approves the subdivision, that the findings also grant approval of adjustments for footprints of houses that are over 30 per cent building coverage on each lot.

William Cox, representing Meadowview Associates, said a legal opinion from the City Attorney should be added regarding the building coverage issue. He said the 5-foot setbacks are unnecessary and the requirement is based on subjective rather than written standards. He said standard set backs that match up with adjoining developments in the neighborhood would be denied

March 31, 1993

in this case based on alleged erosion problems when the proper controls and objective standards already exist in the Code. He said there is no valid reason to impose such severe setbacks on family housing. He said the alleged significant damage the subdivision will cause will primarily be removal of blackberries and a few cherry trees.

Regarding lot coverage, Mr. Cox said when applying for a new subdivision the site is the subdivision, not the individual lots. He said the key word in the Code wording is "structure", which as defined in the Code does not include paved areas or vegetative landscaping materials. It does not include the streets, open space tracts, paved areas or back yards. He said if you take those out, the whole site gets calculated and applicant believes under the Code the applicant can cover up to 65 per cent of the site. If square footage of streets and open space are ignored and the standard is applied to each lot, which is what the Planning Bureau wants to do, you end up with less than 65 per cent coverage. He said you have to come up with some kind of ratio per lot to bring back the open area and streets into the calculation of lot coverage. He said this is a very technical, legal issue that needs to be resolved in the future.

David Bentz, 1318 SW Stephenson Street, presented information from the Arnold Creek Neighborhood Association. He said the primary concern of the neighborhood is the lack of sidewalks and they believe this project needs to extend the sidewalks that do exist to the adjacent property. Another concern is the intrusion into the EC zone if the houses are put as far back as the developer proposes. He said they have nothing against having eight units, rather than seven, but are concerned that about their impact on the EC zoning.

Speaking for himself, Mr. Bentz said PUD provisions should not be taken as a way to transfer density and reduce lot areas and setbacks so that you end up with something that is really designed as a subdivision instead of a PUD. He argued that trees had been cut down during the time the application was turned in and the time it got to the hearing. He said applicant has not made any attempt to provide flexible building pads which is the reason why the reduced setbacks are valid. He said there is little hope that a tree preservation plan will help as it is usually ignored as individual lot owners take control of the property. He also criticized the proposed grading which makes the lots fit the houses, rather than the other way around. He suggested using other house plans more compatible with the topography, such as daylight basements or stilts.

March 31, 1993

In rebuttal to Mr. Cox's testimony, Mr. Bentz contended that the standards will not prevent erosion, citing Meadowview I as an example. Regarding sidewalks, he indicated that current standards make them prohibitively expensive and some lesser standards might need to be considered.

Nancy Park, 12000 SW Boones Ferry Road, objected to not receiving notification. She said her major concern is erosion and objected to casting aside environmental zones. She said putting eight lots on land that should have been zoned R20 is wrong.

Jack Holland, 1414 SW Stephenson, voiced concern about the traffic lights and the dangerous traffic situation on SW Boones Ferry Road which the addition of more houses will only exacerbate.

In his rebuttal, Mr. Cox said the trees being cut down are diseased. Regarding the lack of sidewalks, he said sidewalks exist on the east side and as a condition of the approval a full street would be required on Dickinson with sidewalks along it. This will in turn reduce the number of people walking along Stephenson. He said the trees alluded to by Mr. Bentz were cut down by others, not the applicant. As for architectural design, he said housing design is irrelevant and if the project is conditioned it should be conditioned to require that it meet provisions of Title 24 governing erosion and fill regulations. He said there has never been an erosion citation issued from Meadowview Phase I and most of the trees removed from that development were diseased fruit trees or those required to be removed by City utility departments. He asked for removal of conditions q, r and s which basically eliminate any yard for these houses.

Commissioner Hales asked if the original application was for both a subdivision and a PUD.

Mr. Cox said he understood that a PUD application was made primarily to address the fir trees which have since been found to be diseased.

Commissioner Kafoury asked to refer the issue of building coverage to the City Attorney for further research.

Commissioner Kafoury said she had no objection to the eight lots. Council agreed, with the Mayor noting that Staff said they will go along with eight lots if the front-yard setbacks they recommend are retained.

Commissioner Hales said he is perplexed with the recommendation for five foot setbacks in an R-7 zone and asked if this had ever been required before on a site of less than 30-40 percent slope.

March 31, 1993

Mr. Bizeau said they have required specific setbacks in different developments around the City at various times.

Commissioner Hales said he is troubled by imposing these setback conditions on a proposed subdivision when the subdivisions on either side have 15-20 feet setbacks.

Mr. Bizeau said it includes urban design considerations, citing the visual preference survey.

Commissioner Hales said he did not see how that would apply to a neighborhood street that is mostly built out with houses that have conventional setbacks from the street for R7 or R10 densities on either side of it.

Mr. Bizeau said one of the aspects of a PUD is balancing urban design with the conservation of the natural features of the site, including a steep hillside and a narrowing of the actual drainage area which gives the developer narrower lots.

Commissioner Hales said Code provisions automatically allow you to move the house closer to the street if there are steep sites.

Mr. Bizeau said the developer does not want to do that, but wants to keep them away from the street, creating more fill area.

Commissioner Blumenauer asked if there was a record of erosion problems resulting from the adjacent developments.

Mr. Bizeau said there have been complaints but he had no documentation.

Mayor Katz asked him to come back with that information.

Commissioner Blumenauer said his decision would be contingent on the factual evidence that comes forward. He asked if the topography of the adjacent properties were significantly different from this site.

Mr. Bizeau said if Oregon Hills Estates, the site to the west, came into day it would be dealt with in same way as this one. The site to the east is essentially the same continuation of the drainage way.

Commissioner Lindberg asked if the concern was just with the erosion.

March 31, 1993

Mr. Bizeau said the developer is required to have a 2 to 1 slope, which is fairly steep and as houses are pushed farther back the slope gets higher in the back because the fill is pushed back, giving you up to a 24 foot fill area. As you get closer and closer to drainage way some trees and more vegetation will be disturbed.

Ms. Feldman said the difference between this development and those that flank it is that this one is narrower the street is closer to the drainage way.

Commissioner Hales said he thought the concern was that the fill not enter the drainage way.

Mayor Katz asked if the fill and the potential erosion were the concerns or whether it was the drainage way and preservation of the natural environment.

Mr. Bizeau said it is the fill and the potential for erosion.

Commissioner Hales said he assumed erosion control regulations apply and if there was a condition that the E zone or drainage way not be entered, the applicant would have a number of options for how to address this. He said he does not understand the City's interest in this beyond designation of an area where fill will not be allowed. He said the slope of that fill is not really a planning issue.

Mr. Bizeau said that is correct, there is an ordinance that deals with erosion control.

Mayor Katz said if the answer to Commissioner Blumenauer's question of whether there has been erosion on adjacent developments is yes, then that may be the reason for the Bureau's recommendation. If the answer is negative, then the City may want to take a different position.

Commissioner Blumenauer said it looks as if staff has interpreted PUD regulation in a way that would perhaps mitigate the intrusion through a design approach.

Ms. Feldman said regarding the urban design element, Staff would recommend a greater setback if the tradeoff was having less fill.

Commissioner Hales said he is perplexed that this would be done through PUD regulations, other than designating where not to mess up the landscape. He said the City can draw a line and say do not fill here. How

March 31, 1993

they choose to construct buildings on the site after the lots are created is up to the applicant. He noted varying solutions on the adjacent property which is topographically similar.

Commissioner Hales asked how Condition J, regarding compliance with future shade protection standards, fits in with solar access provisions.

Mr. Bizeau said Condition J is there to make sure that it gets implemented in terms of the solar lot standards in Title 34.

Commissioner Hales asked why they have to be included in the CC&R's (Covenants, Conditions and Restrictions).

Mr. Bizeau said each lot has to have that stipulation attached to it and it could be either on the CC&R or the plat.

Commissioner Hales said he did not recall any mandating of the content of CC&R's.

Mr. Bizeau said it does not have to be in the CC&R's. He said the applicant needs to file a note the County Recorder regarding the solar access requirement.

Commissioner Hales asked if adjacent subdivisions were subject to the same landscaping and tree preservation regulations, such as specified plant species, maintenance requirements, etc.

Mr. Bizeau said conditions have become more specific in these areas since the other two subdivisions were built.

Commissioner Hales said the dominant vegetation in that area will be that planted by homeowners, except for the eight houses in the middle of the block that are landscaped differently. He asked how that would work out practically.

Mr. Bizeau said landscaping requirements were primarily aimed at landscaping of the commonly owned areas, basically the fill area. He said there is definitely a problem in that homeowners will make plantings in the future. He said you try to do what you can in the beginning and hope it has some effect.

Commissioner Hales asked about the enforceability.

Mr. Bizeau said it was complaint driven.

March 31, 1993

Ms. Feldman said the intent was to landscape the commonly owned area and have some transition between that and the rear yards. She said Council could remove the requirements for the rear yards.

Commissioner Hales asked if the mitigation plan for all trees over six inches in diameter (Condition U) included all species and trees in the public right-of-way.

Mr. Bizeau said there is no public right-of-way now. It does mean all trees, regardless of species. He said one tree would have to be removed to build the street and that would be mitigated in the common area.

Referring back to a prior question, Mr. Bizeau said the applicant needs to file a note on the plat with the County Recorder in relation to the solar access requirement.

Mayor Katz summarized, noting that the Council cannot respond to the 7 or 8-lot configuration until it understands clearly the setback requirement. She asked Council members if they agreed with the tree preservation plan, noting agreement. She questioned the sidewalk requirements on SW Stephenson.

Glen Pierce, Transportation Engineering, said when this proposal originally came through it was for a six-lot development and did not include the property on Stephenson, Tax Lot 132. Transportation's conditions were thus based on the on-site improvements and completion of the missing link street with sidewalks. When the possible addition of the Tax Lot 132 was proposed, the Bureau recommended that right-of-way dedication be provided on Stephenson for the future sidewalk and waivers of remonstrance be obtained that could be used if a local improvement district were ever formed in the future to complete sidewalks on that street.

Mayor Katz asked if there were sidewalk requirements on the PUDs.

Mr. Pierce said they require sidewalks with all local street construction and where new development has occurred on Stephenson, sidewalks have been built.

Commissioner Blumenauer said when the project first came in it did not front on SW Stephenson but as the project evolved this changed. He said Transportation policy is not to do something that changes the economics of a project once approval has been given. The compromise was to get the waivers.

March 31, 1993

Commissioner Kafoury asked if the addition of Tax Lot 132 affected the density.

Mr. Pierce said their recommendation was based on the first 6-lot subdivision, and later, on the 7-lot subdivision.

Mayor Katz asked what Transportation's recommendation would be if the project had not had this history and it was seeing the current proposal for the first time.

Mr. Pierce said they would recommend sidewalks.

Don Gardner, Office of Transportation, said all the new homes face a new street which will have sidewalks. The aggregation of Tax Lot 132 only adds a sidewalk in front of one existing home on Stephenson which does not serve the subdivision.

Mayor Katz said if a Bureau makes a recommendation based on the first plan and then a completely new plan comes in, she is at a loss.

Mr. Bizeau said the sidewalk condition is usually deferred to the Office of Transportation.

Ms. Feldman said Bureau should go back each time as the proposal changes but in this case it was not astute enough to realize the lot on Stephenson had been included.

Mr. Gardner said Transportation would look to see if a substantial change had been made. In this case they do not view this as a substantial change even though it would be nice to have a sidewalk.

Ms. Feldman said Council also needs to find that significant change requires the sidewalk on Stephenson.

Commissioner Hales said he did not see what density had to do with a requirement for a sidewalk on Stephenson when all the houses face Dickinson where there are sidewalks.

Mr. Gardner said it comes back to the definition of site. It was only when the site was aggregated to include the seventh lot, that they decided to require the right-of-way and waiver.

March 31, 1993

Commissioner Blumenauer said the record will be kept open and suggested that other interested parties submit materials. He said he would like to flag as a policy issue what happens when proposals are changed.

Ms. Feldman said a City Attorney opinion on building coverage and erosion controls was needed.

Commissioner Blumenauer asked about the use of the PUD mechanism to accomplish E zone objectives even though they are not required under the application as submitted.

Disposition: Continued to April 28, 1993 at 2:00 p.m.

At 3:25 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council

April 1, 1993

THURSDAY, 2:00 PM, April 1, 1993

DUE TO LACK OF AN AGENDA
THE PORTLAND CITY COUNCIL
DID NOT MEET