



CITY OF

PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3RD DAY OF APRIL, 1991 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Bogle and Kafoury, 4.

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

Mayor Clark proclaimed April 8-12, 1991 as Building Safety Week. Ray Kerridge, Commercial Inspections Manager, reaffirmed his Bureau's commitment to improving building safety.

Mayor Clark also read a proclamation expressing appreciation to Ed Tenney, who has resigned as Director of the Water Bureau to take a new position outside the City.

Agenda No. 514 was pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 505** Accept quote of Coast Crane & Equipment Co. for one hydrant truck for \$50,497 (Purchasing Report - Informal Quote)

Disposition: Adopted; prepare contract.

- 506** Amend Purchasing Report awarding contract on Bid No. 99 to furnish 13 pickup trucks (Purchasing Report - Bid No. 99; Previous Agenda 333)

Disposition: Adopted.

- 507** Accept bid of Batzer Construction, Inc. for autoport structural repair for \$680,399 (Purchasing Report - Bid No. 105)

Disposition: Adopted; prepare contract.

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508 Accept bid of Olympic Foundry, Inc. for cast iron riser rings for \$35,532 (Purchasing Report - Bid No. 115-A)

Disposition: Adopted; prepare contract.

509 Accept bid of Emery & Sons Construction, Inc. for construction of Montavilla sanitary sewer system for \$1,819,505 (Purchasing Report - Bid C-9744)

Disposition: Adopted; prepare contract.

Mayor J. E. Bud Clark

***510** Pay claim of Troy Hollis (Ordinance)

Disposition: Ordinance No. 164015. (Y-4)

***511** Pay claim of Scott Michael Livengood, a minor (Ordinance)

Disposition: Ordinance No. 164016. (Y-4)

***512** Contract with Reid & Yates Physical Therapy for provision of Worker Reconditioning Program consulting services (Ordinance)

Disposition: Ordinance No. 164017. (Y-4)

***513** Amend Contract No. 26331 with Leslie Sorenson-Jolink for City Civil Service Board services (Ordinance; waive Code Chapter 5.68)

Disposition: Ordinance No. 164018. (Y-4)

Commissioner Earl Blumenauer

***515** Call for bids for the Ankeny Pump Station revisions and modifications, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 164019. (Y-4)

***516** Accept a sewer easement for the SW Dolph Drive north of SW Merlin Court sewer project, granted by Paul R. Carney (Ordinance)

Disposition: Ordinance No. 164020. (Y-4)

***517** Release utility easements reserved in the vacation of NE 12th Avenue and NE Pacific Street (Ordinance)

Disposition: Ordinance No. 164021. (Y-4)

- *518** Accept a public walkway and utility easement for the SW Sam Jackson Park Street improvement project, granted by Oregon Health Sciences University, at no cost to the City (Ordinance)

Disposition: Ordinance No. 164022. (Y-4)

Commissioner Dick Bogle

- *519** Authorize the Bureau of Fire, Rescue and Emergency Services to send emergency medical technicians to paramedic training at Oregon Health Sciences University (Ordinance)

Disposition: Ordinance No. 164023. (Y-4)

- *520** Authorize an agreement for division of assets with Clackamas County Fire District No. 1 (Ordinance)

Disposition: Ordinance No. 164024. (Y-4)

Commissioner Mike Lindberg

- 521** Recommend approval of Change Order No. 2 to the Water Demand Study (Report; Contract No. 26364)

Disposition: Approved. (Y-4)

- 522** Amend the City Code to increase the Portland Energy Commission from nine to eleven members (Second Reading Agenda 500)

Disposition: Ordinance No. 164025. (Y-4)

- *523** Call for bids for irrigation installation at Columbia Annex, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 164026. (Y-4)

- *524** Call for bids for the construction of 6-inch and 8-inch water mains in SW Greenhills Way and SW Maplecrest Drive, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 164027. (Y-4)

- *525** Call for bids for the construction of a women's shower and restroom facility, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 164028. (Y-4)

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REGULAR AGENDA

Mayor J. E. Bud Clark

S*514 Authorize payment to 4 M Investments, for tank removal costs on 1402 N. River Street property (Ordinance)

Discussion: Mayor Clark asked if the previous owner could be found to cover the costs of correcting the environmental contamination.

Diana Holuka, Property Manager, said the City has owned the property since the 1920's. She added that the City is not satisfied with the environmental report that was prepared on this property prior to its sale and that the City Attorney is investigating this aspect.

Commissioner Blumenauer moved the substitute, which changed the name of the payee. Commissioner Bogle seconded and the motion carried. (Y-4)

Disposition: Ordinance No. 164029. (Y-4)

Commissioner Earl Blumenauer

526 Consider vacating a certain portion of SW Freeman Street from SW 48th Avenue to SW 49th Avenue at the request of James H. Williams (Hearing; C-9749)

Disposition: Approved; City Engineer Prepare Ordinance. (Y-4)

Commissioner Dick Bogle

***527** Accept a \$40,000 grant from the Federal Emergency Management Agency (Ordinance)

Disposition: Ordinance No. 164030. (Y-4)

Commissioner Gretchen Kafoury

***528** Contract with Oregon Community Foundation (OCF), through the Neighborhood Partnership Fund, for \$50,000 to administer a technical assistance program for community development corporations (Ordinance)

Discussion: Commissioner Kafoury said this grant will allow community development corporations to get the technical information they need.

Disposition: Ordinance No. 164031. (Y-4)

504 TIME CERTAIN: 9:30 AM - Transmit Report to Council for the Fred Meyer Traffic Mitigation Plan (Report)

Discussion: Commissioner Blumenauer said he is very impressed by the investment neighbors and staff have made and pleased with the progress that has been made in dealing with a potentially very disruptive situation.

Jamie Throckmorton, Bureau of Traffic Management, said this test plan was developed to prevent encroachment into the neighborhood of non-local traffic going to the new Fred Meyer store. The Bureau provided for extensive neighborhood participation in conducting and developing the plan and is now ready to make a report to Council prior to permanent implementation. Mr. Throckmorton said a majority of residents and business owners support the plan and the Bureau accordingly recommends that the tested devices be made permanent. They are to be paid for by Fred Meyer.

Individuals testifying in support of the plan's permanent implementation included:

Drew Gardner, 2157 NE 28th
Steven Blaske, 2224 NE 24th
Armin Metz, 5100 SSW Macadam, speaking on behalf of Fred Meyer
Anthony Barsotti, 1831 NE 28th
Stephen Peifer, 2121 NE 28th
Carolyn Marks Bax 2406 NE Wasco
E. John Rumpakis, 3440 NE 41st
Ralph Younger, 2135 NE 28th
Neil Malling, 2443 NE 37th
Carolyn Younger, 2135 NE 28th
Ray Honerlah, 2220 NE 32nd

Supporters stated their belief that, overall, the City had lived up to its pledge to keep Fred Meyer traffic off local streets. Many noted that there would never be total agreement on the plan: not all traffic problems have been solved to everyone's satisfaction and some traffic devices are more controversial than others. Concern was expressed about several "hot spots," including speeding on NE 24th.

Joe Weston, 2154 NE Broadway, requested a pork chop barrier at NE 28th and Wasco to allow emergency vehicle access to his business. Without that device, he said, fire truck response time will be significantly delayed if the present plan is permanently implemented.

Commissioner Bogle suggested that the Bureau of Traffic Management check with someone from the Fire Bureau on this.

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Carolyn Marks Bax expressed concern with Mr. Weston's recommendation. She said it was important to have the closures as proposed and said she had never learned of Mr. Weston's objection until today.

Mr. Throckmorton cited a letter from Fire Captain Maynard McQuaw noting that access is adequate and that three different stations would respond to an alarm at Mr. Weston's business.

Commissioner Blumenauer said when he first got involved with this project he found a lot of raw nerve endings among the affected neighbors. The resolution of their concerns about a project they did not want in the first place represents the best of how Portland gets things done.

Disposition: Placed on File.

At 10:50 a.m., Council recessed.

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3RD DAY OF APRIL, 1991 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Bogle and Kafoury, 4.

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

- 530** Appeal of Ardenwald-Johnson Creek Neighborhood Assoc., Eastmoreland Neighborhood Assoc., and Eastmoreland Racquet Club Homeowners Assoc., against decision to approve application of Eastmoreland Tennis Corp. for a conditional use to expand an existing building at 3015 SE Berkeley (Hearing; Previous Agenda 253)

Disposition: Continued to April 24, 1991 at 2 pm.

- 531** Tentatively grant appeal of Franklin G. Drake & Preston Hiefield, Trustees, against decision of the Planning Commission to overrule the Planning Director's interpretation of the zoning code which would limit the number of dwelling units at 2447 NW Westover (Findings; Previous Agenda 401)

Discussion: David Bennett, attorney for the Terraces Condominium Association, noted that he had filed a Request for Reconsideration on the basis that the original application sought an interpretation of the zoning code as to whether the applicant was in lawful control of Tax Lot 60. However, he said, when the matter came to Council, appellant's attorney raised new issues which had not been considered either by the Hearings Officer or staff. Nor had his clients had an opportunity to make their record at this level. He called this unfair and unreasonable and asked that the matter be remanded back to the Planning Commission.

Mr. Bennett reiterated his belief that appellant's argument regarding ownership of density rights to Tax Lot 60 was in error and that such a finding should not be made. Secondly, he said, it was also incorrect for Council to assume that the variances granted in 1973 and 1977 for height limitation were perpetual or had anything to do with density. Finally, he said appellant's argument that Tax Lot 60 was dedicated as open space is erroneous as they did not follow the required procedure within the proper time frame.

Stephen Janik, attorney for appellant, requested adoption of the findings, contending that none of Mr. Bennett's statements were supported by the record. He said his client's request was for a determination as to the

allowed density on the site and the issue of lawful control and ownership only came up as one ground for addressing the broader issue. He said no new issues had been raised at this stage, adding that there is no finding in the present findings on the issue of lawful control of ownership. That was one of three or four alternative grounds for granting the appeal but is not one that Council is basing its decision upon. Mr. Janik said Mr. Bennett's argument that Drake had seven years to designate the lot as open space but failed to do so is also untrue. He said the lot was deeded as open space within the 7-year time limit and also has a restrictive covenant committing its use to open space.

Randy Weisberg, Vice-President of Hillside Neighborhood Association, said the issue is not whether this property will be developed, but whether there will be 80 or 150 units on it. He said all Hillside is asking is that the developer be restricted to the 80 units normally allowed under the zoning code. He said the position that the density variance runs with the land is groundless and conflicts with state law, citing ORS 93.643 which requires that any restrictions on land be specified in the deed. He also objected to the statement in the findings which specifies that the findings not be taken as precedent.

Mr. Janik, in rebuttal, cited a City Attorney opinion stating that the previously approved variance does indeed run with the land. As for the deed restriction, he said the deed giving the two acres to the homeowners association is absolutely restricted to use as open space. He said the precedent statement is the normal legal language used when the facts regarding a case are unique and does not denigrate the merit of Council's decision.

Ms. Imperati reminded Council that a motion to reconsider had been filed and needed to be acted upon.

Commissioner Bogle moved to deny the reconsideration. Commissioner Kafoury seconded and the motion carried. (Y-4)

Commissioner Kafoury said the initial findings went beyond what she thought Council had agreed were the facts in this case. She said she was glad that time was taken to come up with new, more specific findings.

Disposition: Findings adopted. (Y-3; N-1, Blumenauer)

- 532** Tentatively deny appeal of Frederick M. Schuerman against Hearings Officer's decision to approve the application of Miken Development & Pony Soldier-Portland International for modified access/driveway/parking at NE 101st and Sandy Blvd. (Findings; Previous Agenda 447)

Disposition: Findings adopted. (Y-4)

529 TIME CERTAIN: 2:00 PM - Appeal of Steven Rogers et al against the Hearings Officer's decision to approve application of Volunteers of America Oregon, Inc., for a conditional use/variance for a residential care facility at 2400-2422 NE Martin Luther King Jr. Blvd. (Hearing; Previous Agenda 497)

Discussion: Laurie Wall, Planning staff, said this is an appeal of the Hearings Officer's approval of a conditional use by Volunteers of America for a residential care facility (RCF) in a light manufacturing (M3) zone. Applicant also requested a variance from the open space requirements. The facility would provide a three-month drug and alcohol treatment program as an alternative to incarceration for 60 male adult offenders and would include a six-month aftercare program.

Ms. Wall said the Hearings Officer, in his report, analyzed the definition of an RCF and whether this use met conditional use criteria in an M3 zone. He also addressed issues of security, client screening, and the adequacy of parking and open space. The Hearings Officer approved the application with conditions relating to clientele selection, open space access, security and transportation. He also called for formation of a neighborhood impact advisory committee to review the facility for compliance with the conditions.

Commissioner Kafoury declared a potential conflict of interest but said she does not think it eliminates her from being able to vote on this application. She said as a County Commissioner she was involved with the funding of this program but not at this particular site.

Eric Wentland, 102 NE Fargo, said the applicant has failed to offer a fragile neighborhood adequate protection in this case. He argued that the proposed use is for a correctional facility, not a residential care facility, because offenders will be treated for more than 30 days and will not come and go in an unsupervised fashion. Second, the Hearings Officer's decision fails to show how a major variance is justified because the exceptional circumstances criteria is not met. Third, the decision fails to meet Comprehensive Goal 4 by failing to provide any housing. He referred to a memo from Senior Deputy City Attorney Kathryn Imperati noting that HUD guidelines would consider this proposal to be non-residential in nature. He said neighborhood stability will not be promoted by 60 sentenced offenders from outside the neighborhood ordered to stay for a set time period and then ordered to leave. He said the liveability, safety and value of a neighborhood should not be sacrificed and asked for Council to overturn the Hearings Officer's decision.

Susan Hartnett, 28 NE Graham, asserted that applicant failed to meet the conditional use criteria which states that such use must not be detrimental to the public health, peace, safety or value of surrounding properties. She cited a lack of adequate security measures, including staffing of the facility

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by a single person from 12:30 a.m. to 7 a.m. There would also be no locks on doors or windows, only an alarm system. Second, the lack of adequate parking is detrimental to the neighborhood. Ms. Hartnett asserted that the need for staff parking and also for participants in the aftercare program and visitors is inadequately met. Finally, siting such a facility in a neighborhood fighting its way back from total deterioration will change people's perception about their personal safety in the area.

Commissioner Bogle asked at what point a license from the county was needed to operate an RCF.

Dan Coyne, Divisional Director, Volunteers of America, said the only license they need is the conditional use permit from the City.

George Fleerlage, representing the applicant, said the dual track, with a programming and a land use licensing, has been eliminated.

Commissioner Kafoury said Multnomah County contracts with the Volunteers of America to run the facility through the community corrections program.

Mr. Fleerlage said the aim of this alcohol and drug treatment program is to enable participants, upon completion, to stand free of the criminal justice system. He said they believe this program will be run in a way that will greatly benefit both the neighborhood and the larger community, noting that the Eliot Neighborhood Association general membership voted to approve the proposal. He added that almost 50 percent of the residents already enrolled at this program in a temporary location in Clackamas County are from North/Northeast neighborhoods.

Regarding security, Mr. Fleerlage said there is a rigorous selection process to screen out violent offenders. He said supervision and 24-hour-a-day security will be provided. He contended that the application meets the code provisions for parking, noting that since the hearing they have obtained 15 additional parking spaces within 300 feet of the site. He maintained that the application does meet RCF requirements since participants are in residence in response to their need for planned treatment and care. He also argued that the cumulative affect of this facility would be beneficial and would not excessively burden the neighborhood with care facilities. He said the site has been underused for many years and that their improvement of it is a positive response to the comprehensive plan housing goal. Mr. Fleerlage also described plans for the roof garden. He said the need for such an alcohol and drug program is great and the risks are slight in comparison with the potential benefits.

Commissioner Bogle asked how clients were selected and what happened to violators.

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Mr. Fleerlage said they were convicted felons on probation who are placed here by the court.

Mr. Coyne said all clients will be required by the courts to complete alcohol and drug treatment. If they do not volunteer for the program, they will have to go to jail or prison. He said client records are reviewed to ensure that they have no history of violent crimes. Mr. Coyne says he gets assurances from probation officers that if clients do not follow the rules they will be sent to jail.

Commissioner Kafoury asked about nighttime security.

Mr. Coyne reviewed the security procedures and said his own experience gave him confidence that one person could handle the midnight shift. Strict curfews also apply so that participants will not be milling about.

Individuals speaking in support of the application included:

Hittie McGee, 606 NE Sacramento
Larry Reilly, 1112 SW 11th, on behalf of Multnomah County Sheriffs
Office
Ruthine Hepburn, 418 NE Sacramento
Don Clark, 135 SW Ash
Neshell Waters, 1527 N. Emerson
Jerry Van Horton, 2300 NE Martin Luther King Jr. Boulevard

Supporters described the crucial need for this facility and expressed their faith in Volunteers of America's ability to run a responsible program.

Individuals speaking in opposition to approval included:

Charles Flake, Chair for NE Coalition of Neighborhoods
Harold McLaurin, 2413 NE Martin Luther King Jr. Boulevard
Lee Perlman, 512 NE Brazee
Tess Healey, 2520 NE 7th
Winnie Francis, 622 NE Tillamook
John Bartels, 632 NE Russell
Steven Rogers, 533 NE Brazee
Bernie Foster, 2337 N Williams

Opponents expressed concern about the facility's clientele and the proposed security measures, maintaining that such a program does not belong in a neighborhood already overburdened with institutional care facilities. Area business persons also cited inadequate parking in the area.

In rebuttal, Ms. Hartnett stated that opponents do not contend the program is bad or not needed. Rather they maintain it is inappropriately sited too close to a residential area and does not meet applicable land use

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criteria. She said the Eliot neighborhood is being asked, once again, to bear an unfair burden for the entire community. She added that the number of conditions placed by the Hearings Officer on the approval indicates his desire to control an uncomfortable situation.

Mr. Fleerlage in his rebuttal contended that this is a good program in a good location which has the approval of the neighborhood.

Commissioner Kafoury moved to tentatively deny the appeal.
Commissioner Blumenauer seconded.

Commissioner Blumenauer said the conditions go a long way to meet the concerns.

Commissioner Bogle said he believes in the program but also believes this is a minimum security correctional facility which does not belong in this location.

Commissioner Kafoury said while she believes the public safety concerns are legitimate she also thinks the program can operate without negative impact. She added that providing adequate parking may take more work.

Mayor Clark said while he understands neighborhood concern for safety, this facility will help meet the vital need for drug treatment programs that will also, in the end, produce safer neighborhoods.

Disposition: Appeal denied tentatively. (Y-3; N-1, Bogle) Prepare Findings for April 17, 1991 at 2 pm.

At 4:00 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner
By Cay Kershner
Clerk of the Council

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THURSDAY, 2:00 PM, APRIL 4, 1991

**DUE TO THE LACK OF AN AGENDA
THE MEETING WAS CANCELLED**