



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 17TH 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; Harry Auerbach, Deputy City Attorney; and Chuck Bolliger, Sergeant at Arms.

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

CONSENT AGENDA - NO DISCUSSION

- 1331** Accept bid of Moore Excavation for Vancouver Basin CSO Unit 3 for \$93,326 (Purchasing Report - Bid 2)

Disposition: Accepted; prepare contract.

- 1332** Accept bid of Cassetta Construction Services for Gabriel Park wet meadows for \$49,559 (Purchasing Report - Bid 10)

Disposition: Accepted; prepare contract.

- 1333** Vacate certain portions of NE 4th Avenue, NE 5th Place and NE Suttle Avenue, under certain conditions (Ordinance by Order of Council; C-9852)

Disposition: Passed to Second Reading August 24, 1994 at 9:30 a.m.

- 1334** Vacate a certain portion of SW 2nd Avenue and SW Front Avenue lying south of SW Slavin Road, under certain conditions (Second Reading Agenda; C-9843)

Disposition: Ordinance No. 168009. (Y-4)

Mayor Vera Katz

- *1335** Authorize a settlement to resolve a grievance between the City of Portland and Rodolfo Ruiz (Ordinance)

Disposition: Ordinance No. 168010. (Y-4)

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Commissioner Earl Blumenauer

1336 Set hearing date, 9:30 am, Wednesday, September 14, 1994, to vacate a portion of NE 120th Avenue between NE Glisan and Davis Streets (Report; Petition; C-9859)

Disposition: Adopted.

1337 Accept the street and storm sewer improvements on SW 7th Avenue from SW Alice Street to SW Lobelia Street and SW Orchid Street from SW Terwilliger Boulevard to SW 8th Avenue, approve Change Order Nos. 1, 2 and 3, make final payment and release retainage (Report; Contract No. C-9797)

Disposition: Accepted.

1338 Declare the purpose and intention of the City of Portland to construct street and sewer improvements in the SW Pasadena/37th LID (Resolution; Street; C-9820)

Disposition: Resolution No. 35303. (Y-4)

***1339** Amend contract with OTAK, Inc. to increase work scope and contract amount (Ordinance; amend Contract No. 27310)

Disposition: Ordinance No. 168011. (Y-4)

***1340** Amend contract with Alpha Engineering Inc. to provide additional engineering services and increase contract time for the SW Pasadena/37th LID project (Ordinance; amend Contract No. 28532)

Disposition: Ordinance No. 168012. (Y-4)

***1341** Authorize execution of lease agreement with Towne Storage for a certain area of E. Burnside Street lying under the Burnside Bridge for vehicle parking use (Ordinance)

Disposition: Ordinance No. 168013. (Y-4)

***1342** Accept a grant from the Oregon Department of Transportation in the amount of \$30,000 to develop a comprehensive Bicycle Master Plan (Ordinance)

Disposition: Ordinance No. 168014. (Y-4)

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- *1343** Establish a credit card for use by Fire Bureau employees in emergency situations (Ordinance)

Disposition: Ordinance No. 168015. (Y-4)

Commissioner Charlie Hales

- *1344** Contract with the Private Industry Council to provide placement of youth in work experience positions with Parks and Recreation (Ordinance)

Disposition: Ordinance No. 168016. (Y-4)

Commissioner Gretchen Kafoury

- *1345** Transfer General Fund special appropriations to the Bureau of Housing and Community Development for an agreement with the Private Industry Council to carry out summer youth employment projects (Ordinance)

Disposition: Ordinance No. 168017. (Y-4)

- *1346** Contract with the Housing Development Center for \$104,000 to provide technical assistance to non-profit developers of affordable housing and provide for payment (Ordinance)

Disposition: Ordinance No. 168018. (Y-4)

- *1347** Grant revocable permit to Art Celebration, Inc. to close certain streets to hold their Artquake Festival September 2 to 6, 1994, waive fees for permits and inspections (Ordinance)

Disposition: Ordinance No. 168019. (Y-4)

Commissioner Mike Lindberg

- 1348** Accept contract with Casper & Magera, Inc. for Robinbrook sanitary sewer as complete and provide for final payment (Report; Contract No. 28843)

Disposition: Accepted.

- *1349** Contract with the U.S. Army Corps of Engineers to provide technical assistance in finalizing the Johnson Creek Resources Management Plan (Ordinance)

Disposition: Ordinance No. 168020. (Y-4)

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- *1350** Amend contract with Black and Veatch, Inc. to increase scope of work, payment and time (Ordinance; amend Contract No. 28549)
- Disposition:** Ordinance No. 168021. (Y-4)
- *1351** Amend contract with Parametrix, Inc. to include screening level risk assessment of the Smith-Bybee Management Area (Ordinance; amend Contract No. 29099)
- Disposition:** Ordinance No. 168022. (Y-4)
- *1352** Intergovernmental Agreement with Metro for a screening-level risk assessment of the Smith-Bybee Lakes Management Area (Ordinance)
- Disposition:** Ordinance No. 168023. (Y-4)
- *1353** Contract with North Creek Analytical to provide laboratory services and provide for payment (Ordinance)
- Disposition:** Ordinance No. 168024. (Y-4)
- *1354** Agreement with ASCG, Inc. for design of wastewater pumping station improvements, miscellaneous design tasks and engineering services during construction (Ordinance)
- Disposition:** Ordinance No. 168025. (Y-4)
- *1355** Agreement with Curran-McLeod, Inc. for design of wastewater pumping station improvements, miscellaneous design tasks and engineering services during construction (Ordinance)
- Disposition:** Ordinance No. 168026. (Y-4)
- *1356** Agreement with David Evans & Associates, Inc. for design of wastewater pumping station improvements, miscellaneous design tasks and engineering services during construction (Ordinance)
- Disposition:** Ordinance No. 168027. (Y-4)
- *1357** Agreement with Brown and Caldwell for design of wastewater pumping station improvements, miscellaneous design tasks and engineering services during construction (Ordinance)
- Disposition:** Ordinance No. 168028. (Y-4)

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- *1358** Agreement with Black & Veatch, Inc. for design of wastewater pumping station improvements, miscellaneous design tasks and engineering services during construction (Ordinance)

Disposition: Ordinance No. 168029. (Y-4)

- *1359** Call for bids to construct maintenance improvements at Mt. Tabor Reservoirs, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 168030. (Y-4)

City Auditor Barbara Clark

- 1360** Amend contract with Poorman Douglas Corporation for bill generation and mailing services (Ordinance; amend Contract No. 28619)

Disposition: Passed to Second Reading August 24, 1994 at 9:30 a.m.

REGULAR AGENDA

- 1330** **TIME CERTAIN: 9:30 AM** - Express support for state and federal actions to reduce the use of tobacco, especially among minors (Resolution introduced by Commissioner Kafoury)

Discussion: Commissioner Kafoury noted that this item responds to a request from United Community Action Network (UCAN) to see what the City might do to prohibit outdoor advertising of tobacco products. She said there does not seem to be a whole lot local government can do without violating first amendment rights but this resolution makes the modest statement that Council does not condone advertising that adversely influences minors.

Joe Keating, UCAN and Tobacco Free Forum, said as older people stop smoking, the tobacco industry is increasingly aiming its advertising efforts at young people. Currently over 3,000 young people get hooked on tobacco daily and smokers under age 18 yield almost a billion dollars in gross sales annually. Mr. Keating said if billboard and convenience stores would cease cigarette ads it would have a very positive effect on reducing tobacco use among young people.

Dr. Donald Austin, Oregon Health Division and Oregon Health Coalition for a Tobacco Free Environment, said tobacco is both addictive and harmful, adding that Oregon taxpayers are now paying \$35 million annually in direct medical costs for the treatment of tobacco-related illnesses. He said in Oregon about 15,000 new smokers per year are recruited, 90 percent of them minors. He described four main approaches that can be used to keep kids from using tobacco: 1) higher pricing; 2)

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intellectually immunizing them from pro-tobacco messages; 3) enforcing current laws; and 4) restricting advertising to adults.

Brenda Niblock, American Lung Association of Oregon, said children can buy tobacco with very little difficulty in Oregon, despite passage of the no sales to minors and no possession laws. Several studies show that when tobacco age restriction laws are actively enforced, children's use of tobacco decreases.

Dr. John Padgett, American Cancer Society, described the wide-ranging health risks and costs due to tobacco use. Effective tobacco control measures can work, as has been shown in Canada where a 65 percent decrease in tobacco consumption has been achieved. He said tobacco represents a clear and present danger to health and a heavy cost to society.

Larissa Pennington, Student Body President, Lincoln High School, said a lot of high school students still smoke and most begin because of peer pressure. This resolution begins tackling the problem of teenage smokers.

Dr. Minot Cleveland, Oregon Health Sciences University, speaking on behalf of the Heart Association, said 400,000 smokers die each year due to smoking-related diseases. The focus on youth in this resolution is key since it has been found that 25 percent of 17 and 18 year-olds do smoke.

Catherine Broderick, Congressman Wyden's Office, read his letter of support for the resolution.

Commissioner Blumenauer said he hoped Council would consider how much the State profits from the sale of tobacco to minors and suggested that some of that money be dedicated to eradicating tobacco use among young people. He also suggested referring this to the Chief's Forum to consider enforcement measures, since the evidence is that current laws are not being enforced.

Disposition: Resolution No. 35304. (Y-4)

1361

Appeals of Mitchell J. Olejko and Jill Wolcott against decision of Noise Review Board to grant variance and modification to the Oregon Department of Transportation for night-time construction for the Climbing Lane Project on Highway 26 (Previous Agenda 1239)

Discussion: Mayor Katz noted that City Attorney Harry Auerbach had been working with these parties to resolve this issue.

Harry Auerbach, Deputy City Attorney, noted that several meetings have been held since the initial hearing to pursue some of the unanswered

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questions. He found that the issues went beyond the noise, the trees and the Climbing Lane project itself and that the level of communication had deteriorated to the point that constructive dialogue between the neighbors and the Oregon Department of Transportation (ODOT) was not occurring. He said some small progress was made at the first meeting, followed by a sub-committee meeting of the Climbing Lane residents which dealt specifically with the noise issue. That was followed up with a general meeting to see how the scope of the current project compares with what was envisioned when the Council approved it three years ago. Some of that information was still not available and it now appears a major breakthrough has been made in ODOT's understanding of the need for real community participation. He said yesterday ODOT informed him that it planned to go back to the community and make sure these issues are adequately addressed before any work is actually done on this segment. Mr. Auerbach said he expects that work will be delayed and the noise variance put in abeyance for now. He thanked the many parties involved in trying to achieve some resolution.

Bruce Warner, Region Manager, ODOT, said ODOT will delay the Climbing Lane project as it has become painfully apparent to him that ODOT has a major credibility problem with citizens in this neighborhood. He said he believes this delay will allow the department to mend fences and build urgently needed communication links with area residents, including an aggressive public involvement process. ODOT will also thoroughly review the Climbing Lane project and respond to the concerns, particularly regarding the differences between the base design described in the FEIS and the current design. In addition, they will develop noise and tree mitigation plans, furnish justification for nighttime work and provide a community involvement plan. He asked for postponement of the noise variance appeal to allow them three months time to deliver the necessary information and answer all the questions.

Mitch Olejko, 1680 SW Highland Parkway, appellant, said they are willing to work with ODOT to address the problems. He said he assumes condemnation would also be put on hold.

Commissioner Blumenauer asked about condemnation.

Mr. Warner said he did not know but would review that to see if there is a way to slow things down.

Mayor Katz said two key issues were raised. One was deciding to begin this project after delay was recommended, although she understands it was done because of federal fund availability. She said if those funds have been locked up, the delay is probably doable while further discussion of the design and scope takes place. The other issue was the mitigation for noise as well as the change in design. She said she is pleased to have a

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delay so the department can clearly listen to the community and work with them collaboratively.

Mr. Auerbach recommended that the appeal be tabled.

Commissioner Blumenauer moved that it be filed for no further consideration. Commissioner Lindberg seconded.

Mr. Auerbach asked if the intention was to go through a new noise review process.

Commissioner Blumenauer said since this will be reconfigured and have new timing this could be resurrected, if necessary.

Mayor Katz asked Mr. Auerbach to continue his work as a watchdog.

Commissioner Blumenauer said he is particularly interested in reassessing what actually needs to be done, noting Council's reservations about the Canyon highway project which he had advanced to its regional partners and ODOT. He said there may be something that is even better than simply improving the process.

Mayor Katz said she has discussed with the City Attorney the need to review the City's role in these intergovernmental agreements and perhaps play a more proactive review role and also look more closely at the environmental impact statements to see if what is proposed is within their scope.

Disposition: Filed for no further consideration. (Y-4)

Commissioner Charlie Hales

1362

Request from Historic Landmarks Commission for approval of demolition delay extension for proposal to demolish top five stories of the Esquire Hotel, a National Register property, at 626 SW Park (Report; LUR 94-00209-HL)

Discussion: Sue Donaldson, Planning Bureau staff, said she is here today on behalf of the Historic Landmarks Commission to request approval of a demolition delay extension for a further 90 days beyond the automatic 150 days invoked by the landmark designation. She said the request was set in motion because of violations of the City's dangerous building code which resulted in a request from the Bureau of Buildings to the building's owners to either repair it up to the FEMA Standard 178 or demolish it. The owners have chosen the demolition option. Staff denied this demolition request. At the Landmarks hearing it was established that the demolition would cost nearly as much as it would to make the necessary repairs. The

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real problem is future upgrade requirements and the cost to make it habitable. Ms. Donaldson noted that under new State regulations, buildings in the City must now meet fairly stringent seismic code requirements which a majority of City buildings cannot meet, making historic structures among the most vulnerable as many are unreinforced masonry. She said one question of great interest to the historic community is whether these seismic requirements will become one more very strong incentive for people to demolish more historic buildings. She said the State Historic Preservation Office also strongly supports this request for the delay.

Ms. Donaldson showed slides, noting the building's state of disrepair but adding that the owners have made some improvements to the basement and first two floors. They are now asking to get rid of the remaining five floors.

Commissioner Kafoury noted the City's significant investment in the renovation of Morrison Park, right across the street.

Deborah Grunefeld, Chair of the Landmarks Commission, said the additional 90 days will give them a chance to bring the players together and try to rehabilitate this building. She said the building qualifies for federal tax credits which could help with its rehabilitation and, if it were rehabilitated for low-income housing, it could qualify for additional tax credits. She cited the need for such housing as well as the loss in possible tax revenue through loss of the upper floors.

Carter Case, 1620 SW Taylor, representing the owners and architect for the building's recently completed renovation project, said this all arose because of a complaint six months ago about pigeons flying out of windows. He said the building owners then tried to answer a 40-item check list of things that needed to be repaired, 39 of which they have or are willing to do. The 40th calls for an extensive engineering study to show how current building codes can be met. The owners have spent a lot of money on engineering studies which indicate the building does not meet current Code; they were told by the Bureau of Buildings that if it were brought to FEMA 178 standards that would be acceptable. Those seismic standards are approximately 70 percent of Code, which would be acceptable if the building remains unoccupied above the first floor. Mr. Case said the owners of the building are restauranters, not developers, and do not have a concrete plan about what to do upstairs. He said they have been approached in the last three years by a number of developers and there is one proposal in the works right now so they have no objection to the delay. The owners do not want to tear it down but have felt monthly pressure from the Buildings to either pay up or tear it down. They finally decided to tear it down but then learned at the Landmarks Commission hearing that it would cost about as much to selectively tear down the building as

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it would be to do the FEMA 178 repairs. However, the owners want to know if that is all the money they will have to spend until such time as the space is occupied and what the tax implications are. He said the owners would be agreeable to retaining those floors if they could get the Bureau of Buildings to agree to bringing the building up to FEMA 178 standards over a reasonable period of time until that space is occupied, and then bringing it up to seismic and other code standards at that time.

Commissioner Kafoury said this has a long history of being a dangerous building and it looks like Council is just delaying the inevitable. She said the 90-day period is not the issue for her. The City probably needs a different Code provision as right now the choices for a dangerous building are either to repair or demolish it. She said perhaps the City should consider some kind of warehousing provision but over time this building has not been cared for in any way.

Mayor Katz agreed there are two very difficult choices now. She said she would support a 90-day delay to allow time to see if some interim Code language is needed so that the choice is not simply ripping down old historic buildings that are in disrepair. (The Mayor left the meeting at this point.)

Commissioner Kafoury said they do not want to encourage people to deal with these buildings on a case by case basis or suddenly slap a historic designation on them.

Margaret Mahoney, Director, Bureau of Buildings, showed photographs to indicate the condition of the inside of the building. She said there is a history of Code violations on this building going back to 1948, including frequent fire safety and sanitation problems. In the 1970s it went through a Chapter 13 review and upgrade which was ordered by Council at that time for a lot of residential buildings in the City. Not all that work was completed and the building was vacated in 1982 because of significant complaints by building residents. It was reexamined in 1992 based on additional complaints and the Bureau found structural, sanitation and fire and life safety problems. She said this is not a seismic issue alone; this is a dangerous building even without seismic considerations.

Commissioner Blumenauer asked if she meant this posed a fire hazard for the rest of the community.

Ms. Mahoney said there are 15 triggers which identify a building as dangerous. They are in three categories - sanitation, fire and life safety and structural conditions. She said this building has had violations in all of these areas and the difficulty it poses right now stems from its effect on adjoining buildings and the possibility of having things fall into the right-of-way. The real issue is what do they do after the demolition delay period

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runs out as there are very few resources for historic properties right now. She noted also that the Bureau currently only has two options, repair or demolish. They have discussed phased and less-than-current Code structural improvements with the owners but have not reached agreement about that. She proposed that during the 90-day period, the City consider an acceptable level of warehousing for buildings such as this where the upper floors are not going to be used in order to protect people on the lower floors, in the right-of-way and adjacent buildings. This would not be a zero investment option, however. She said the Bureau is willing to look at that kind of alternative. The Seismic Task Force is looking at the seismic piece and expects to complete its report in several weeks.

Commissioner Blumenauer asked if the photos were accurate.

Mr. Case said he thought some of the most pressing problems had been taken care of, but possibly they had not. He said if the FEMA 178 seismic standards were not the issue, all the other repairs could be done tomorrow. But the costs to do the seismic work are so great, the owner is asking why do anything other than tear it down.

Ms. Mahoney said she did not want to leave the impression that the Bureau would not require some stability of the walls to ensure against falling.

Mr. Case said the owners are willing to spend all of what it takes to get to FEMA 178 but then in three years they will have to bring it up to some new level. He said they have owned the building for three or four years.

Commissioner Lindberg asked if the dangerous building things could be taken care of immediately but the seismic upgrades delayed until development occurs. He asked when the seismic requirements are triggered.

Ms. Mahoney said what triggered this is a 1992 complaint which led the Bureau to make an inspection in which it found 40 Code violations. The Code says either bring this up to current Code or demolish the building. The Bureau did propose phased improvements with the owners. Substantial structural improvements have been made to the basement and first floor, which were probably the greatest problem. This remodeling captured some of the seismic upgrading but none on the upper floors. The Seismic Task Force will be recommending removal of the seismic trigger from the Dangerous Building Code and creation of a new chapter in Title 24 that is triggered improvements to a building. She described how seismic improvements would be captured when the owner is investing in the building or doing other necessary work.

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Commissioner Blumenauer asked who is currently liable if a wall collapses.

Mr. Auerbach said primarily the owners would have the responsibility although some creative lawyer might claim the City should have done more than it did to abate the nuisance.

Commissioner Blumenauer asked if a building like that could be insured.

Commissioner Kafoury said an enforcement action has been filed against the owners, not a negotiation process. The Bureau has been negotiating and offered to do a phased-in repair schedule which the owners have not agreed to participate in. She said she does not care if this is delayed for 90 days but it does not solve a darn thing.

Commissioner Lindberg said he had not understood that negotiations had been going on.

Commissioner Kafoury said they have been meeting for two years about the repairs. She said she wants to make it clear that the enforcement action is still in effect until Council tells them not to do that.

Commissioner Blumenauer asked if demo delay stops them from any enforcement.

Ms. Mahoney said yes, unless some other condition occurs, such as a fire.

Commissioner Lindberg asked what would be different in 90 days.

Ms. Mahoney said what they need is something different than what is currently in the Dangerous Building Code. She proposed that a two-track approach be taken. The Bureau will continue to discuss with the owners how to repair the building on a phased schedule. At the same time they need to determine whether, when there is no economic activity in a building, there a minimum acceptable level at which they can let it sit.

Commissioner Blumenauer asked Mr. Case if the building is as bad as it looks. He said he does not think people going into the restaurant would want to go there if they knew how bad it is. He said it seems to him a responsible building owner would want to hop to it unless they have a huge amount of insurance. He said it looks like a fire hazard and a building that could collapse if there were a minor earthquake.

Mr. Case said the building is not that bad but they are willing to get to it if they can come to some agreement on the seismic requirements.

Commissioner Kafoury said she is willing to grant the 90-day delay to try

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to come up with an alternative policy. She asked Mr. Auerbach to check on liability.

Mr. Auerbach said he would suggest that any agreement the Buildings Bureau reaches with the owners requires them to maintain liability insurance which covers the City as well.

Commissioner Blumenauer said perhaps Council should consider publicizing to the community what exists there now.

Regarding the liability issue, Mr. Auerbach said the City should make it clear that the demolition delay is being granted in order to weigh the competing public interests between preservation of historic buildings and the maintenance of public safety. Those are discretionary choices the Council has the authority to make.

Disposition: Approved. (Y-4)

City Auditor Barbara Clark

1363 Assess property for large lot deferral contracts through June 1994 (Second Reading Agenda 1324; L0047)

Disposition: Ordinance No. 168031. (Y-4)

1364 Assess property for sewer system development charges through June 1994 (Second Reading Agenda 1325; Z0578 through Z0583)

Disposition: Ordinance No. 168032. (Y-4)

At 11:10 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 17TH 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; Pete Kasting, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

REGULAR AGENDA

Commissioner Gretchen Kafoury

- 1365** Liquor license application for Leo James Murphy, Jr., dba Scotty's, 7380 SW Garden Home Road, retail malt beverage liquor license (new outlet); favorable with condition, restrictions and caution recommendation (Report)

Discussion: John Werneken, Bureau of Licenses, said this is the former site of an Elks Club, noting that Council had made an unfavorable recommendation on another application at this location earlier this year, primarily because of concerns for the effect on the character and livability of the community, particularly with regard to traffic, congestion and the safety of pedestrians, especially children. He said there has been a lot of comment on both sides of the issue.

Mayor Katz asked if Council had heard this before.

Mr. Werneken said this is a different applicant for a different kind of liquor license at the same building, adding that this license would not allow selling distilled spirits. He summarized Bureau conclusions supporting its favorable recommendation. He said Mr. Murphy met with neighbors on a number of occasions and made efforts to address their concerns. Second, he has consistently described his intention to create a family restaurant, rather than an outlet for gaming, sports and drinking. Third, his proposal appears to involve a smaller patron load which should reduce impacts on parking and transportation. Finally, the owner has made some commitments which should reduce many of the concerns Council and the community have about this location. He said the Bureau recommendation includes a condition, some restrictions and a letter of

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caution. The condition would prevent this license, if granted, from going into effect until the required parking has been provided and accepted by the City as complying with Code. The applicant has submitted a parking proposal which appears to provide more spaces than the Code requires and also makes possible a pedestrian walkway along SW 74th. Second, the Bureau would like to recommend restrictions, which have been accepted by Mr. Murphy, including no sale of beverages off premises, no live entertainment and no use of the second floor for any activity that is not family-oriented. The Bureau believes Mr. Murphy will operate a family restaurant with a major emphasis on food and regular on-premises supervision by the owner. A restriction is also proposed on operating hours although there is some difference of opinion about this. The Bureau is recommending closing at 10 p.m. on week nights and midnight on Friday and Saturday. Finally, they will recommend that OLCC send a letter of caution so that if evidence is found that the applicant is not operating as proposed, that will be taken under serious consideration upon renewal. He said in their view as long as the zoning provides that a retail establishment, including one that serves alcoholic beverages, is an appropriate land use at this address, this proposal is probably as sensitive to the needs of the community as any they are likely to see.

Commissioner Lindberg asked about the sports bar concept and if that is what is planned here.

Mr. Werneken said after reviewing the applicant's establishment in Wilsonville, he believes this one will have some characteristics of a sports bar, such as television sets, but not a tavern atmosphere. He said the major emphasis is on food and providing seating for people to eat. They will keep the televisions installed by the prior tenant.

Commissioner Lindberg asked if the fact that the applicant's other outlets are toward the top of the Oregon Lottery Commission's list of video poker retailers a fact Council can consider. Is there evidence of problems where a tremendous amount of video poker is going on?

Mr. Werneken said there is no correlation to his knowledge. Some neighbors believe placing an emphasis on poker contradicts the claim that this is a family restaurant. The Bureau contacted the Lottery Commission to see if the applicant's other establishments involved substantial video poker sales and they do. However, the simple fact that there are a lot of video poker sales does not necessarily indicate the character of the establishment as a whole.

Commissioner Lindberg asked if traffic congestion can be considered as part of the criteria in making a recommendation.

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Mr. Werneken said the Code states that adverse impacts upon such factors as traffic congestion are grounds for an unfavorable endorsement. This applicant states that 40 patrons with 20 vehicles is the largest crowd he would expect to attract at any one time. That volume did not seem to the Bureau to constitute a significant worsening of traffic at that location.

Mayor Katz asked what the factors were that led to a favorable recommendation after Council denied the previous one.

Mr. Werneken said the greater emphasis on food and other activities that do not necessarily involve drinking was one major element. The applicant has also made a good faith effort to meet neighbor concerns about livability, as shown by the parking and walkway plans. The application also seems to present a much smaller patron load. The concerns still remain about locating a commercial outlet where congestion is rather high and whether an outlet serving alcohol is needed in a community where many feel they are already adequately served by other outlets.

Mayor Katz asked if there would be pool tables.

Mr. Werneken said yes but there is no large area devoted to it.

Jim Murphy, applicant, said he owns two other Scotty's and has been in business for eight years. He said he lives in the community and believes this operation will be an asset to it, serving as a social gathering place. Regarding the congestion, he argued that if he does not locate here, some other operation will that would have lots of traffic. With only 1600 square feet, he will not be able to accommodate a great many patrons. He said he would like to stay open to 11 p.m. on Monday and Thursdays because of football and would only have one pool table. His customer base is expected to draw from the thousands of apartments within two miles of this site.

Bob Bothman, Chair of the Garden Home CPO-3, 7365 SW 87th, 97223, said all the concerns raised in the first application apply to this one as well. The interior of the building is to remain exactly as the prior operation and the public interest does not require this as it is within 500 feet of two child care facilities. There are also very high traffic levels as well as five liquor licenses in the Garden Home area already. He said this operation is not compatible with the neighborhood, adding that traffic improvements are in the works but they are pedestrian-oriented and do not provide an additional traffic lane. Parking is a major concern, especially since the new construction of Garden Home and Olson Roads has removed all the on-street parking from these two streets. He said there has been a continuing parking problem at night already with parking spilling over into the residential area. Residents would be located on three sides of the parking lot and this is simply incompatible. The hours of

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operation are also not satisfactory to the neighborhood and he concluded by stating that they believe the applicant has not responded to their list of requirements.

Commissioner Lindberg asked what they think should be at this site.

Mr. Bothman said apartments would be ideal or having business offices on the main floor and apartments on the second. He said the applicant also owns property behind this which is zoned for high density residential.

Natalie Darcy, 9355 SW Brooks Bend Lane, 97223, said they compared the proposed parking layout with the Code and found that his proposal fails to meet many Code requirements. By their calculations, only 12 parking spaces can be placed there, not the 29 the applicant proposes.

Mark Simnitt, 7265 SW Alden, said they believe the parking is inadequately addressed and that the building is larger than 1600 feet. He said he checked out Mr. Murphy's Tigard operation, after learning that it was to be most similar to this one, and believes it would be inappropriate. He said most of those supporting the application do not live in the area.

Other individuals speaking in opposition included:

Jessica Simnitt, 7265 SW Alden, 97223
Julie Simnitt, 7265 SW Alden, 97223
Al Campbell, 7645 SW 83rd Ave., 97223
Ann Duncomb, 7555 SW 83rd, 97223
Dr. Susan Levitte, 8274 SW 67th, 97223
Joseph Hiefield, Garden Home resident, no address given

Opponents stressed their concern with traffic safety, especially for children because of the location of the bus stop and lack of sidewalks. They maintained that activities such as video poker are inappropriate for an operation which caters to families. Noting that Council turned down a similar application four months ago, they asked that this be denied again.

Dr. Levitte said Mr. Murphy failed to provide requested information, including how many people he would have on Friday or Saturday nights and gross video poker receipts. She said he has also not provided accurate information about the size of his operation and questioned his proposed hours of operation.

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George Reis, 10290 SW Evergreen Court, 97070, said he believes he followed Code direction in drawing up the parking lot plan and that there is more than adequate space for the parking stalls. He said Mr. Murphy bent over backwards to address neighborhood concerns and any questions he did not answer were because he did not have the information at hand. He said both his other establishments have good reputations.

Other individuals testifying in support of the applicant included:

Steve Bailey, 7240 SW 77th, 97223
Bill Yant, 7565 SW Mohawk, Tualatin, 97062, realtor
Bruce Sitner, 2547 SE 154th, 97236
Fontaine Arney, 2547 SE 154th, 97236
Steven Bjorkland, 1874 NW 129th Place, 97229

Supporters stressed Mr. Murphy's desire to run a family-oriented restaurant and his efforts to work with the community to address the concerns that have been raised. They contended that any operation that is opened there will increase traffic and that the proposed parking plan is adequate.

Regarding the required parking, Mr. Werneken said the Bureau recommends that there be no license to sell liquor until parking that meets Code requirements in quality and quantity is implemented.

Commissioner Kafoury asked about the traffic and the Office of Transportation's statement that there would be no impact.

Mr. Werneken said no one has spoken officially for the City about the traffic impact. He said the applicant states that there will be perhaps 20 vehicles at any one time. He said he does not know how that weighs against existing traffic on the street, although some people may hold that any increase is intolerable.

Mayor Katz asked if this was zoned for high density housing.

Mr. Werneken said the back part of the property is zoned R7 and the front part is CG (General Commercial) which is where the restaurant and parking would be. He said he is not sure how much parking the whole parcel would require.

Mayor Katz said she heard two things -- there were not enough parking slots and there were too many. She said if it is zoned for high density housing, the potential there could be for far greater traffic impacts.

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Commissioner Kafoury said she cannot see any justification for a new liquor outlet at this point. She moved to deny the application and make an unfavorable recommendation. She said she is not comfortable about the parking and traffic impacts. She also does not buy that this is a family restaurant.

Commissioner Lindberg seconded.

Mayor Katz noted the suggested alternative conclusion mentioned in the Bureau's report (Item 7 on Page 5) which states that if the Council finds that unacceptable increases in traffic congestion affecting school children would occur if this license were granted, the Council recommends that OLCC refuse the license. She said that could be placed in the record.

Commissioner Kafoury amended her motion to use that language with the addition that Council does not believe this is a family-oriented restaurant.

Commissioner Lindberg seconded.

Mayor Katz noted that the last sentence references a plan to mitigate increases in traffic before it would be in the public interest for the City to give this application any further consideration.

Commissioner Kafoury said she is recommending voting no until Council is absolutely convinced there is a decent traffic plan and this is not just another tavern.

Mayor Katz said if and when an adequate traffic plan is drawn up, the applicant could return to the Council.

Commissioner Lindberg said the applicant would also have to include a proposal to ensure safety in a pedestrian environment because of the lack of sidewalks, existing congestion, etc. That is included in the language.

Peter Kasting, Senior Deputy City Attorney, said technically Council is expressing the concerns that lead to its recommendation and also expressing what would need to be done to address them. It is not prohibiting anybody from coming forward with another application but this puts Council on record as to its concerns and what an appropriate response would be.

Commissioner Blumenauer said this application seems to be very similar to the earlier one in which the OLCC sustained Council's unfavorable recommendation.

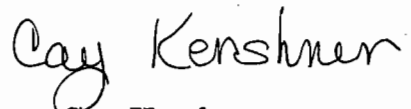
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Commissioner Lindberg said there may be an inherent incompatibility between a place where alcohol is consumed and a location where so many kids are walking by.

Disposition: Unfavorably recommended. (Y-4)

At 3:20 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By Cay Kershner
Council Clerk