



CITY OF

## PORTLAND, OREGON

OFFICIAL  
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 10TH DAY OF AUGUST, 1994 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Kafoury and Lindberg, 4.

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

### CONSENT AGENDA - NO DISCUSSION

**1279** Cash Investment balances for July 1 through July 27, 1994 (Report; Treasurer)

**Disposition:** Placed on File.

**1280** Accept bid of First Interstate Bank for banking and trust services for \$110,934 (Purchasing Report - RFP 5)

**Disposition:** Accepted; prepare contract.

**1281** Accept bid of Northwest Pipe & Casing Company for outfall and diffuser pipe and piping appurtenances for the Columbia Boulevard Wastewater Treatment Plant for \$844,126 (Purchasing Report - Bid 4)

**Disposition:** Accepted; prepare contract.

**1282** Reject all bids for Sunderland wastewater pump station and rebid (Purchasing Report - Bid 169)

**Disposition:** Accepted.

**1283** Accept bid of Cytec Industries, Inc. for furnishing polymer flocculants for sludge dewatering at an estimated annual amount of \$825,840 (Purchasing Report - Bid 186-A)

**Disposition:** Accepted; prepare contract.

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- 1284** Vacate a certain portion of SW 2nd Avenue and SW Front Avenue lying south of SW Slavin Road, under certain conditions (Ordinance by Order of Council; C-9843)

**Disposition:** Passed to Second Reading August 17, 1994 at 9:30 a.m.

**Mayor Vera Katz**

- \*1285** Authorize issuance and sale of Tax Anticipation Notes, Series 1994, in an amount not to exceed \$6,500,000 (Ordinance)

**Disposition:** Ordinance No. 167974. (Y-4)

- \*1286** Pay claim of Cindy Knutzen (Ordinance)

**Disposition:** Ordinance No. 167975. (Y-4)

- \*1287** Apply for a continuation grant of \$211,418 from the Oregon Department of Transportation, Traffic Safety Division, for DUII enforcement (Ordinance)

**Disposition:** Ordinance No. 167976. (Y-4)

**Commissioner Earl Blumenauer**

- 1288** Accept the improvements of Phase Two of the Eastmoreland Neighborhood Traffic Management Project at SE 27th Avenue and SE Bybee Boulevard as complete and pay Copenhagen Utilities & Construction, Inc. the amount of \$6,945 (Report; Contract No. 29038)

**Disposition:** Accepted.

- 1289** Accept the HCD street improvement project of N Buffalo Street from N Boston Avenue to N Delaware Avenue as complete, make final payment and release retainage (Previous Agenda 1248; C-9788)

**Disposition:** Accepted.

- 1290** Accept the HCD street improvement project of N Saratoga Street from N Vancouver Avenue to N Moore Avenue as complete, make final payment and release retainage (Previous Agenda 1249; C-9789)

**Disposition:** Accepted.

- \*1291** Agreement with CH2M Hill for the Columbia Corridor Transportation Study Alternatives Analysis (Ordinance)

**Disposition:** Ordinance No. 167977. (Y-4)

- \*1292** Amend contract with RREEF West-VI One, Inc. which provides for the NW 23rd at W Burnside Street improvement project (Ordinance; amend Contract No. 50269)

**Disposition:** Ordinance No. 167978. (Y-4)

- \*1293** Amend contract with Sheldon Fire & Rescue Equipment, Inc. for the purchase of one additional type III fire rescue ambulance for the Bureau of General Services for \$76,610 (Ordinance; amend Contract No. 29194)

**Disposition:** Ordinance No. 167979. (Y-4)

**Commissioner Charlie Hales**

- \*1294** Accept grant from Oregon Department of Transportation and the Oregon Department of Land Conservation and Development for \$40,000 for the Hollywood pilot project Phase II (Ordinance)

**Disposition:** Ordinance No. 167980. (Y-4)

- \*1295** Accept grant from Oregon Department of Transportation and the Oregon Department of Land Conservation and Development for \$40,000 for the Southeast Main Streets study (Ordinance)

**Disposition:** Ordinance No. 167981. (Y-4)

- \*1296** Appoint Markley Drake to Program Manager I at the top rate and authorize vacation accrual at the 5-9 year rate (Ordinance)

**Disposition:** Ordinance No. 167982. (Y-4)

**Commissioner Gretchen Kafoury**

- \*1297** Contract with the Private Industry Council, Inc. for \$125,000 for Summer Mini-Proposal Youth Employment and Enrichment Program and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167983. (Y-4)

- \*1298** Contract with Multnomah County, Community and Family Services Division, for \$209,456 for the Youth Employment and Empowerment Program and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167984. (Y-4)

- \*1299** Contract with the Private Industry Council, Inc. for \$609,901 for the Comprehensive Youth Employment Program and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167985. (Y-4)

- \*1300** Contract with School District No. 1, Portland Public Schools, for \$404,166 for the Home Repair Training Program and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167986. (Y-4)

- \*1301** Contract with REACH Community Development for \$32,240 to provide support for implementation of the Belmont Target Area Plan and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167987. (Y-4)

- \*1302** Contract with the Community Action Agency of Yamhill County, acting as fiscal agent for the Community Development Network, to provide input regarding issues of affordable housing and utilization of federal housing and community development resources and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167988. (Y-4)

- \*1303** Contract with Vietnamese American Community Services of Oregon, Inc. and International Refugee Center of Oregon, Inc. for \$12,000 to develop and carry out the family stabilization and student transition program and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167989. (Y-4)

- \*1304** Contract with Multnomah County Department of Community Corrections for \$104,000 to provide the STOP Program and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167990. (Y-4)

- \*1305** Contract with Multnomah County for \$104,032 for services for women leaving prostitution and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167991. (Y-4)

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**Commissioner Mike Lindberg**

**1306** Accept contract with Copenhagen Utilities & Construction for Marshall sanitary sewer as complete, approve change orders and provide for final payment (Report; Contract No. 28465)

**Disposition:** Accepted.

**1307** Accept contract with K & K Plumbing Construction Co. for SE 166th Avenue, between SE Haig Drive and SE Bush Street sanitary sewer as complete and provide for final payment (Report; Contract No. 29366)

**Disposition:** Accepted.

**\*1308** Authorize entering Intergovernmental Agreement with the Rockwood Water People's Utility District (Ordinance)

**Disposition:** Ordinance No. 167992. (Y-4)

**\*1309** Amend contract with Baba Wague Diakite and Ronna Neuenschwander to increase the amount and extend the termination date (Ordinance; amend Contract No. 29912)

**Disposition:** Ordinance No. 167993. (Y-4)

**\*1310** Authorize payment of \$71,950 to RZA Agra, Inc. for emergency hazardous materials remediation related to the Water Pollution Control laboratory (Ordinance; amend Contract No. 28949)

**Disposition:** Ordinance No. 167994. (Y-4)

**\*1311** Authorize a contract and provide for payment for the 13th Avenue Basin CSO Sump Project Unit 17 (Ordinance)

**Disposition:** Ordinance No. 167995. (Y-4)

**\*1312** Authorize a contract and provide for payment for the NW 29th and 31st Avenues diversion elimination (Ordinance)

**Disposition:** Ordinance No. 167996. (Y-4)

**\*1313** Contract with CH2M Hill, Inc. for professional engineering services to prepare an updated facilities plan for the Columbia Boulevard Wastewater Treatment Plant and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167997. (Y-4)

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- \*1314** Contract with L.C. Lee & Associates, Inc. to provide technical design assistance in the development of the Ramsey Lake Pollution Reduction Facility (Ordinance)

**Disposition:** Ordinance No. 167998. (Y-4)

- \*1315** Consent to transfer of Krening, Inc. solid waste and recycling franchise to Columbia Sanitary Service (Ordinance)

**Disposition:** Ordinance No. 167999. (Y-4)

- \*1316** Authorize a contract with the lowest responsible bidder for the CBWTP outfall and diffuser pipe and piping appurtenances, Project No. 5136, and provide for payment (Ordinance)

**Disposition:** Ordinance No. 168000. (Y-4)

- \*1317** Amend contract with the U.S. Forest Service to provide professional services for \$35,854 to complete an environmental analysis and special use permit for operation and maintenance of Water Bureau facilities at Bull Run Lake (Ordinance; amend Contract No. 28314)

**Disposition:** Ordinance No. 168001. (Y-4)

## REGULAR AGENDA

- \*1277** **TIME CERTAIN: 9:30 AM** - Amend City Code to create minimum safety zone and explicitly exempt "passive resistance" protected under ORS 162.315 (Ordinance introduced by Mayor Katz; amend Chapter 14.08.140)

**Discussion:** Madelyn Wessel, Deputy City Attorney, said because of a recent Court of Appeals decision, it is necessary to amend the Code and clarify that portion the Court was concerned about in order to get this very important safety tool back on the books.

Portland Police Officer Richard Ostria, Defensive Tactics Instructor, said the goal of this ordinance is to provide a Police officer engaged in taking someone into custody a minimum safety zone in which to perform his duties. The zone also protects the suspect and bystanders. Taking someone into custody is very dangerous for a Police officer as the intent of the suspect is unknown and, if the subject fights back, there is a danger to the officer, subject and bystanders. He outlined some of the difficulties and distractions an officer faces when he is taking a person into custody, particularly when dealing with multiple individuals. It is also important to have a minimum safety zone to enable the officer to protect his weapons. He said distance for the Police equals time and time equals safety, as Police officers are normally at a disadvantage because they must react to other people's actions. He cited studies to show the need for establishing

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such safety gaps, adding that FBI statistics for 1983 to 1992 show that of 713 officers killed in the United States, 103 were killed with their own weapons. Second, he noted that the zone also protects the safety of the subject from bystanders, whose intent is unknown. Third, the safety of the general public is enhanced because of the zone.

Keith Atori, Portland Police Officer, Lead Patrol Tactics Instructor, addressed the expansion of the zone. He spoke about the need to protect the identity of victims, witnesses and complainants, adding that many times they will not talk to police because the suspect is standing nearby. He said this ordinance will allow them to create an area where victims and witnesses are more open to talking without fear of recrimination. The zone would also give more privacy to victims of sensitive crimes and to juveniles. Finally, the zone gives emergency medical technicians and others a clear working area.

Ms. Wessel said the real effect of this revised ordinance is to allow Police officers on the scene to create a very minimal 10-foot zone around themselves and the subject of an arrest, a victim or a witness and keep bystanders at least that far away. She said it cannot be used in lieu of disorderly conduct nor is it aimed at breaking up political demonstrations or other types of crowd situations. She said this minimum tool was removed by the Court of Appeals and that is why Council is being asked to act on this today.

Mayor Katz asked what the Court's objection was.

Ms. Wessel said the Court believed the old ordinance criminalized passive resistance to an arrest by the person being arrested, such as going limp as a protest. She said the original ordinance was never aimed at that individual but rather at keeping people surrounding that type of situation at a minimum distance. She said the Court's interpretation is a bit puzzling but the fastest way to solve the problem is to hammer home the City's intent not to criminalize passive resistance.

Commissioner Blumenauer asked if she was comfortable with the language describing how the radius of the minimum safety zone could be extended.

Ms. Wessel said that language parallels existing State law and another State statutory provision which permits removal of people from the scene if the stated factors pose an imminent threat.

Commissioner Blumenauer asked if there had been any problems with the interpretation of existing State law.

Ms. Wessel said no. She said the case which was invalidated was a preemption issue and the question was whether the City was criminalizing something State law considered legitimate. She said that can be gotten

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around by tracking this through to another State statute.

Dan Handelman, People Overseeing Police Study Group, 2600 NE Martin Luther King Blvd., #106, described a situation in a Portland park in May where he and others watched the Police pat down three African American males to look for guns. He said he and his friends were asked by some female friends of the young men to move along and then they were asked to do so by the Police, but not very politely. He said they were over 20 feet from the arrest area and informed Police that they intended only to watch and not interfere. A backup officer arrived and threatened them with arrest if they did not go away. Later, when they approached the three suspects and told them they had watched to be sure their civil rights were not violated, the men thanked them for being there. He noted that the ordinance exempts passive resistance but asked what prevents an officer from expanding the safety zone to exclude observers and then arresting them. He said the ordinance allows officers to limit access to witnesses, victims and arrestees and asked if witnesses could ask the arrestees their names so they can act as witnesses for them or if observers could compare stories. He said they understand the need for officer and civilian safety but believe this is too broadly worded and allows the police to redefine the size of an area so that anyone remaining is considered in violation of the law, giving the police sweeping powers and posing serious threats to civil liberties. He suggested modifying the ordinance to specifically allow for observation of police activity or adopting a more narrowly written ordinance that does not allow officers to redefine the area of the safety zone so freely. Another option is to return to the original 10-foot rule which deals with the person being arrested, not witnesses or victims.

Ms. Wessel said the key issue raised is whether requiring an objective indication by an officer that there is an imminent and serious threat to public safety before an officer can move people beyond a 10-foot radius will protect the public interest in free observation. She said it is quite clear to her that expansion must be met by objective facts. If Police merely order all observers away, based on no observable threat to safety or regard to the criteria, that would not be a valid application of the ordinance. The real issue is that both State law and the City Code require that those objective factors must be met. The fact that the Code has been expanded to cover the interviewing of witnesses and victims has little to do with the issue raised here, which is whether people have a right to observe Police conduct on the streets.

Mayor Katz said she would assume that a new Standard Operating Procedure would be written for this.

Ms. Wessel said the two officers testifying today conduct the training and will make sure that those receiving it know how this should be implemented.



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Mayor Katz said Council wants to flag that as an issue so that the public is able to observe the behavior and response of Police officers on the scene without being pushed further and further away.

Commissioner Lindberg asked if there would be general orders. He said he has heard from citizens observing from 20 to 30 feet away who feel they have been unreasonably moved away and left with the feeling that the Police do not want them seeing them work.

Ms. Wessel said the expansion potential is something they can work on in training.

Mayor Katz said since it looks as if expansion of the zone is at the officer's discretion, training in that area would be very critical.

Commissioner Kafoury said she is a little concerned about the vagueness of the language and looks forward to seeing the procedures the Bureau proposes.

Commissioner Lindberg and Mayor Katz expressed similar concerns about allowing the public to watch how the Police and public employees do their business, without making the situation unsafe.

**Disposition:** Ordinance No. 168002. (Y-4)

**1278**

**TIME CERTAIN: Bureau of Environmental Services 10:00 AM -**  
Accept the Tanner Creek basin preliminary engineering report (Resolution introduced by Commissioner Lindberg)

**Discussion:** Dean Marriott, Director, Bureau of Environmental Services (BES), said this project has been underway for several years, adding that the Tanner Creek watershed is about 1600 acres, flowing into the Willamette in the area known as the River District. It is part of the Combined Sewer Overflow (CSO) abatement strategy and the Cornerstone program aimed at getting clean water out of the sewer system. He said Tanner Creek was put underground into the sewer system many years ago and now when it rains it causes a number of substantial CSO events into the River. He said BES has taken advantage of the work being done as part of the Light Rail construction to do a small portion of this project right now but the bulk remains to be done. He said reclaiming Tanner Creek will save money for the rate-payers while taking clean water out of the sewer system. He noted extensive citizen involvement in this report, including formation of Citizens Advisory and Technical Advisory Committees as well as workshops and open houses. He said the options developed by citizens were screened for cost and engineering effectiveness and the results are before Council today. Implementation will require partnerships with other government agencies and working in conjunction with the River District project.

Mark Braun, Tanner Creek Project Manager, said the pipeline is the major portion of the project as it takes most of the clean water and transports it to the River. He showed slides to illustrate how the Creek would be daylighted and highlighted major features, including a cascade, wet ponds and an interpretative center, planned along the route.

Mr. Marriott said the baseline projects, those judged to be most important, include the pipeline getting Tanner Creek out of the sewer system, the wetponds and the biofiltration swales. He listed the projects at the next two levels of importance -- high priority and long range projects -- and summarized the cost for each group. The baseline projects are estimated to cost \$22,250 million and are fully budgeted. Partnerships and cost sharing are envisioned for projects in the other categories and there is a possibility that some of the features may be incorporated with the River district development.

Commissioner Lindberg said planning, design and construction of the River District and the Tanner Creek project will be integrated as much as possible. Any savings that might result will be allocated to help achieve the River District project.

Debbie Wood, Citizens Advisory Committee for the Tanner Creek Project and River District Steering Committee member, said she particularly supports the integration of the sewer construction project with improving neighborhood livability. She strongly supported the high priority projects, adding that the kind of amenities proposed in that category matter a lot to residents. For low-income residents, having natural areas becomes even more important. She said she has been extremely impressed by the openness of the public process.

Pat Prendergrass, 333 SW 5th, chair, River District Steering Committee, said the Committee enthusiastically supports this as members feel the Tanner Basin will provide a central focus for the District and allow the siting of residential housing.

Michael Carlson, Portland Audubon Society, strongly supported the resolution and the process even though there is more limited opportunity for wildlife habitat development than they had hoped. He said the real value is to bring a sense of nature into downtown and the greening of the River District is critical. He said the project really calls for a champion to push the other amenities as, without them, the project is a pipe dream.

Phil Kalberer, Citizens Advisory Committee member representing the Chamber of Commerce and the Association for Portland Progress, said this takes a CSO project and because of the daylighting and amenities will promote education, economic development and recreation. He said one of the most important features of the resolution is that it calls for public/private partnerships in order to fund the high priority and long

range projects. He said the long range projects are the ones that really tie the upper and lower basin together and will make this a very educational and creative amenity. It is also important to have BES assign a staff member to push the partnerships and find funding for the amenities.

Mayor Katz said there are champions of this project at all levels who are working to be creative in putting the pieces together to entice federal funds for some portions of it.

John Alland, 10463 SW 53rd, 97219, said the daylighting of Tanner Creek is an excellent beginning for ecosystem restoration that can cleanse storm water while providing habitat for wildlife and other livability amenities. Tanner Creek should only be the beginning, however, as all the watersheds need to be looked at.

Tom O'Keefe, United Community Action Network, said their concern has always been corporate polluters, citing an incident at Civic Stadium where oil was illegally being dumped in the sewer system and a similar situation involving Burlington Northern. He said UCAN has slides showing oil running into the sewer system and called for better communication between BES and the Department of Environmental Quality on such matters as well as better corporate responsibility.

Commissioner Lindberg said the resolution calls for BES to report back to Council in six months on its progress in finding funding and building partnerships in order to achieve the whole dream, not just the pipe dream. He said it is better to try to build partnerships to cover the \$3 million funding gap rather than increasing sewer rates.

Commissioner Blumenauer said the City will have failed if it ends up with the baseline projects only. If the City is going to spend one billion dollars on the CSO project, the highest priority should be to make sure the amenities occur, which are actually essential parts which transform this from the absolute minimum into a potential jewel that will increase the acceptance for the long, arduous CSO project.

Mayor Katz said this lays the foundation for the next 20 years for this project. She urged the Bureau to save as much of its resources as possible for the second and third levels of amenities. She said the City will also work very hard with the federal government and the private sector to build partnerships to make this a success.

**Disposition:** Resolution No. 35300. (Y-4)

**Mayor Vera Katz**

**1318**

Designate distribution of the fiscal year 1994-95 revenues from a non-resident surcharge at City-owned golf courses (Resolution)

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**Discussion:** Mayor Katz said she understands all the Commissioners have reviewed this and given it a green light.

**Disposition:** Resolution No. 35301. (Y-4)

- \*1319** Accept a grant addendum of \$25,000 from the State of Oregon Public Utilities Commission for Motor Carrier Safety Inspection Program in the Police Bureau Traffic Division (Ordinance)

**Disposition:** Ordinance No. 168003. (Y-4)

**Commissioner Charlie Hales**

- \*1320** Authorize Purchasing Agent to sign a Purchase Order as a contract with Apple Computers for Macintosh hardware and software for the Bureau of Planning at the estimated amount of \$106,000 without advertising for bids (Ordinance)

**Disposition:** Ordinance No. 168004. (Y-4)

**Commissioner Gretchen Kafoury**

- 1321** Declare City policy regarding homeless campers and enforcement of anti-camping ordinance (Resolution)

**Discussion:** Police Chief Charles Moose endorsed this resolution as a very workable solution which also recognizes that future adjustment may be needed as the situation changes. He said this is a good step forward in improving City livability and working with people who do not have stable shelter. The Police Bureau will make every effort to follow it.

Commissioner Kafoury said the City has long felt people ought to have access to shelter but that long term camping in public places was not acceptable. She said she is pleased that the Police, Legal Aid and the Burnside Advocates got together to reach some agreement. What the City is attempting here, probably for the first time, is to acknowledge the rights of people to be treated fairly and with dignity. This policy ensures that if a camp must be roused, certain procedures will be followed, including a notification process. It also involves more outreach with campers, who have often been the forgotten homeless.

Bob Durstin, Bureau of Housing and Development Community (HCD), described how the protocol will work, noting that it is a compromise which will increase communication among bureaus and homeless advocates. When sweeps are initiated, the Police will do a 24-hour posting beforehand and then the social service system and advocates will be brought in to provide assistance. Alternatives to the camps will be sought and HCD also hopes to collect data regarding the number of camps and the needs and

demographics of the campers. The sweeps will also be monitored to make sure the rights of the individual campers are protected. HCD has also asked the Oregon Department of Transportation for money to hire a part-time outreach worker to contact the campers directly to gauge the extent of the problem. He said this protocol will help them access what is happening as a result of the shutdown of massive shelters in Old Town.

Mark Jolin, Burnside Advocates member on the Homeless Persons Legal Issues Task Force, expressed Task Force support for this even though many believe this does not go far enough in protecting the rights of homeless people. He said the Task Force continues to believe that it is unjust and inhumane to enforce the anti-camping ordinance when there is still insufficient or appropriate emergency shelter space. Given the current political realities, however, this compromise is an important step in the right direction. He noted that Commissioner Kafoury, Mayor Katz and Chief Moose have indicated their desire to find more humane alternatives. He said this recognizes that camping is not deviant behavior and the Task Force will continue to solicit feedback from the homeless community to make sure their rights are being protected.

Mark Knaughton, no address stated, said he spent about five years as a criminal camper. He said the way the camping ordinance has been enforced in the past sent a message to poor people that they are worthless. Moving campers around does not solve the problem either. The resolution opens the door to a more rational approach to the problem of a lack of affordable housing.

Dick Baldwin, Multnomah County Legal Aid Service, said they believe the anti-camping ordinance is selectively enforced only against homeless people and makes criminals out of them. He said as he reviewed similar ordinances throughout the country, it seems clear the primary purpose is a frustrated attempt to drive away the homeless and sweep the problem under the rug. Some judges have found that when there is not adequate housing this type of intervention could be considered cruel and unusual punishment. The anti-camping ordinance is bad social policy and should be repealed, although this is a constructive step forward as the homeless need the equal protection of the law as much as anyone. However, they are interested in working with the City in a more constructive way.

Tom O'Keefe, UCAN, also asked for repeal of the anti-camping ordinance. He said no one arrested under this ordinance has ever been prosecuted and asked how it can be illegal to be homeless. He said housing is the solution and cited UCAN efforts to replace lost low-income housing.

Commissioner Blumenauer said if the anti-camping ordinance is not enforced, the City ends up with unsafe, unhealthy and dangerous situations, including damage to public property. The City has invested millions of dollars in trying to solve the problems of homeless and low-

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income people and Council is committed to doing more where it can. However, allowing homeless people to camp where they will and take over public property is something the City does not permit other citizens to do.

Commissioner Kafoury said the reasons cited by Commissioner Blumenauer are why the anti-camping ordinance is not being repealed, even though a number of people wish it would be. She said there have been incidents where the Police have conducted sweeps and not respected people's private property rights and this is a community concern that needs to be addressed.

Mayor Katz said the challenge to her as Police Commissioner has been to get a traditional para-military organization, the Police, to develop ties with other community resources. She said this is a compromise and the sweeps will continue, primarily where illegal activities are occurring which have a negative impact on the community. In many cases the sweeps have occurred without the proper sensitivity and social service agencies and the Police must work together to improve the situation for those impacted by this ordinance.

**Disposition:** Resolution No. 35302. (Y-4)

**\*1322** Accept a U.S. Department of Justice grant from the State Criminal Justice Services Division in the amount of \$199,928 (Ordinance)

**Disposition:** Ordinance No. 168005. (Y-4)

**\*1323** Contract with Allen's Communication and Dispatch for dispatching of towing services (Ordinance)

**Disposition:** Ordinance No. 168006. (Y-4)

**City Auditor Barbara Clark**

**1324** Assess property for large lot deferral contracts through June 1994 (Hearing; Ordinance; L0047)

**Disposition:** Passed to Second Reading August 17, 1994 at 9:30 a.m.

**1325** Assess property for sewer system development charges through June, 1994 (Hearing; Ordinance; Z0578 through Z0583)

**Disposition:** Passed to Second Reading August 17, 1994 at 9:30 a.m.

At 11:30 a.m., Council recessed.

**AUGUST 10, 1994**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 10TH DAY OF AUGUST, 1994 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Kafoury and Lindberg, 4.

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

**REGULAR**

**Commissioner Charlie Hales**

- \*1327** Amend the Downtown Parking and Circulation Policy to codify the City's short term parking strategy (Ordinance)

**Discussion:** Jessica Richman, Bureau of Planning staff, said this amendment responds to a decision by the Land Use Board of Appeals regarding a criterion in the Downtown Parking and Circulation Policy allowing the City to approve short term parking in structures if it is consistent with the City's short term parking strategy. The City approved several structures under this criterion, most recently in the Schlesinger case which LUBA reversed on appeal, finding that the City did not have an adopted short term parking strategy. The City is appealing that decision but, in order to help the applicant proceed with development, it wishes to codify the short term parking strategy.

Steve Pfeiffer, attorney representing BPM Associates, said Council is well aware of the circumstances in the Schlesinger case and knows that LUBA has instructed the City that if it wants a short term parking strategy it has to put it in the Code rather than referring to case-by-case interpretations. He urged approval.

**Disposition:** Ordinance No. 168007. (Y-4)

- \*1328** Suspend three year renewal requirement for surface parking lots in Downtown Parking and Circulation Policy (Ordinance)

**Discussion:** Bob Clay, Bureau of Planning staff, said this ordinance will suspend the three-year renewal requirements for surface parking lots which is part of the Downtown Parking and Circulation Policy until the new Central City Transportation Management Plan (CCTMP) is adopted. It affects 22 surface parking lots which currently have conditional-use renewal applications, 13 of which are now in an expired status. He said the CCTMP policy document should be before Council in October and this will revise the regulations associated with renewal of existing surface



parking lots. Once the policy is adopted, the regulations will be codified.

Lee Lacey, 910 SW Park, #502, 97205, said the Downtown Community Association supports the ordinance with the hope that Council views the parking lots within the context of downtown livability and the pedestrian/car interface. He said they support transition into the CCTMP.

Steve Pfeiffer, Attorney representing BPM Associates, said based on their understanding that this would have no bearing on the prior issue, codification of the short term parking strategy, his clients have no problem with this.

**Disposition:** Ordinance No. 168008. (Y-4)

1326

**TIME CERTAIN: 2:00 PM** - Appeal of West Hills Homes, Inc. and Larry and Nina Lindstrom against Hearings Officer's decision to deny application for a Planned Unit Development and Subdivision located between SW Arnold and Coronado Streets and between SW 44th and 39th Avenues (Hearing; 93-00591 PU SU EN)

**Discussion:** Ruth Spetter, Senior Deputy City Attorney, noted certain legal requirements that must be followed in order to retain appeal rights.

Tom Bizeau, Planning staff, cited the applicable approval criteria and described the project and appeal issues. He said development of this planned unit subdivision is being proposed in four phases. In the three phases which are delineated, 58 units are proposed with some attached housing called for in the third phase. The site is at the headwaters of Arnold Creek which runs into Tryon Creek and is environmentally zoned because of the drainage which runs through the middle of the site. He said the area was platted in 1889 in a straight street grid pattern which made it difficult to develop because of the terrain; this is one of the last large sites being proposed for development. In 1991 there was an approved street vacation for roads in this street grid, contingent on approval of a planned unit development. Density calculations are premised on the vacation of those streets. Mr. Bizeau said appellants have raised seven issues, the major one being the environmental issue. Most of the proposed development will occur within the Environmental Conservation (EC) zones and calls for the removal of 73 percent of the trees within the EC zone, a major impact which must be mitigated or minimized. The Hearings Officer in his decision said the amount of impact is unacceptable for this site and the applicant had not presented evidence that this is the minimal impact that is practicable.

Mr. Bizeau showed slides of the site, noting the impact on the trees and the difficult terrain. He concluded by noting the Hearings Officer's report which states that because the environmental criteria cannot be met, many of the PUD, Subdivision and adjustment approval criteria cannot be met.



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If they cannot be, the rest of the provisions in the Code are difficult to meet also and it is the burden of the applicant to prove that they have been able to meet those approval criteria. That does not seem to have been done.

Mayor Katz asked if staff thought the land was developable at all.

Mr. Bizeau said yes, portions can be developed and the applicants have put a lot of time and effort into their plans. However, it is a sensitive site at the headwaters of Arnold Creek and a matter of balancing the environmental concerns with development.

Mayor Katz asked if it can be developed with the density that is required.

Mr. Bizeau said, based on some of the existing site constraints, there could be a reduction in density if the applicant wished. The developers could put in more attached housing if they wanted to in certain areas, for instance.

Mayor Katz asked if the number of units they are requesting could be developed on the site with less impact on the environment.

Mr. Bizeau said it is possible.

William Cox, attorney for the applicants, displayed a wagon full of materials which he said represents just half the documentation they have had prepared by experts in order to get through the process. He cited the credentials of the consultants who have been involved in the project, including an engineer, architect, silviculturists and geotechnical engineers. The cost of this application to date is about \$100,000. Noting that there were 12 individual grading studies, Mr. Cox also objected to having this go on for two years and then be denied because, according to the Hearings Officer, the proposal will have more of a negative impact and remove more of the resource than is acceptable. The Hearings Officer adds that whether the applicants can resolve that problem with more attached housing or a different style of construction is up to them and calls for more creativity in designing this site. He said they have had every kind of expertise possible and yet are told they need more creativity. He said there is no standard the applicants can meet, charging that instead they have been given the classic run-around. He said their silviculturist/arborist advised them not to do any mitigation in the EP zone as it would be detrimental to the ecology already there. He said it is not possible to meet the impossible standard which states that the mitigation is not enough. He said they proposed to put the mitigation on the lots themselves, but staff told them they could not do that. He said they have no place to put the mitigation then which leads the Hearings Officer to say they cannot build the project. This throws out the entire idea of the Urban Growth Boundary as it does not allow building in Portland. He said this is not an isolated incident as he has over 350 lots sitting in his office that cannot get through the City's

process. He noted aerial photographs of the site and submitted a letter from the silviculturist stating that while the urban forest is not wild it contributes many advantages to the habitat and that planting within it does much to mitigate the effects of tree removal, despite the loss of the wilder forested environment. He concludes by stating that the standard, conventional approach to mitigation does not fit this PUD.

Mr. Cox showed visuals to illustrate where the lots lie, adding that the vegetation on those lots is maple and alder trees, not conifers. He said those trees are not a valuable resource.

Paul Sedoruk, Land Development Consultants, 233 SW Washington, Hillsboro, a licensed architect in Colorado, said they have done 15 grading plans and what Mr. Bizeau showed on the slides is an old one. He said the grading is nowhere close to the EP zone and only comes close when it is necessary to put in a road as required under the State Transportation Rule. He said Mr. Bizeau is also confused about the number of trees being cut down, contending that, based on their tree survey of trees 12-inches in diameter or greater, only 49 percent of the land would be impacted. He said he assumed the density per acre is similar on both portions of the site while Mr. Bizeau seems to believe that there are more trees where they are developing than in the EP zone. He said the project has been designed very carefully and they have worked hard not to remove the significant evergreen groves. There were only two groves of fir they could not avoid removing. He said he met with Transportation and Planning and with the neighbors at least five times and believes they have reached the best solution for this site. They mixed the densities, met some of the needs of the neighborhood and believe they have reached a great compromise with a project that will have minimum impact on this site.

Mike Burcutt, 8610 SW 59th Avenue, said he is a member of the Environmental Streamlining Committee which found that the mitigation requirements did not make a lot of sense and concluded that total mitigation is not possible in all situations. He said his second consideration is the matter of costs. As a representative of the Metropolitan Homebuilders Association sitting on the SWNI Board, he said the wagon of documentation is symptomatic of the problems that exist in getting through the development process. He said while he does not always agree with Mr. Cox and his clients about what he considers their "rape and pillage" method of development, it is not all their fault as the Office of Transportation and the Fire bureau both have requirements that do not jibe with the conservation and protection zones and force developers to do things they do not particularly like.

Richard Brickiron, J.C. Reeve Development Corporation, 4850 SW Scholls Ferry Road, 97225, said most people believe developers are trying to take advantage of the public environment in order to make a profit. However, developers realize that green spaces are critical and, in order to meet all

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the rules imposed by other bureaus, they buy large tracts, half of which are usually given up to green space. He said in this case the developers have worked very hard with staff to get this approved in concert with City and State goals.

William Cox read a letter from Jon Chandler, Common Ground, the Urban Land Council of Oregon, in support of the applicants. It criticized Portland's implementation of the environmental zone ordinances and said this case represents an excellent example of the problems presented when developers try to comply with the requirements. He called for revisions to those ordinances to make them workable and resolve the conflict between the E zone regulations and the obligation, under Comprehensive Goal 10, to provide housing. Staff told the applicant that mitigation must occur for any resources lost while the applicant's experts state that mitigation is only possible up to a point and then the resource values are eroded by the mitigation. By not allowing mitigation on individual lots, the applicant is forced to mitigate in the resource zone which is not possible without changing its character. This elevation of Goal 5 over Goal 10 is highly inappropriate as nowhere in State law does it state that environmental considerations should be paramount to housing or economic development. He said if the City really wants to increase density it needs to specifically state that intention and attain approval of that policy from LCDC rather than accomplishing this intention by harassing applicants. He said there is no City policy guiding applicants through the maze and instead applicants are left to guess which one of several contradictory policies will control a given situation. He said the treatment of this applicant has been outrageous and the City's failure to clarify vague and ambiguous policies is inexcusable.

Robert Leith, 10741 SW 49th, 97221, said he has been torn by both sides. As a compromise, he suggested that the R7 zoning be retained, allowing about 35 homes to be built on the property, rather than 65. He said the developer believes he should be able to develop more because of what he paid for the property but since he has not actually bought it, he should go back to the seller and see if he can get a lower price to make building 35 homes feasible, with full mitigation. He said building 65 houses will tear down the forest. He also took issue with Mr. Cox's statement that conifers will not grow in the dense forest.

Colleen Culbertson, 12105 SW Lesser Road, 97219, commended the City for having these protections in place against developers' practices. She noted the City's expense and time in going through this process, when a lot of money and experts have been brought in against them. She said if the applicants want some of the regulations changed, they should work on those changes but not take it out on this particular project.

David A. Gens, 10644 SW 42nd, 97219, President, West Portland Park Neighborhood Association, stated the case for the opponents. He said the

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proposal fails to recognize the natural resource on this site, adding that West Portland Park voted on July 14, 1994 to support the Hearing Officer's denial. He said West Portland Park is not opposed to development on this site but believes this is irresponsible. The quality of the water resource that traverses the site and associated upland resources must be protected. He said they object to the elimination of the majority of the EC zone and support high density development where appropriate, but not in this case. He requested that the records of the two prior land use review hearings on this application be made part of the record.

Amanda Fritz, 4106 SW Vacuna, 97219, Chair, West Portland Park Land Use Committee, and Director, Friends of Arnold Creek, said the appellants do not explain how they have met the seven approval criteria found by the Hearings Officer to be deficient. They argue that the only vacant land left in Portland is environmentally zoned and that the headwaters of Arnold Creek must be paved over to satisfy the need for infill. She said only 15 percent of Portland's land has an environmental overlay zone and of 10 subdivision applications in such zones in 1993, this was the only one that was denied, demonstrating that other developers are submitting coherent proposals that comply with the standards. This one does not. She said she asked 1000 Friends of Oregon to evaluate this site as to its appropriateness for maximum density and their letter clearly states it is not appropriate for a sensitive resource such as this. She said of the seven approval criteria not found by the Hearings Officer to be met, five cannot be conditioned to be met, all involving the amount of trees and vegetation to be removed. The application proposes to cut 504 of 692 trees in the EC zone, or 73 percent. The Hearings Officer said this is essentially removal of the resource and would cut 89 percent of the trees in the EC zone in Phase III in an area with the steepest slopes, the greatest erosion potential and the densest housing. Because of this massive loss of trees, there is not enough space left in the EC and EP zones to replant enough trees to ensure no net loss, as the Code requires. The Hearings Officer in her decision notes that, if there is no way to compensate for the loss of resource, that loss must be reduced. The Hearings Officer also states that other elements, such as stormwater and groundwater recharge issues, did not get sufficient consideration. Ms. Fritz said the Neighborhood Association is disgusted at the way the developer prepared this application, citing a lack of attention to detail and inaccurate information on the applicant's part. As an example, she cited their statements concerning the amount of land to remain as open space, arguing that they have supplied inconsistent and unverifiable numbers throughout the application process. She said she is astonished that there is no penalty for submission of three applications full of inconsistencies, arguing that some of the applicant's proposals for the subdivision, such as building a house on top of a side tributary of Arnold Creek without showing the tributary on the plans, are prohibited by the Code. She said their request for five setbacks for single family lots would result in houses closer than the Code allowed, a clear fire hazard on this site.

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Ms. Fritz said the applicant will be required to comply with water quality requirements and ADA rules for the pedestrian trails and said there should be much more evidence in the plans that they are ready to do so. She charged that the applicant has not worked meaningfully with the neighborhood association, failing to provide complete information regarding the tree survey or to meet with individual neighbors to discuss lot-specific concerns. She said appellants have been given countless opportunities to correct the deficiencies in their proposal but say, in essence, that the requirements are unfair. She said approving this, however, would be unfair to other developers who do submit sensitive, coherent proposals. She said the developer should be told to start again and pay a new application fee before any more time is spent on this. This is a difficult site to develop properly as it contains steep slopes and a delicately balanced ecosystem and is a critical area for interspersions with Tryon Creek State Park.

George Toepfer, Friends of Tryon Creek, 4379 Snowbrush Court, Lake Oswego, 97035, said they have become increasingly concerned with water quality of the Creek and the health of the watershed. As infill development continues, with the removal of vegetation and trees, runoff will inevitably increase, making it even more important to protect the zones around the headwaters and tributaries such as Arnold Creek. He said because of their concerns they have begun a Step Project with the Oregon Department of Fish and Wildlife to provide for salmon and trout enhancement. He said Tryon Creek is not just another pretty place but an invaluable educational resource. He urged Council to make decisions that prevent transforming another urban stream into yet another urban sewer.

Paul Mattson, 3811 SW Arnold St., 97219, said the central issue is where the applicant has chosen to place the development -- in a steep, important ecosystem and wildlife corridor. He said he has studied this proposal for over two years and said the figures have been continually changing. By all estimates, however, proper mitigation would not be possible and therefore the proposal cannot meet the environmental review criteria. He noted that the Southwest Protection Plan ranks this site (No. 121) as significant and contended the magnitude of this disturbance is too great for anyone to mitigate as there is no known way to remove a forest and still have it at the same time. He said he is not opposed to development and realizes growth is inevitable but this project would be devastating to this unique and irreplaceable environmental asset.

Nancy Drais, 4205 SW Vesta, Board member of West Portland Park Neighborhood Association and Friends of Arnold Creek, said the number of trees to be removed is closer to 1,000 than the several hundred stated by the applicant. Saving only a single tree or two is not viable. Most of the trees intended to be preserved are too close to intended structures and it would be impossible to preserve them without destroying their root structure, causing them to die. The applicant's tree preservation plan is

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a sham and the applicant knows it as many of the trees to be preserved are in the grading zone where they must be removed anyway. She said for applicants to call the establishment of environmental overlay zones by the City a "stalling device" shows the applicant's lack of concern for the environment, this specific site, the City or West Portland Park. With this development, the forest canopy will not even remotely be restored within the next 50 years.

Keith Cushing, 4201 SW Vacuna, 97219, said this case is confused and the questionable expertise and relentless changes are the source of this confusion. He said this forest should be preserved and while Council may sympathize with the plight of the applicant, that is not a reason for approving it. There is no law mandating development at this particular site at the proposed magnitude of density and in the manner proposed. He said other properties are available for high-density development and the satisfaction of City policies. He said while clearly there is a conflict between providing high-density development and the mandate of preserving natural resources, in this case high-density cannot be established in such proximity to a treasured natural resource.

Arnold Rochlin, PO Box 83645, 97223, said spending large sums to fight compliance cannot buy a dispensation from complying with the environmental zone regulations. The applicant could have saved a good part of his investment if he had simply resolved to work with staff constructively and in compliance. The applicant has suggested that since he cannot do enough mitigation on the site to compensate for the environmental impact, he should not be required to do it. He ignores the other alternative, which is to reduce the impact by either reducing the number of units or using a higher density style of development.

Mr. Rochlin strongly disagreed with the Hearings Officer's statement in her decision regarding development in the EP zone where she decides there can be a required pedestrian bridge across an EP zone, because it is the only place it can be placed given the particular development proposed. He said if the particular development proposed by the applicant requires a bridge through an EP zone, a different type of development, that does not require the bridge, is needed. What is most objectionable about her statement is her finding that theoretically all sites in the City that have drainage areas will be environmentally zoned or have interim resource zoning. Mr. Rochlin said one of the standards for EP zones is that there is no other site in the City where the particular proposal could be accomplished. He said the correct interpretation is whether there is another place in the City to develop comparable housing that would not require development in an EP zone. He said the Hearings Officer erred grossly in this area and urged Council to correct that as well as to uphold the decision.

Anitra Rasmussen, 3844 SW Jerald Way, 97221, Democratic candidate for House District 11, said this site clearly deserves special attention and



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development should proceed with the utmost caution as this is a recognizable regional treasure. She said this application clearly does not meet the approval criteria.

Jeremy Grand, 3707 SW Coronado, 97219, questioned how so many high-priced consultants, as cited by Mr. Cox, could be so wrong. He said he is not sure the overlays presented are any more accurate than any of the other information submitted by the applicant and asked that they be reviewed before Council put any credence in them. He said this is a difficult area to develop and the applicant does not seem up to it while the City's requirements seem rather lenient. It should be difficult to build in environmental zones and developers should use appropriate techniques to deal with sensitive areas and avoid massive bulldozing.

Betty Hedberg, 7903 SW Ruby Terrace, President, Southwest Neighborhood Information (SWNI), said their Board voted July 27, 1994 to endorse the resolution of West Portland Park which supports the denials recommended by Planning staff and the Hearings Officer. The development proposal is unacceptable in its present form as this is a valuable resource to all of the Southwest area and beyond.

Tim Crail, 3150 SW Bertha, 97201, Southwest Neighborhood Coalition Land Use Chair, said he is here at the request of Arnold Creek Neighborhood Association which opposes the development because of its serious detrimental impacts on Arnold Creek, including intensifying drainage problems downstream. He noted Council's earlier commitment, in connection with the Woodlee Heights PUD, to dealing with existing drainage problems in future developments. If Council approves this application, it will make problems in the Arnold Creek area much worse. Speaking personally, he said if Council approves this it means the environmental regulations are meaningless and should be repealed. He said from all the errors and inconsistencies in the application, it is apparent the applicant could not follow his own numbers.

Liz Callison, 6039 SW Knightsbridge Dr., speaking for Friends of West Hills Streams, called for denial because of the heavy impact of this development. She said there is great potential for degradation of the Tryon Creek Watershed and the area of proposed development is the primary drainage for surrounding neighborhoods and has environmental value far beyond any immediate profit to be made by a developer. The mitigation requirements should not be reduced even though it is a poor substitute for established forest as it would be unfair to other would-be developers to grant the present application as the proposed grading plan would destroy the natural drainage patterns of the entire area. Referring to Mr. Burcutt's testimony she said she too was a member of the E Zone Streamlining, adding that while none of the members are authorized to speak for the committee she believes it favors reduction of development in

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E zones primarily through reduction in density requirements, not through reduction of the mitigation requirements.

Kay Durtschi, Multnomah Neighborhood Association, 2230 SW Caldew, said she has served on many land-use committees and the amount of time put into this issue by volunteers has been astronomical. She said this is a vital resource and it is crucial that it be preserved.

John Alland, Vice President, SWNI, said Mr. Cox's assertions in his appeal about SWNI are completely unfounded. He said SWNI is not anti-growth but is anti-bad planning, anti-poor environmental design and against the loss of neighborhood livability. He said they have gladly helped builders and developers who truly listen to neighborhood concerns and involve them in the planning. He expressed the support of the Southwest Coalition for denial. He said this is the wrong plan for this site.

Ryan O'Brien, planning consultant with Land Development Consultants, said the first thing developers ask about a site is whether it is in an E zone and if it is most will not touch it. Second, a lot of developers are watching this case hoping for some direction from Council on how to handle these specific cases where neighbors want single family housing in a single family neighborhood while staff is calling for multiple-family units. He said from attending the first two neighborhood association meetings, he thought it was very clear that the people in the neighborhood who live near the site do not want multiple family housing.

Nadine Kincaid, 4430 SW Vesta, 97219, said she bought her house six years ago because of the trees and would like to see the woods remain.

Mr. Cox referred to the Dolan case in Tigard, noting that it is the obligation of the City to show how the general applies to the specific. You cannot just say trees shall be saved; you have to say specifically which trees are valuable and why. He said that has not been done here and he believes the City is running afoul of the U.S. Constitution. The reason there is so much confusion about the numbers is due to the number of changes made at the request of staff and by neighbors in an attempt to satisfy all parties. He said every one of the neighbors who testified reflects the attitude that since they live by the trees, they must be saved for them. He said the proposal will have the minimum impact feasible which is shown by the fact that they have approval from BES for stormwater runoff, from Transportation for connectivity, and from Buildings for the grading plan. He said Mr. Bizeau's attitude, that if houses are put on stilts, grading is not needed and all the trees can be saved, is wrong. Applicants' experts believe there is no net difference between whether the site is graded and replanted or if the houses are on stilts because the trees are still removed. He said they can control erosion if they do a mass grading, none of which enters the EP zone as it is all staying in the EC zone. He said people are counting trees outside the EC zone and that is



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why they are getting the difference in numbers. Mr. Cox questioned the City's policy allowing SWNI, which is funded with City money, to contest projects. He classified that an inherent lack of due process and called for either removal of their funding or telling them not to participate in these hearings. He said appellants are not complaining about the high density development or about the stringent requirements. Their complaint is that they do not know what the requirements are, i.e. they have no idea what a significant impact is or what a significant tree is. It is in the mind of Mr. Bizeau. He said he questioned the statement that there were approvals of 10 other subdivisions. He said he asked Mr. Bizeau how many large subdivisions have been approved under the EC zone and the reply was none. None of any size have been approved as it is not possible to get through the process. He said the key problem results from too many families having three kids.

Mayor Katz asked if he would like to retract his last statement.

Mr. Cox said no, either shut people out of coming to Portland or let them develop this property. He said he has spent 15 years of his life trying to deal with the Urban Growth Boundary.

Commissioner Lindberg asked staff if all remaining developable land in the City is within the E zone and if development is being paralyzed by the E zone regulations. He asked if the Planning Bureau had evaluated the regulations to see what has happened since they were adopted.

Mr. Bizeau said he believes there have been some efforts to put together the different cases and find out how the approvals have been going.

Commissioner Kafoury said Commissioner Hales supposedly is working on a review of environmental zones and a review of Title 34.

Commissioner Lindberg said when the Homebuilders come in and suggest that development is at a near paralysis this provides a good opportunity to let people know the City is assessing the impact of the E zone.

Duncan Brown, Planning Bureau, said the Bureau has issued an E zone fact sheet, adding that the vast majority of the remaining undeveloped residential land in Portland is outside the E zone. He said a number of fairly large subdivisions have been approved that contain significant portions of environmental zoning.

David Knowles, Interim Director, Planning Bureau, said the Environmental Zone Streamlining Committee has just completed its work and has issued a draft of its recommendations. It recommends a series of changes which will streamline the regulations themselves but does not evaluate how much development has occurred within the environmental zone as it is intended to get at some of the impediments to development.

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He said the draft is now out for public comment and hearings are planned before it comes to Council, probably late this year. The rewrite of Title 34, the Subdivision Code, is underway now also and they expect the process will take a little over a year.

Mayor Katz said the Council itself is concerned about the need to streamline and review the E zone regulations and that is why the Planning Bureau was directed to do so. This may still not meet all the needs of developers but Council does recognize that the regulations did create some difficulties that need review.

Mr. Cox said he believes the draft does not address the issue of large subdivisions at all.

Mr. Knowles said staff is certainly interested in hearing from the development community. He said there have been some applicants who have been able to get through that process very well and develop in environmental zones.

Mr. Cox said he would like to see a list, which he asked for six months ago. He said the list he saw earlier included two cases which he had to bring to Council to get resolved. He said he asked Mr. Bizeau if he knew of any others and he responded, none that he knew of.

Commissioner Kafoury moved to tentatively deny the appeal and uphold the decision of the Hearings Officer. Commissioner Lindberg seconded.

Commissioner Kafoury said City policy is to encourage development within the Urban Growth Boundary and the neighborhoods need to know that Nimbyism is not acceptable. However, constant balancing has to be done and the reason the E zones were adopted in the first place was to recognize that there are highly sensitive areas that can never be replaced or repaired. But Southwest residents, as they prepare their neighborhood plan, will have to figure out some areas where they will accept higher density and infill. This case, however, seems relatively clear as the burden of proof to show that environmental damage will not occur has not been done.

Commissioner Lindberg said he will vote aye for the reasons outlined in the Hearings Officer's report, particularly where it states that the applicant has not proposed a development plan that meets the approval criteria and the mitigation plan does not compensate for the loss of resources. He said there is no doubt that the City needs to proceed with sensitive development that achieves its housing goals yet preserves the environment. Developers have found that not all expertise rests with hired experts as nearby residents also have good ideas and will support developments that protect the environment.

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Mayor Katz voted aye and identified two issues. She said there was a clear understanding that there are planning issues that need to be reviewed to make both the work of the developers and neighborhoods easier. But each project still must be reviewed individually and for that reason she supports the motion. Second, the City is on record as supporting both a tight Urban Growth Boundary as well as at least 50,000 new housing units within the Boundary within the next 20 years. A delicate balancing is required between density, neighborhood character and preservation of the environment and this means asking neighborhoods to identify areas that can sustain much higher density.

**Disposition:** Tentatively deny appeal; prepare findings for August 24, 1994 at 2:00 p.m.

At 3:50 p.m., Council recessed.

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**A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 11TH DAY OF AUGUST, 1994 AT 2:00 P.M.**

**THOSE PRESENT WERE:** Mayor Katz, Presiding; Commissioners Blumenauer, Kafoury and Lindberg, 4.

**OFFICERS IN ATTENDANCE:** Cay Kershner, Clerk of the Council; Linda Meng, Chief Deputy City Attorney; and Chuck Bolliger, Sergeant at Arms.

**Commissioner Gretchen Kafoury**

**1329**

Liquor license application for Deawynne Corp., dba Wynner's, 2002 SE Division Street, retail malt beverage liquor license (renewal); favorable with restrictions recommendation (Report)

**Discussion:** John Werneken, License Bureau staff, noted a report from a neighbor detailing instances which the License and Police Bureaus believe establish a history of significant problems that need to be resolved. He said the licensee has been working with OLCC and City staff to control those problems, adding that the staff report lists 10 measures the owner has implemented or will implement. Both Bureaus believe such measures, when followed, are effective in eliminating the disturbances that have been reported. For that reason, the Bureaus recommend a favorable endorsement with the restriction that these measures be implemented and maintained.

Winn Gillam, owner of Wynner's Tavern, said she purchased this place two years ago and has worked very hard to eliminate most of the bad element. She said she believes they are now a real credit to an area that has a lot of problems, including transients and drug problems. She said her neighbor Karen Matson complained and made her aware of people sitting outside in their cars smoking so she implemented security checks on the cars. Nevertheless, the complaints continued and she now believes a lot of them are unfounded. She said she has had security outside patrolling seven nights a week since the first of May as well as inside surveillance. She said they fully enforce a sign requiring that anyone who leaves after 9:00 not be allowed re-entry and a sign asking patrons to keep quiet. She has also installed more outside lights and done everything she has said she would do.

Mayor Katz noted that a lot of what disturbs the neighbors is rowdy behavior occurring outside, not just at her tavern. She said Ms. Gillam must recognize that she has a responsibility for the activity outside the tavern as, if people are yelling, it may indicate that they are being fed too much booze.

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Ms. Gillam said she has had security on the outside since May.

Commissioner Kafoury asked if any neighborhood association had taken a position.

Mr. Werneken said the neighborhood association is keeping track but has taken no formal position.

Karen Matson, SE 20th, said she lives next door to Wynner's and is the person who supplied the logs. She said soon after moving in five years ago she noticed many problems relating to alcohol and drug use which made her wish she had not moved here. In the past two years the present owners have increased the amount of business and that seems to have increased the number of problems. She said after OLCC issued a warning ticket the owner made some promises, such as noted in the restrictions placed on the renewed liquor license, but if she were really serious about correcting the problems, she would have followed through by now. She asked Council to deny renewal of the application.

Fran Berger, SE 20th, said things have improved recently except for an incident on July 30 when a man woke her up at 2:00 a.m. with yelling, swearing, fighting and exposing himself. She said such incidents bother her and while they have lessened she does not want anyone to have free rein again. She called for monitoring but said she does not object to the licensee if she can maintain law and order around the premises.

Gwenna Cornell, an employee at Wynners, said the current operation is much improved over the prior one, which was a pig sty. She said she cuts people off if they drink too much and will "86" people who are acting inappropriately. She contended that much of the information supplied to Council is unsubstantiated and meaningless and that Wynner's staff is doing all they can to keep things under control.

Lois Stewart, a customer at the tavern for the last 30 years, charged that the neighbor who has been complaining has put notes on every car on the block telling them not to park on a public street.

Commissioner Kafoury asked what made the difference between a favorable and an unfavorable recommendation. She said the log shows the complaints about noise in the evenings are still continuing.

Mr. Werneken said from looking at the record since April when some of the corrective measure began, the Bureau did not believe the degree of disturbances was documented or that it was clear that they could and would not be controlled. He said the number of complainants is somewhat of a factor as, while staff does not discount one person who is suffering from a disturbance, if six or seven others are also suffering and the

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neighborhood association has also identified it as a problem, the complaint gains additional stature. That element was not present in this case. Second, there appeared to be some decline in the severity and quantity of incidents and Police did not have a record of intense criminal or disturbing activity at this location. He said their experience has been that reasonable measures are effective in eliminating disturbances caused by customers going and coming from the tavern. Finally, they believe if the license is renewed with the restrictions and they are not complied with, that in itself is grounds for discontinuing the license.

Commissioner Kafoury asked whether earlier closing hours were considered.

Mr. Werneken said it did not occur to him that the instances were that closely associated with late closing hours. They thought being vigilant about what the patrons were doing was the key.

Commissioner Kafoury said she is very concerned about this license as it is in a vulnerable neighborhood. Given the strategy outlined, she moved to accept the report and be very clear that if these restrictions are not met, the City is willing to go back to the OLCC.

Commissioner Lindberg seconded.

Mayor Katz asked if a license can be yanked without going through this procedure again if restrictions are placed on a problem tavern and the problems continue.

Mr. Werneken said if the license is issued subject to compliance with restrictions, the effect of non-compliance is a Class 1 violation and could lead to the license being summarily cancelled.

Mayor Katz asked if OLCC really adheres to that policy and actually revokes licenses.

Mr. Werneken said yes.

Officer Larry Seivert, Portland Police, said OLCC still needs a lot of documentation from the City about the restrictions. The Police will pass any violations onto the OLCC but it does take some time so the owner has a chance to clean the place up.

Commissioner Blumenauer said he hopes the Bureaus will make sure OLCC gets what it needs from the City. He suggested that the neighbors take steps to involve the neighborhood association, adding that he is optimistic that these problems will not continue.

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Mayor Katz said she appreciated the documentation even though some is not relevant as it is important that citizens provide it to the Police Bureau and OLCC. She said she is concerned about the activities outside the tavern as they may reflect an internal problem in the amount of liquor that is served.

**Disposition:** Favorably recommended with restrictions (Y-4)

At 2:30 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland



By Cay Kershner  
Clerk of the Council