



CITY OF

PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD 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; Kathryn Imperati, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

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

CONSENT AGENDA - NO DISCUSSION

- 267** Cash Investment Balances for January 13, 1994 through February 9, 1994 (Report; Treasurer)
- Disposition:** Placed on File.
- 268** Accept bid of Richard L. Martin, Inc., for Albina pump station revisions and modifications for \$377,770 (Purchasing Report - Bid 64)
- Disposition:** Accepted; prepare contract.
- 269** Accept bid of Courtesy Ford for two 14,500 GVW trucks with hydraulic power source and service body for \$122,475 (Purchasing Report - Bid 95)
- Disposition:** Accepted; prepare contract.
- 270** Accept bid of Northside Ford Truck Sales, Inc. for five high cube vans for \$131,745 (Purchasing Report - Bid 96)
- Disposition:** Accepted; prepare contract.
- 271** Accept bid of D & L Foundry for cast iron riser rings for the Bureau of Maintenance for \$28,512 (Purchasing Report - Bid 99-A)
- Disposition:** Accepted; prepare contract.

FEBRUARY 23, 1994

272 Accept bid of Brattain International Trucks at ten percent off current IHC price list "Major Fleet Prices" for International Harvester truck parts and accessories for Fleet Services, Bureau of General Services for \$121,000 (Purchasing Report - Bid 102-A)

Disposition: Accepted; prepare contract.

273 Accept bid of Brundidge Construction for Bayard Basin CSO sump Unit 4 for \$334,394 (Purchasing Report - Bid 105)

Disposition: Accepted; prepare contract.

274 Vacate a portion of NW 24th Place north of NW Thurman Street, under certain conditions (Second Reading Agenda 219)

Disposition: Ordinance No. 167388. (Y-5)

275 Vacate a portion of public right-of-way at the northwest corner of the intersection of SW Jefferson Street and SW 18th Avenue, under certain conditions (Second Reading Agenda 220)

Disposition: Ordinance No. 167389. (Y-5)

Mayor Vera Katz

276 Approve certain amendments to the City's Personnel Rules necessary to support the classification plan for nonrepresented employees (Resolution)

Disposition: Resolution No. 35252. (Y-5)

***277** Pay claim of Victoria McCandlish (Ordinance)

Disposition: Ordinance No. 167390. (Y-5)

***278** Pay claim of Donald Williams (Ordinance)

Disposition: Ordinance No. 167391. (Y-5)

***279** Amend contract with Micro One, Inc., for computer consulting and programming services (Ordinance; amend Contract No. 28990)

Disposition: Ordinance No. 167392. (Y-5)

FEBRUARY 23, 1994

- *280** Authorize representatives of the Portland Development Commission to sign commercial tenant leases for the City of Portland on the Walnut Park/North Precinct Community Policing Facility Retail Center project (Ordinance)

Disposition: Ordinance No. 167393. (Y-5)

- *281** Execute an agreement with Kindercare Learning Centers for the provision of discounted child care services to City of Portland employees (Ordinance)

Disposition: Ordinance No. 167394. (Y-5)

- *282** Execute an agreement with Children's World Learning Centers for the provision of discounted child care services to City of Portland employees (Ordinance)

Disposition: Ordinance No. 167395. (Y-5)

Commissioner Charlie Hales

- *283** Apply to the City of Gresham for a Community Development Block Grant in the amount of \$20,960 to fund "Elder Safety Coalition - Community Outreach to Seniors in Need" (Ordinance)

Disposition: Ordinance No. 167396. (Y-5)

Commissioner Gretchen Kafoury

- 284** Recognize February as Black History Month through public education and promotion of the contributions and accomplishments of African-Americans (Resolution)

Disposition: Resolution No. 35253. (Y-5)

- *285** Amend contract with Aron Faegre and Associates for architectural services to extend termination date (Ordinance; amend Contract No. 27519)

Disposition: Ordinance No. 167397. (Y-5)

- *286** Amend contract with Russell Construction, Inc., by \$10,856 for additional construction services on The Portland Building lobby renovation (Ordinance; amend Contract No. 27678)

Disposition: Ordinance No. 167398. (Y-5)

FEBRUARY 23, 1994

- *287** Increase contract with Aron Faegre and Associates for design of Walnut Park development project (Ordinance; amend Contract No. 28201)

Disposition: Ordinance No. 167399. (Y-5)

- *288** Authorize Mayor and Commissioner of Public Affairs, upon approval of the Portland Development Commission, to execute a Change Order to contract with Koll Construction, Inc., in the amount of \$600,000 (Ordinance; amend Contract No. 28973)

Disposition: Ordinance No. 167400. (Y-5)

Commissioner Mike Lindberg

- 289** Accept Final Certificate of Completion, approve Change Order for Burnside East-South sanitary sewer and provide for final payment (Report; Contract No. 28670)

Disposition: Accepted.

- 290** Approve Change Order No. 1 on contract with A. C. Schommer & Sons for the construction of the Headworks disinfection improvements (Report; amend Contract No. 28920)

Disposition: Approved.

- *291** Authorize a contract and provide for payment for the Bayard Basin CSO sump project, Units 5-6 (Ordinance)

Disposition: Ordinance No. 167401. (Y-5)

- *292** Call for bids for the Alameda Park sewer reconstruction project, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 167402. (Y-5)

- 293** Amend the existing Northwest Portland franchise boundary of Gruetter Sanitary Service and allow them to subcontract the collection of solid waste and recycling in that area to Gruetter Disposal Service (Second Reading Agenda 244)

Disposition: Ordinance No. 167403. (Y-5)

- 294** Adopt Chapter 17.39 (Stormwater Discharges) of the City Code to fulfill requirements of the City's Municipal NPDES stormwater permit for management of stormwater runoff associated with industrial activity and provide authority to the Director of Environmental Services to adopt administrative rules (Second Reading Agenda 260)

Disposition: Ordinance No. 167404. (Y-5)

City Auditor Barbara Clark

- *295** Cancel sewer system development charge for 8809 SE Stephens St. (Ordinance; amend Ordinance No. 167359)

Disposition: Ordinance No. 167405. (Y-5)

REGULAR AGENDA

- 265** **TIME CERTAIN: 9:30 AM** - Report from Bureau of Fire, Rescue and Emergency Services on Community Emergency Services pilot program (Report introduced by Commissioner Hales)

Discussion: Commissioner Hales said this is a report on an experimental program in community emergency services (CES) that the Bureau embarked on in an attempt to build a different climate for community service. Like all experiments there have been bumps in the road as well as real insights into how to make the Bureau a more productive force in the community. He said as a result of this program, there are hundreds of homes that are safer than they were a year ago and there are more working smoke detectors and people who understand the importance of maintaining them. He said he thinks there is real excitement about this program at the Bureau line level.

Fire Chief Robert Wall said three fire stations participated in the pilot program in conjunction with their neighborhoods.

Captain Joe Wallace, Station 41, said this project has taken a major step towards providing a safer community. The community response was overwhelming and formation of a Citizens Advisory Committee (CAC) was straightforward, although he was unable to recruit members of ethnic minorities to serve. Four projects were undertaken, two concerning the Bureau's annual fire detector campaign. Over 1,000 families were contacted and given fire and smoke detector information. Future projects will include disaster preparation programs and expansion of the smoke detector campaign. He said he believes the project was effective and asked Council for continued support.

Mayor Katz asked how they contacted 1,000 households.

FEBRUARY 23, 1994

Captain Wallace said they used the West Powellhurst School newsletter to send out coupons for smoke detectors and batteries and used the Cub Scouts to deliver door hangers.

Captain Gary Warrington, Station No. 2, said their CAC issued a community safety handbook to area households and also targeted fire safety education efforts to a mobile home project because of concern about the high rate of loss and death in mobile home fires. The committee also worked on a name change for the station, to make it part of the community rather than something inaccessible.

Mayor Katz asked how many smoke detectors were installed in mobile homes.

Captain Warrington said 125 occupancies were contacted and about 50 smoke detectors or batteries were added. After a cyanide poisoning, a presentation was prepared to tell businesses how they can make it easier for Fire Bureau personnel to respond in emergency situations, such as providing legible business addresses and personnel background. All in all, they worked in 18 different areas and made a big difference in the community. He said he started as a firm believer in CES and remains committed to it. However, the total Bureau's commitment and work load issues need to be addressed. He supported allowing captains and battalion chiefs to individualize the programs at each station.

Frank Johnston, CAC member, described the work of his committee, including publication of the community emergency booklet. He expressed appreciation for the efforts of station personnel but voiced concern that the training of new-hire firefighters might lessen the amount of time given to the CES program. He said an interruption in the CES program would lead to a loss of support for the completion of Station Fire 2's pilot program. He said he hoped this is not just another public relations program that makes it look as if the community has input to give.

Captain Steve Muir, Station 14, said he is enthusiastic about this program and believes it has already made an impact in educating people about fire safety. He said Station 14 is in a very diverse neighborhood and a lot of time was spent finding out who the community leaders were. He said they found that in 72 per cent of the house fires in this area there were no working smoke detectors. The committee decided to focus on reducing fire loss in the Vernon School district, with an emphasis on residences with small children and the elderly. As a result of their outreach efforts they were able to install 30 smoke detectors and 29 additional batteries. They also developed literature aimed at the elderly and published a brochure in Russian in order to reach that population. Captain Muir noted the amount of time this project took from other

FEBRUARY 23, 1994

duties, such as emergency preparedness. He said retaining a 40-hour liaison is the key to future success of the program.

Alinda Hunter, CAC member, said this program has the potential for being one of the most successful outreach efforts in her neighborhood. She said one identified need was to do something about the rise in arson fires committed by young people. The project will not be limited to fire safety education as the committee plans to address the deeper needs of the community and see how the Fire Bureau can play a role in addressing those needs and inspire a "neighbor- helping-neighbor" attitude.

Mayor Katz asked if the number of arson crimes was a determining factor in selecting these three stations to participate in the program.

Captain Muir said he did not know.

Chief Wall said two people were assigned to the project, Inspector Bob Weaver and Earl Diment, 40-hour personnel who helped with coordination and liaison.

Bob Weaver, District Fire Inspector, liaison between Station 14 and the Community Steering Committee, said he was skeptical at first about how fire prevention could be melded into community emergency service, especially given his time schedule. A decision was made to allocate half his time to acting as liaison, which was not a budgeted position. Noting that the old bucket brigades were dependent on community involvement, he said the pilot project demonstrates that this kind of involvement can be regained if the City takes a proactive role. It is a serious commitment which requires staffing and financial support.

Earl Diment, Public Education Officer, overall coordinator for the program, said the stations were selected primarily on the basis of who volunteered. He said the project's goal was to save lives and see if ways could be found to decrease the number of lives lost in fires. The program put Fire Bureau personnel in closer touch with citizens and identified better ways the Bureau can do its job. Closer contact with schools youth organizations has shown them how to reduce the number of juvenile fire incidents.

Mayor Katz asked how much effort was concentrated on preparation for disasters.

Chief Wall said the focus of CES was on smoke detectors but it is an excellent forum for preparing the community for major disasters, such as an earthquake, and this is part of their future plans. He emphasized that this was a pilot project and involved diverting existing resources.

FEBRUARY 23, 1994

The pilot program indicates this way of doing business can be more effective in reducing loss of life from fires. The numbers cited today are just a small example of what can be done because with any pilot project, time is needed for organization and the overall effectiveness for the Bureau can be multiplied with time. He said he supports this 100 per cent.

Commissioner Hales said this experiment has been a success, both in statistics and intangibles. It also uncovered problems, particularly in the areas of diversity, representation, workload and prioritization issues, training responsibilities and continuity. The next step will be real and sustained support from Council.

Randy Leonard, President, Portland Fire Fighters Association, said CES should be seen in its proper historical perspective, noting that in the last 10 years, six stations have been closed and 188 firefighting positions eliminated at a time when there has been unprecedented annexations. He cited a recent poll which showed that firefighters received the highest approval rating of any group, nearly 90 per cent, and said Council should use its firefighters as an example of efficiency, delivering more services with less resources. He said CES can accomplish two things - it can get the community more involved in emergency preparedness while it also performs as a support function for the firefighters, without adding on another responsibility to an already overloaded workforce. Lt. Leonard said community emergency preparedness needs to be better coordinated within the bureau and cited the need to have more fire inspectors out in the community performing fire inspections every day.

Commissioner Blumenauer said this report illustrates that the City is trying to deliver integrated services that actually build community. He said being a better neighbor helps City employees do their job better.

Commissioner Lindberg said one of his priorities is letting community and station personnel determine their priorities. He said he likes the idea of renaming the stations to fit in better with the community, rather than identifying them numerically.

Mayor Katz noted that the apprehension expressed initially by the firefighters was similar to that felt when the City embarked on community policing. There is the time and training issue, working smarter and thinking differently. She said the reason she kept asking about smoke detectors is to focus not just on the process but on the results. She said this is a wonderful start and she would like to see more emphasis placed in this area.

Disposition: Accepted. (Y-5)

S-*266 TIME CERTAIN: 10:30 AM - Further amend City Code to again designate drug-free zones; provide for exclusions from designated drug-free zones for those attempting to commit certain crimes; and amend certain provisions pertaining to variances (Ordinance introduced by Mayor Katz; amend Chapter 14.100)

Discussion: Cay Kershner, Clerk of the Council, noted that a Substitute had been filed. Mayor Katz noted that it removes the cap from the geographic area. Commissioner Kafoury moved the Substitute. The motion was seconded and, hearing no objections, the Mayor so ordered.

Deputy Police Chief Roberta Webber said this ordinance concerns two drug-free zones that are due to expire, noting that a few weeks ago Council approved an ordinance to add the possessors of drugs as well the sellers. At this time they are requesting that additional offenses be added to those meriting exclusion, including the attempted possession and conspiracy to possess, attempted distribution or sale and conspiracy to sell an imitation drug.

Deputy Chief Webber said another addition being requested is the ability to exclude a person from both drug-free zones if they are excluded from one. An issue that has arisen since the addition of possessors to the ordinance, is the exclusion of a business owner. The Police are asking that the ordinance be changed so that variances can be given to owners and employees of a businesses in a drug-free zone. Rather than totally excluding such people, the ordinance permits granting them a variance so they are not deprived of their livelihood. Language relating to mandatory removal of the variance if an individual is rearrested has also been removed.

Regarding the substitute, Deputy Chief Webber said the original version had a boundary of 100 square blocks but that boundary was arbitrary and they would like to add a few adjoining blocks that have substantially higher than average drug arrests. Rather than craft a second zone, they decided to remove the cap.

Finally, Deputy Chief Webber said, Police and neighbors are declaring victory in Washington Park and there is no request to renew that drug-free zone because of the dramatic reduction in drug activity there.

Tom Williams, Deputy City Attorney, said the Bureau has worked diligently to tailor these provisions to make sure that people's rights are respected despite the limits placed on them. To that end, people have the right to appeal their exclusion and variances are provided for employment, residence, health, welfare and well being. He said they

FEBRUARY 23, 1994

believe this ordinance is narrowly tailored to remedy a difficult situation in these zones.

Mike Garvey, Commander, Central Precinct, described the reasons for expanding the drug-free zone, noting concern about where people excluded from the drug-free zones would go. He said tracking showed that of 664 people excluded from the Old Town drug-free zone in 1993, 205 were arrested for trespass as they reentered the area after the exclusion. Of the 205 trespasses, several were multiple arrests of the same person. They found 34 narcotic arrests were made outside Old Town of individuals who had been excluded. Arrests for distribution of a controlled substance totalled 773 people in 1993.

Commander Garvey said after putting pressure on in Old Town, Police noted that the drug traffic was moving to the bus mall and other nearby areas, rather than across the river as they had expected. With expansion of the Old Town zone they think they will be much more effective.

Commissioner Lindberg asked what the sanctions are for trespass and whether those arrested served any jail time.

Commander Garvey said the more drug activity is disrupted, the less successfully dealers can do business even if they do not spend a lot of time in jail. It takes them out of the marketplace.

Deputy Chief Webber said with the addition of possession to the ordinance, the District Attorney's office advises them that 98 percent of the people arrested for possession will be diverted prior to any court trial. The trespass alerts the court to the fact that diversion did not work. The trespass arrest also allows the Police to make an arrest and search for drugs.

Commissioner Hales asked about the practical effect of the provision regarding imitation controlled substances.

Deputy Chief Webber said all the problems of the drug trade are still there with the imitation drugs.

Sergeant Smith, East Precinct, said this ordinance offers a very viable and effective control measure for drug activity in the Central Eastside Industrial area where drug sales are an increasing and pervasive problem. He said now they are asking for an extension of the drug-free zone to the north, approximately five blocks beyond the current zone. This would encompass the Sullivan's Gulch area which attracts a large number of transients and has no businesses or residential homes.

FEBRUARY 23, 1994

Mike Henry, St. Francis Kitchen, 330 SE 11th, requested extension of the Eastside drug-free zone to include his facility because of the 300 per cent increase in violence in his area. He said they have noticed that the drug dealers are feeding off his clientele, the homeless, and the parent organization, St. Vincent de Paul has had to increase security by two people to deal with this.

Major Hogan, Salvation Army, supported extension of the zones.

Paul Richmond, PO Box 454, 97207, criticized expansion of the ordinance to bar people based on suspicion of having an imitation of a controlled substance. He said this law abrogates the entire Bill of Rights and benefits business owners and real estate speculators.

Carlos Rivera, Chair of the Chief's Forum, said this measure has alleviated drug problems in the area, adding that some initial problems relating to the Immigration and Naturalization Service are being cleared up.

Debbie Wood, President, Old Town/Chinatown Neighborhood Association, said this has been an effective tool for the Police and has brought the community together, fostering an unprecedented relationship between businesses and social service agencies. This particular tool is an important part of whole spectrum necessary to make this community a place where people want to live. Community policing is really working like it should and this ordinance is a very positive step.

Bill Naito, 5 NW Front, President, Old Town Community Policing Steering Committee, said this is a very important tool to control the drug supermarket in this area. The drug traffic has been reduced to a manageable level and they would now like to expand it south to Alder now because the Burnside boundary is artificial. He said this ordinance is not an abrogation of the Bill of Rights and the civil rights of the community will be protected.

Randy Miller, Central Eastside Industrial Council, 1 Produce Row, said insidious drug users defeat the central purpose of trying to keep an employment zone in this area. If the City is not tough, it will be much more difficult to restrain drug activity.

Vern Rifer, President, Downtown Community Association, supported the ordinance, noting that the perception of safety needs to be increased. He also supported expansion of the zone, noting that the area between Burnside and Alder currently provides cover for drug dealers moving out of Old Town.

FEBRUARY 23, 1994

Al Jasper, Old Town/China Town Neighborhood Association board member, said great progress has been made in dealing with drug problems in Old Town and this has been by far the most effective tool as it demonstrates the overall commitment to bring back the vitality of Old Town. The ordinance was revised earlier to deal with possessors. Now imitation drugs, which have also been a problem, are being included.

Dick Noonan, Executive Vice President, Central Eastside Industrial Council, supported the expansion. He said the City should not undersell the value of interdiction, as the unacceptable alternative is to issue a carte blanche to dealers.

Paul Loney, 816 SE 29th, 97214, attorney, said he sees problems regarding the safeguards. He said a person who is arrested faces possible criminal penalties, second degree trespass with 90 days in jail, and yet the appeal is to a City Code Hearings Officer who is not a trained officer of the court. Even though it is labeled a civil exclusion it is a criminal exclusion from day one. He said sooner or later the validity of this will be challenged, arguing that the District Attorney drops the charges when it appears someone might challenge its constitutionality. He suggested using the Frankfort model to separate drug users from drug dealers. He said drug dealing will not go away by treating people as pariahs.

William Balast, representing Pacific Crest Community School, 1131 SE Oak, said they are adjacent to St. Francis Park which is very attractive to drug traffic. He strongly supported extension of the drug-free zone to include that area.

Commissioner Blumenauer asked if someone could speak to the problems in St. Francis Park because of drug activity.

Lt. Dennis Merrill, East Precinct, said they are looking at that area but are not yet ready to recommend its inclusion at this point. They should know by June.

Commissioner Hales asked if the Police had to come back to Council to designate a park or a portion of it as an additional drug-free zone.

Mr. Williams said Council action would be required for extension. He said there are provisions for exclusion of people from City parks for criminal activity.

Commissioner Blumenauer said St. Francis park is not a City park.

Mr. Balast said it belongs to the Catholic Archdiocese.

Commissioner Blumenauer said he hopes the City can be sensitive to the park so there will not be a problem in the Spring when the weather improves.

Mr. Williams said Council could exclude people from the sidewalks but it would take the private owner to designate the Police officers as persons in charge who could then evict people from the property. This ordinance does not purport to exclude anyone from private property.

Sergeant Merrill said there is a process that would allow Police to act as an agent for the property owners and make trespass arrests. If people are found on the property in violation of posted rules, Police can take enforcement action.

Disposition: Substitute Ordinance No. 167406. (Y-5)

Commissioner Earl Blumenauer

296

Consider vacating a portion of SE 101st Avenue and SE 103rd Avenue lying south of SE Powell Boulevard, as initiated by Resolution No. 35235 (Hearing; Report; C-9856)

Discussion: Shelley Wade, City Engineer's Office, said the City Engineer recommends approval of this vacation, which was initiated by the Bureau of Parks in order to consolidate these areas as part of the Ed Benedict park. She said she understands an objection has been filed.

Commissioner Blumenauer said he understood that if the vacation goes forward the property in question is not landlocked and that the City is negotiating to purchase it for park purposes.

Harry Auerbach, Deputy City Attorney, said yes, Council previously vacated a portion of SE 100th. Negotiations to purchase the property are now under way and if they are not successful condemnation may be considered.

Richard Jacobson, 4154 SE 103rd, said this property has been a dump for years and he does not understand why something has not be done about it. He said he was told it had 30 Code violations and still nothing has been done. The house has been demolished and replaced by a trailer and there are junk cars all around.

Virginia Burns, 3738 SE 101st, said she and her husband recently built a new home on nearby property, abutting Ed Benedict Park. She said they are thrilled about the vacation but are sick and tired of looking at this junk pile. She said they want this mess cleaned up and cannot understand why it is taking so long.

FEBRUARY 23, 1994

Mr. Auerbach said the Bureau of Buildings has undertaken Code enforcement against this property and there have been attempts to relocate the property owner but she has not been cooperative. He said they share the neighbors' frustration and assured Council that the property will ultimately be a part of the park.

Commissioner Lindberg asked how long the Buildings Bureau had been working on enforcement.

Mr. Auerbach said the house was demolished but the property owner simply put a trailer on the property rather than moving. Within the next several months, they will either reach agreement on its sale or get condemnation authority.

Commissioner Blumenauer asked if the clean up could be speeded up as it sounds like there is a hazardous condition here.

Mr. Auerbach said they have nuisance abatement liens in excess of \$5,000 on the property now. He said he could not speak to current efforts by the Bureau of Buildings.

Commissioner Kafoury said she will report on that this afternoon. She said their preference is to get the property and then clean it up. She said it has taken far longer than anyone predicted.

Mr. Auerbach said property owners have civil rights that must be respected and when the City deals with difficult property owners the process takes longer.

Commissioner Blumenauer said given what the neighborhood is putting up with this may call for an expedited process where the City just begins condemnation rather than having an unhealthy situation that is more costly to the property owner and the public.

Commissioner Hales said going ahead with condemnation at the same time that mediation is underway is a possibility.

Disposition: Approved. City Engineer prepare ordinance. (Y-5)

Commissioner Charlie Hales

***297**

Contract with Stastny Architects for professional architectural services in the amount of \$15,000 to develop a concept design for the interpretive center at Smith and Bybee Lakes (Ordinance)

Disposition: Ordinance No. 167407. (Y-5)

- *298** Authorize a License Agreement with American Waterways, Inc., for use of Gov. Tom McCall Waterfront Park for permanent moorage of a dining and excursion vessel on the Willamette River just north of Salmon Street Springs (Ordinance)

Discussion: Commissioner Hales said this is a pretty significant license agreement, a \$30,000 a year revenue source to the City and involves a major policy issue as to when and how public facilities are licensed for private use.

Susan Hathaway Marxer, Parks Bureau Property Manager, said American Waterways is getting a loan from PDC and the State Economic Development Business Fund to finance a portion of their operation. The important thing to note is that the money the Park Bureau will receive from this will fund the Master Plan for Waterfront Park and its related river uses, which was ordered by the Hearings examiner.

Disposition: Ordinance No. 167408. (Y-5)

- *299** Authorize a Submerged and Submersible Land Lease with the State of Oregon Division of State Lands and its sublease to American Waterways, Inc., for a portion of the Willamette River adjacent to Gov. Tom McCall Waterfront Park for moorage of a dinner vessel and related dock structures (Ordinance)

Discussion: Commissioner Blumenauer said he is interested in framing the policy issues. He said this looks to him like the City is locked in for 10 years.

Commissioner Hales said that is the duration of the license agreement but the City is not locked into ten years as there are ways to reopen it. He asked Ms. Hathaway-Marxer to explain how the agreement can be reopened for cause.

Commissioner Blumenauer asked if there was something that would allow reopening if Council found this agreement was not good public policy.

Ms. Hathaway-Marxer said there are several options. First, this is a license, not a lease, and can be revoked at the will of the grantor.

Commissioner Blumenauer said if that can be done he will vote aye.

Commissioner Kafoury said she was nervously voting yes.

Mayor Katz asked Parks staff to make sure that people feel comfortable

on this and if there is any information that needs to be provided to the Council, please do so.

Disposition: Ordinance No. 167409. (Y-5)

Commissioner Mike Lindberg

***300** Grant authority to enter into a new short-term Bull Run Lake special use permit with the Forest Service (Ordinance)

Discussion: Paul Richmond, PO Box 454, 97207, said the ordinance references a permit which he has been unable to obtain a copy of.

Bruce Niss, Portland Water Bureau, said the permit is 99 per cent federal boiler plate and the rest talks about the operation of Bull Run Lake and what will and will not be allowed at Bull Run Lake during the coming year. Specifically, no discharges from the Lake will be allowed this year.

Commissioner Lindberg said this just runs until December 31 and it involves not using Bull Run Lake this year. With partial access to the groundwater wells, the Bureau feels comfortable with this kind of permit, which does allow some testing.

Mr. Niss said it allows for testing, studies and data collection in order to design a water extraction system that meets certification from the DEQ that state water quality standards will not be violated.

Mr. Richmond said he feels uneasy about presuming this document is innocent of any defect, particularly after the Dr. Larson incident which cost the City \$72,000 to settle.

Commissioner Lindberg said he favors proceeding with this.

Mr. Richmond said the Auditor's Office was unable to furnish him with a copy of the permit and he has concerns about the speed with which this is being passed and the source.

Commissioner Blumenauer said he was prepared to go ahead but could wait for a final vote this afternoon if there was a procedural glitch.

Disposition: Continued to February 23, 1994 at 2:00 p.m.

***301** Contract with Audubon Society of Portland for \$20,000 to ensure that the City of Portland's position, relative to its Clean River Program, is represented in the Metropolitan Service District's Region 2040 program goals and objectives (Ordinance)

Discussion: Paul Richmond, PO Box 454, 97207, said designating the Audubon Society to represent the City raises questions about why the City does not have someone like this on staff.

Commissioner Blumenauer said it is a good idea to get exceptional service, as would be the case here, directly and at less cost.

Disposition: Ordinance No. 167410. (Y-5)

City Auditor Barbara Clark

302 Assess benefitted property for the costs of constructing the Royal Highlands sanitary interceptor sewer (Hearing; Ordinance; C-9715)

Discussion: Dan Vizzini, Auditor's Office, said this has been in the works for four or five years and one remonstrance was filed, which he recommended be overruled.

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

Disposition: Remonstrance overruled. (Y-5) Passed to Second Reading March 2, 1994 at 9:30 a.m.

303 Assess property for sewer system development charges through December, 1993 (Hearing; Ordinance; Z0545 through Z0560)

Discussion: Mr. Vizzini said these are a continuation of the mid-County sewer project capital improvement plan assessment loans. No remonstrances were received. The volume of loans is beginning to subside and he expects a lower level of activity over the next four years as the project gets built out.

Disposition: Passed to Second Reading March 2, 1994 at 9:30 a.m.

304 Assess property for private plumbing loans through January 1994 (Second Reading Agenda 261)

Disposition: Ordinance No. 167411. (Y-5)

Commissioner Blumenauer moved acceptance of the item filed on the Four-Fifths Agenda. Commissioner Kafoury seconded and, hearing no objections, the Mayor so ordered.

FEBRUARY 23, 1994

Four-Fifths Agenda

- * **304-1** Application for a \$400,000 grant from Department of Treasury, Bureau of Alcohol Tobacco and Firearms for the GREAT Program by the Portland Police Bureau (Ordinance)

Discussion: Mayor Katz said this is a program to instruct lower, middle and junior high schools about the dangers of gangs.

Paul Richmond, PO Box 454, 97207, said most citizens are aware of the gross violations of rights by the Bureau of Alcohol, Tobacco and Firearms which massacred citizens probably as part of a real estate grab. He said he gets really upset when he keeps hearing all this talk about gangs.

Chief Charles Moose, Portland Police Bureau, clarified that the training will be provided by ATF but people from the federal agency will not be coming to Portland or interact with the young people.

Disposition: Ordinance No. 167412. (Y-5)

At 12:15 p.m. Council recessed.

FEBRUARY 23, 1994

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF FEBRUARY, 1994 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, Senior Deputy City Attorney; and Chuck Bolliger, Sergeant at Arms.

REGULAR AGENDA

Commissioner Charlie Hales

- *305** Amend the Comprehensive Plan map and change the zone of property at 635 and 711 SE 60th Avenue from R2 to R1, Residential (Ordinance; 93-00708 CP ZC)

Disposition: Continued to March 30, 1994 at 2:00 p.m.

- 307** Tentatively deny appeal of Block 216 Partnership against Hearings Officer's decision to deny application to demolish an existing building and construct a surface parking lot (Findings; 93-00064 CU DZ; Previous Agenda 210)

Discussion: Tim Barnes, Planning Bureau, said the appellant's attorney pointed out an error in the findings which has now been corrected. The change reflects the fact that when buildings in this zone are demolished, the Code requires only ground cover, not trees and shrubs as he had originally stated.

Commissioner Hales moved to amend the findings to reflect the change shown on Page 5 of the findings. Commissioner Lindberg seconded and the motion carried. (Y-5)

Mayor Katz asked if there were other legal issues.

Kathryn Imperati, Senior Deputy City Attorney, said she has reviewed Mr. Janik's comments on the findings and believes that Council is free to go ahead and adopt the findings as amended.

Disposition: Findings Adopted as amended. (Y-5)

306

Appeal of Woodstock Neighborhood Association and Joe Van Haverbeke, applicant, against Hearings Officer's decision regarding the five-lot subdivision at SE 48th Avenue at SE Mitchell Street (Hearing; 93-00549 SU)

Discussion: Linda Meng, Senior Deputy City Attorney, reviewed the procedures and process for appeal.

Duncan Brown, Planning Bureau, said this proposal was originally for a five-lot subdivision. The Hearings Officer approved the application but modified it to allow only four lots in any configuration with following conditions: 1) the applicant dedicate 24 feet or half the remaining half of a 50-foot right-of-way along SE 48th Avenue; 2) require a 4-foot pedestrian pathway on 48th Avenue; 3) require lots to be developed under solar option C and; 4) require that any street created in the Mitchell Street right of way which provided access from the east must provide at least 25 feet of street frontage or obtain an adjustment.

Mr. Brown said the Neighborhood Association appealed the decision on the grounds that a Local Improvement District (LID) should lead the subdivision rather than follow it and that the 25-foot frontage requirement on Mitchell would not allow for a lot to acquire access from Mitchell.

At the same time the applicant appealed on the basis that a 50-foot right-of-way required by the Hearings Officer and a 26-foot wide paved road would be unnecessary as the Office of Transportation recommended only a 20-foot wide street, which would necessitate only a 40-foot right-of-way. Mr. Brown said both the developer and the neighborhood have submitted alternative proposals. The applicant's alternatives 1 and 2 show how a five-lot subdivision could be achieved if a 40-foot right-of-way is allowed. The Neighborhood Association has submitted Alternative C showing that the four lots approved by the Hearings Officer could be achieved with a 50-foot right-of-way. The basic issue is balancing City goals of achieving density and retaining neighborhood livability, which in part is determined by the streetscape. If a 50-foot right-of-way is necessary, only four lots could be created without an adjustment. If a 40-foot right-of-way is allowed, five lots could be achieved.

Regarding Alternative C, Commissioner Lindberg asked what the neighborhood meant by "right-of-way stub as the fifth lot."

Mr. Brown said a fifth house could be achieved if Mitchell Street were vacated. He said Planning staff reviewed the three alternatives, based on the right-of-way needs, and believes any of the three will meet the City's approval criteria.

FEBRUARY 23, 1994

Mr. Brown showed slides of the applicant's site which fronts on 48th Street, particularly noting whether or not the streets it bounds are improved or unimproved.

Tim Ramis, attorney representing the applicant, said this is a case about infill and how to achieve the requirements for minimum density, which call for five lots. He said Council can and should approve a five-lot subdivision regardless of the decision made about street widths, adding that Council could require either the 20-foot improvement (the "skinny street") or the 26-foot improvement and still approve the five lots. He said under the Code there is more than one way to achieve minimum density and, in this case, several different options allow that. He displayed exhibits A and B to demonstrate the two options, option B reflecting the Hearings Officer's opinion that there should be a wider street in order to accommodate parking on both sides. The evidence in the case comes from two perspectives. While Transportation staff has stated that 20 feet is a sufficient street width, the neighborhood supports 26 feet as they believe the street should have parking on both sides. After the Hearings Officer's decision supporting the neighborhood, Transportation staff issued a letter refuting the need for parking and a wider street. He said the applicant does not want to get in the middle of that dispute and believes five lots can be developed with either street width. He said he has not had a chance to review the neighborhood plan calling for four lots but believes it does not meet Code requirements as the lot widths (45 instead of 50 feet) are insufficient. Applicant also agrees to Option C of the solar requirement.

Commissioner Hales asked about the status of the street improvements and the local improvement district necessary to achieve them.

Mr. Ramis said the developer is agreeable to participating in an LID or, alternatively, to sign a waiver of remonstrance. He said he understands that the adjoining property owner does not object to a LID which means the numbers would be sufficient to initiate one, adding that his client's property does not compose 50 percent of the frontage.

Harold Kuenzi, 4800 SE Raymond, coapplicant, said he has owned this property since 1947 and is trying to sell it to get out of paying high taxes. He said he does not understand the fuss by neighbors about parking, stating that he never sees cars parked on 48th and Mitchell. He said the people who want to punch a full street through do not have to pay a dime for it and that the Woodstock Neighborhood Association wants to have all the say on what happens to the development. He added that they want three houses, the developer wants five and his contract calls for four.

Terry Griffiths, 4128 SE Reedway, Chair, Woodstock Neighborhood

Association, showed slides of the property and of unimproved right-of-ways in the neighborhood. She said the subdivision as proposed does not meet the approval criteria because it only requires a 40-foot right-of-way for the length of the subdivision along SE 48th. The neighborhood agrees with the Hearings Officer that a 50-foot right-of-way is the appropriate width for all of 48th between Raymond and Mitchell. The Hearings Officer found that the Code does not state that a 40-foot right-of-way is mandatory and that there is no specific criteria for determining whether a 40 or 50-foot right-of-way is appropriate. Without such criteria the Hearings Officer found support for the 50-foot standard in Goal 11 of the Comprehensive Plan which states that the City should construct local service streets in accordance with existing and planned land-use patterns. On that basis she found that the 50-foot right-of-way was not consistent with the existing land-use pattern.

Ms. Griffiths said applicant's alternative proposal shows a 26-foot width street but in R5 zones a 50-foot right-of-way is required if parking on both sides of the street is needed. Also, a 40-foot right-of-way does not allow for adequate provision of sidewalks and parking strips. The five-foot wide asphalt strip adjacent to a gravel road proposed for the subdivision is inadequate and inconsistent with existing land-use patterns in the surrounding neighborhood. She contended that the roadway should be improved, at the developer's expense, with sidewalks and planting strips on the subdivision side. She disagreed with the Office of Transportation's contention that it is unfair to force the developer to improve the street because other households along the street will also benefit. However, she said only two houses adjacent to the right-of-way at SE 48th front on the street and need access, and only one other household would benefit from a half-street improvement. She noted that residents supported a local improvement district to improve the street but the project fell through when several found the cost was beyond their ability to pay. She said if the street is not improved now it is unlikely to happen at all, adding that there are over two miles of unimproved sidewalks in the Woodstock neighborhood. She argued that it is better to have the cost of street improvements absorbed within the development from the onset.

Regarding the right-of-way stub at 49th and Mitchell, Ms. Griffiths said it should not be used as access to a building lot for the subdivision. If a 5,000 square foot lot is allowed, that is 5,000 less that could be included in a local improvement district on SE 48th, making it even more difficult to form one in the future. Allowing access to the subdivision site through the stub would also preclude forever the possibility of vacating that right-of-way and using it as an additional building lot. The property owners adjacent to the stub are interested in street vacation and using the stub as a building lot. This would be in the best interests of the City as the subdivision could then be developed with no flag lots

and the City would gain an additional tax lot.

Jeff Schnabel, 5721 SE 41st, 97202 said they support infill but believe the development should be compatible with existing neighborhood patterns. He said he believes the applicant's scheme is inappropriate and poses a threat to livable city objectives. He said most houses in the community have street frontage and all the right-of-ways are either 50 or 60 feet. These street widths allow on-street parking which is needed because of this site's proximity to Woodstock Park. He criticized use of flag lots which take away interior open space and lack security. In this case, he argued, application of the skinny street policy is an anomaly in a neighborhood with fully developed streets. He said they are concerned that public land, in the form of right-of-way, is being turned over to this development. He charged that it is inappropriate for the Traffic Bureau to permit a narrow serpentine gravel road to access four new households. He said they also do not know how the proposed asphalt walk transitions into concrete walks and how the gravel road transitions into the existing streets. Finally, they have difficulty with use of a public easement as a driveway for one of the flag lots and feel this land would be better used as a building lot.

Martha B. Irish, 4801 SE Steele, said 118 persons signed a petition calling for development of a three-lot frontage and 50-foot right-of-way. They also believe the developer should be required to construct an improved street at least in front of the subdivision and object to having to accept 557 feet of gravel road and driveways. She said only one of the homes fronting 48th would benefit from this street as the three other homes already face improved streets. She said either of the alternatives proposed would substantially alter neighborhood character and diminish livability. She said the entire neighborhood believes this is an extremely shoddy proposal and believes three lots are appropriate rather than crowding in as many dwellings as possible in an area with gravel accessways.

Paul Stievenard, 5123 SE 49th, 97206 said his property is adjacent to the SE Mitchell stub where he has maintained the landscaping for over 20 years. He said if this stub is used for a flag lot, it will require removal of 14 trees and other shrubs. He said the City will be well served if it vacates the stub to him.

Michaelene Atchley, 5230 SE 48th, said she is concerned about the lack of full street improvements required for the subdivision and believes loss of the pedestrian path through the property and the configuration of the proposed street will create a safety hazard. She described two proposals created by the neighborhood, the first using the three-lot plan and the second a four-lot plan where the Mitchell Street stub is used for another building lot.

Moshe Lenske, 4314 SE Crystal Spring Blvd., said the Hearings Officer correctly rejected the 40-foot right-of-way and called for creation of four, not five, lots. He said in the original proposal compliance with solar access requirements was to be predated for customer protection because it was not finally determined until the building permit stage. In the current proposal, the siting occurs now and this does not meet solar access standards. Mr. Lenske said an error was made in prescribing a temporary zigzag gravel road, arguing that land development improvement should include full street improvement at the same time. If the City wishes to increase density the Mitchell Street stump should not be wasted as a driveway, especially as the adjacent owner would like to have that property vacated. He said the proposal does not support growth concepts contained in the Livable Cities project or Future Focus which recognize the importance of neighborhood character. He asked that the petition turned into the Hearings Officers and signed 118 neighbors asking for a 50-foot right-of-way and three lots be included in the official record.

Pamela Alegria, 3750 SE Henry, representing the Willamette Pedestrian Coalition, supported the Hearings Officer's decision for a 50-foot right-of-way. She said they do not agree with interim improvements as the LID may not happen and there is no enforcement mechanism to ensure full improvements.

Mr. Ramis reviewed the issues raised. Regarding the 50-foot right-of-way, he said the Hearings Officer advocated a wider street in order to accommodate parking on both sides but did not realize there is an alternative -- a 40-foot right-of-way with a five-foot easement and a 26-foot wide curb-to-curb street improvement which allows parking on both sides. Regarding access on Mitchell, he said they could move access to 48th, although that is not their preference, and this issue should not determine approval of five lots. As for criticisms of flag lots, Mr. Ramis noted that they are not relevant to any Code criteria. Finally, concerning LID and street improvements, he said the property owners have no objection to participating in an LID and neither does the contract purchaser. By agreeing to Option C, the solar access requirements are satisfied.

Commissioner Hales asked if formation of an LID could be required as a condition of approval, just as sidewalk improvements were required in the recent Mittleman Jewish Community Center case.

Glen Pierce, Transportation Engineering, said in the Community Center case an improved street was already there. In this case there is no street at all so some access to serve the site is needed.

Commissioner Blumenauer said Council just heard that there was no

objection to an LID and asked if there is any objection to that.

Mr. Pierce said they have no objection to improving the street as an LID since that was the original intent, noting the initial lack of successful the developer had in forming one. He said they would prefer that formation of an LID be a condition of approval.

Commissioner Hales said he has been trying to balance the skinny street standard and density policy with an out-of-date subdivision Code and LID policies that are not as robust as he would like them to be. The result is poor urban design even though it meets City standards. The question becomes how can approval be granted in a way that advances the quality of urban design and helps solve the problem of half-finished infrastructure levels. He suggested returning to the Hearings Officer's decision with an approval for less lots conditioned with formation of an LID.

Susan Feldman, Planning staff, said all three proposals meet the approval criterion for a subdivision. One way to solve the problem of flag lots is to condition the subdivision so that only three lots access onto 48th. That way if there are flag lots, the eastern and northern lots would have to access onto the poles, not directly onto the street. She said the difference between the four and five lots is insignificant except for the fact that the five-lot proposal would use the easement to provide a sidewalk. She said it would basically look the same and the City would still get a 26-foot street, answering neighborhood concerns about overflow and onstreet parking. She said they do not see adequacy of services as an issue under either proposal but their preference is that all lots access onto 48th to avoid ending up with a permanent dead end street (Mitchell).

Commissioner Hales asked if the five-lot cluster design with two flag lots accessing 48th and only three driveways is the preferred alternative of the two.

Ms. Feldman said yes.

Commissioner Blumenauer said this case is an example of conflicting City policies and shows the importance of proceeding with the Southeast neighborhood plan as he fears there are conflicting City policies. He said he believes in skinny streets as they slow down traffic and are cheaper and greener. However, the neighborhood is right about conditioning approval on completion of the street improvement. He suggested that Council require the road to be upgraded with an immediate LID, allow five units without the Mitchell access and a skinny street of 26 feet. He said he thought that would meet the concerns raised by the neighborhood.

Commissioner Hales said he is concerned about creating two flag lots instead of one. While the density policy would require five lots, there are general urban design policies that discourage flag lots.

Commissioner Lindberg asked which alternative Council would select if it wished to uphold the decision of the Hearings Officer. Would this be four lots with traditional streets and sidewalks.

Mr. Brown said the 50-foot right-of-way would necessitate four lots because the remaining land would drop below 24,000 square feet in area. The street width would remain 26-feet whether the right-of-way was 40 or 50 feet.

Mr. Pierce said the 26-foot is the standard for streets with parking on both sides.

Mr. Pierce said if an LID is required as a condition, the subdivision plat could not be improved until the street improvements are guaranteed and that process takes about a year.

Ms. Meng said the issue raised by the neighborhood is that the Hearings Officer did not require an LID, only dedication of 25 feet to make a 50-foot right-of-way.

Commissioner Hales said he disagrees with the Hearings Officer's conclusion about the interim road improvements and Council now has a better opportunity to deal with that problem through the formation of an LID. He said he would like Council to consider whether it agrees with the Hearings Officer's recommendation about four lots or if it prefers five.

Commissioner Lindberg said he thought provisions for flag lots were recently made in the Code, adding that he personally does not like them.

Ms. Feldman said they are allowed as a minor partition development. With the four-lot alternative, one of the lots would still have to be a flag lot, which is what the Hearings Officer approved. However, she did not approve a specific lot development pattern because the width along SE 48th is not wide enough to have four lots without adjustments. Right now the Code does not discourage flag lots.

Commissioner Hales moved to approve the five-lot cluster subdivision with no access to SE Mitchell, with a 26-foot wide street and the pedestrian easement methodology suggested in Item 2 of staff's memorandum as well as those referring to building area and driveway access (Items 3 and 4) with an additional condition of approval requiring

FEBRUARY 23, 1994

a LID for street improvements on SE 48th. Commissioner Blumenauer seconded.

Ms. Feldman said to answer concern about cars hanging over the driveways on the middle lots, she would like to require that the front door of the garage be set back at least 23 feet from the property line to ensure pedestrian access along the frontage. The other two houses will access onto the poles. She said their major concern about flag lots has been the double driveways and suggested that Council make a finding that there is less impact if these houses access onto the flagpoles.

Commissioner Hales asked if Council is upholding or reversing the Hearings Officer's decision with the change in conditions of approval and in the number of lots from four to five.

Ms. Meng said if Council requires the LID it would be granting at least part of the Neighborhood Association appeal and if five lots are allowed, the applicant's appeal, at least in part, is also granted.

Ms. Feldman said Transportation should clarify the difference between forming the LID and actually doing the improvements.

Don Gardner, Office of Transportation, said if the LID is required, there are parties on the other side of the street who have the right to remonstrate and the question of the LID will ultimately return to Council. If there are not enough waivers to form an LID, does Council want to require this particular developer to be responsible for a full-street improvement.

Commissioner Hales said if more than 50 per cent of the property is represented, presumably there is nothing to stop formation of an LID.

Mr. Gardner said the question for infill development is whether to make the developer pay for all the improvement or wait until you get over 50 per cent of the benefitted properties to support one.

Commissioner Hales said he does not want to approve the project without the improvements and is willing to support formation of an LID in order to construct them. He said he would not be persuaded to change his mind by additional remonstrances.

Dan Vizzini, Auditor's Office, said he is concerned that if Council requires the petitioner to be responsible for the improvement, that may step on the top of existing policies which call for benefitted property to be assessed for the improvement. He said there are situations where the City has required street improvements which the property owner has the option of financing internally or by way of an LID. Abutting

FEBRUARY 23, 1994

property owners will come in and argue that it is the developer's sole responsibility rather than the shared responsibility of all who use the street. He said Council should leave open the question of benefit and who pays, noting that there are several options for forming an LID. The developer could form one on his own and pay for the whole thing.

Commissioner Lindberg asked if developers in similar situations had been asked to pay the entire bill.

Mr. Vizzini said not yet, although there is a situation like that pending. The developer could form an LID on his own in a matter of weeks. A second option is to go through the normal petition process and try to get more than fifty percent. The third option is for Council to direct formation of the improvement. The Auditor's Office then goes through the process and if the remonstrances do not exceed 60 percent, they can be overruled and the project can go forward. If time is of the essence, Council could form the improvement district on its own authority and then deal with the public hearing when it comes forward. That shortens everything. The two quickest ways are to either have the developer do it or have Council do it on its own authority. The design will take the longest amount of time.

Mr. Vizzini said Mr. Gardner makes a good point when he says if Council decides to require the improvement it should be prepared to stand behind that decision six to eight months from now when an LID comes before Council and people are remonstrating against it.

Commissioner Hales said the City has miles of streets like this and will have other infill projects like this. If the City does not use the development to bootstrap improvements, they may never be done. Therefore, good public policy would be to require their construction at the time of development. The benefits of those improvements are shared by all the abutting properties and therefore the costs ought to be spread. But, in a situation like this, where 50 per cent or more of the property is owned by the applicant, there is no reason not to proceed with formation of an LID.

Commissioner Lindberg said if a whole bunch of these are coming down the line in Southeast, these policies need to be sorted out.

Mayor Katz and Commissioner Hales said Council has agreed to five lots, three driveways, no access onto Mitchell, the other four recommendations included in Planning's February 23 memorandum and the condition requiring formation of an LID or construction of the improvements.

Mr. Brown said the Hearings Officer also added a Condition C that

FEBRUARY 23, 1994

required the Option C (solar access performance option) to be incorporated into the final plat as well as the 23-foot setback for Lot 2.

Commissioner Hales asked if Council needs to make a decision about how to achieve street improvements now, either by requiring the developer to build the improvements or giving him the option to form an LID. He said his inclination is towards the former.

Ms. Meng asked if Council intended to require a 20 or 26-foot street.

Council indicated it wanted the 26-foot street.

Commissioner Blumenauer said he is voting in favor but asked if this wording would permit concurrent construction of the improvements with the development. He said he hopes that would occur and would personally be prepared to have Council direct that the LID be created. He said he believes this will be a better project as a result of the appeals that have taken place and has great sympathy with people who are frustrated by how this works.

Commissioner Hales said this case illustrates the difficulty City staff and Council has in trying to advance its planning agenda in areas where there is very patchy infrastructure.

Commissioner Kafoury said before voting on the actual findings, it would be helpful to get a better idea of the policy implications.

Commissioner Lindberg said it his intent to have the findings require that sidewalk improvements be constructed concurrently with the development.

Mayor Katz said this is not the most delicate solution but forces Council to deal with the policy on public improvements as the City tries to increase density. She said she is not crazy about any of the designs but the proposed solution does address some of the problems they are trying to resolve. She said a Council Informal on the policy for public improvements may be needed so Council has a better idea about how to proceed in the future.

Commissioner Hales suggested that the Auditor's Office, Transportation and Planning bring back options for dealing with the LID issues. He said Council's tentative decision is to require the improvements and allow formation of the LID but there are two other ways to do that and perhaps Council should review those three options when the findings are considered and choose a different one, depending on what the research shows.

Disposition: Tentatively grant portions of both appeals with added conditions; applicant prepare findings for March 30, 1994 at 2:00 p.m.

Commissioner Gretchen Kafoury

308

Liquor license application for Young Ok Lee and Kyong Ah Lee, dba Northwest Neighborhood Market, 2314 NW Lovejoy St., package store liquor license (renewal); Unfavorable recommendation (Report)

Discussion: Mike Sanderson, License Bureau, said this comes to Council with an unfavorable recommendation. He said problems began with this store right after its purchase by the current owner in May, 1993.

Perry Christianson, Police Bureau Drug and Vice Division, said there was only one liquor-related incident prior to this applicant taking over the store. Since then the incidents of liquor-related incidents have increased and a pattern of noncompliance has been established. The OLCC issued verbal instruction to the licensee regarding liquor sales to visibly intoxicated persons and minors and witnessed the sale of liquor to a minor by the owner's 16-year-old son. As a result of that incident the licensee agreed not to have the son work in the evenings or sell liquor until he turned 18. They also agreed to work with the Korean Grocers Association to better understand the rules. However, on July 20, 1993 a citation was issued to a patron of the Market for furnishing liquor to a minor. The citation also noted that the grocery was frequently used by minors attempting to purchase alcohol from legal adults, a practice known as "shoulder tapping." Sgt. Christiansen described additional citations and incidents to illustrate a continuing pattern of illegal criminal activity and history of broken agreements, despite repeated warnings. Based on this record, the Police and License Bureaus believe they have no choice but to forward an unfavorable recommendation.

Dawn Urban, Police Bureau, described her attempts to work with the applicant in order to stop the sale of liquor to minors and visibly intoxicated persons. She said because of the communication problem she went to great extremes to work with them instead of issuing citations. However, the problems still persist.

Thomas Walsh, attorney representing Northwest Neighborhood Market, agreed that mistakes have been made but some of the assertions are hearsay and are not documented. He referred to Chief Moose's letter in support of the unfavorable recommendation. The initial, documented incident listed the owner's underage son who sold liquor to the a minor. He said it is not unusual to see children selling beer in Korea and while obviously this is a violation, it will not be repeated. Mr. Walsh reviewed

FEBRUARY 23, 1994

the other incidents cited, contending that what happens to liquor once it leaves the store is not always within the control of the proprietor and the problem of street drinking is one that occurs throughout the City. The sale of liquor without a license he attributed to a misunderstanding by the applicant about the license renewal and an agreement that would have permitted the licensee to continue selling but which the OLCC found to be coercive and rejected. He said neither the frequency or severity of the violations are sufficient to deprive this business operator of its license.

Dave Lee, son of the applicant, said they are more aware of the problems in the neighborhood and are working to solve them. They are also working more closely with the OLCC than ever before and believe they just started off on wrong foot.

Kyong Lee, daughter of the owner, said she understands the law now and will not serve transients or minors.

Commissioner Hales asked staff if they regarded this situation as forming a sufficient pattern to warrant an unfavorable recommendation. He asked if other solutions had been considered, such as neighborhood agreements.

Mr. Sanderson said Matthew Witt of the Northwest District Association, asked him to express its interest in making sure the License Bureau continues to aggressively address livability issues, particularly problems with street drinkers. He said the Bureau tried to enter into an agreement with the applicants not to sell fortified wines or 40-ounce malt liquor while the hearing was going on but the OLCC felt that was coercive and that is why the license lapsed. He said the Bureau is sympathetic to the loss of revenue that people undergo while the process is hammered out, but it could not in good conscience issue a favorable recommendation. He said the Bureau needs Council direction as to whether this pattern of violations is worthy of a renewal. He said they do not think so because there have been so many efforts, even though undocumented, by Police not to cite the licensee but to work with them. He said in this case officers were trying to use verbal instruction and education to bring people into compliance. He said no tickets were written without some kind of instruction first but that has failed. The Bureau believes that when an applicant is unable or unwilling to work with the law enforcement agencies an unfavorable recommendation must result.

Commissioner Lindberg asked if there is a set period of time before one can reapply for another license.

Mr. Sanderson said after a certain amount of time a person could return

FEBRUARY 23, 1994

and demonstrate that something has changed, leading to a reasonable belief that violations will not occur in the future.

Commissioner Kafoury moved to uphold the unfavorable recommendation. Commissioner Blumenauer seconded.

Commissioner Kafoury reminded Council that the evidence is significant and attempts have been made to get voluntary compliance and use policies which have worked elsewhere. She said one thing that is not acceptable to her is having minors sell liquor. Finally, this is a high impact area in a neighborhood where there is great concern. People certainly are free to come back again at some point but it is a privilege to get a liquor license.

Mayor Katz asked when the applicant could come back and make another request.

Mr. Sanderson said she would have the right to come back at any time with an application.

Mayor Katz said in this case there is a language and cultural problem as well as perhaps an unwillingness to seriously heed the law. Assuming denial, she asked what kind of educational approach could occur to make sure the applicant clearly understands the rules.

Mr. Sanderson said the OLCC has massive educational programs available for servers and store owners. He suggested that the Bureau work with the Korean Grocery Association and alert it to any emerging problems.

Mayor Katz asked if the Korean Grocery Association was contacted at all.

Mr. Sanderson said he did not know as Henry Emrich, who died late last year, initially oversaw this case. However, he had a reputation for being the first person to try to develop a working relationship with the Association.

Mayor Katz said it would be valuable to make sure the Lees clearly understand the law so they can come back in a short period of time and get a second chance at a liquor license.

Mr. Walsh said the Korean Grocery Association was not contacted in the early stages and these licensees apparently got off on the wrong foot. Practically, a market operating on such a slim margin will have to be sold to someone else if the license is removed.

FEBRUARY 23, 1994

Commissioner Lindberg noted a nine-month pattern with literally dozens of contacts, adding that if Council did not say no there would be no accountability in the system.

Mayor Katz said she would reluctantly vote aye. She said it is critical that when Southeast Asians come into a community they get assistance at the front end and the Grocery Association has to resources to do that. She said people also ought to understand the disruptive impact of alcoholism on neighborhoods.

Disposition: Unfavorably recommended (Y-5)

At 4:35 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland



By Cay Kershner
Clerk of the Council