



CITY OF

PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF SEPTEMBER, 1992 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Bogle (late), Kafoury and Lindberg, 5.

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

Agenda No. 1607 was pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 1608** Accept bid of McInnis Enterprises Ltd., for annual rental of portable comfort stations and sewage storage unit services for \$44,250 (Purchasing Report - Bid 31-A)

Disposition: Accepted; prepare contract.

- 1609** Accept bid of Cascade Container-Fab Company, Inc., for recycling containers for multi-family residences for \$55,225 (Purchasing Report - Bid 32)

Disposition: Accepted; prepare contract.

- 1610** Vacate SE Harrison Street between SE Grand Avenue and SE 6th Avenue, under certain conditions (Ordinance by Order of Council; (C-9779)

Disposition: Passed to Second Reading September 30, 1992 at 9:30 a.m.

Mayor J. E. Bud Clark

- 1611** Accept contract with Northwest Elevator Company for City Hall elevator modernization as complete and authorize final payment (Report; Contract No. 27697)

Disposition: Accepted.

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- 1612** Appoint Morgan W.F. Dickenson, III, to the Housing Authority of Portland (Resolution)

Disposition: Resolution No. 35044. (Y-4)

- *1613** Agreement with the Port of Portland to provide access to the Portland Police Data System (Ordinance)

Disposition: Ordinance No. 165835. (Y-4)

- *1614** Agreement with Portland Community College for custom designed communications tactics training for \$34,347 (Ordinance)

Disposition: Ordinance No. 165836. (Y-5)

- *1615** Pay claim of Julia Erickson (Ordinance)

Disposition: Ordinance No. 165837. (Y-4)

Commissioner Earl Blumenauer

- 1616** Accept completion of the NE 33rd Drive and NE Marine Drive Sanitary Sewer LID, approve Change Order Nos. 1-4 and make final payment (Report; Contract No. C-9770)

Disposition: Accepted.

- *1617** Amend contract with W & H Pacific to provide additional final design and environmental services on the N Marine Drive, Rivergate to Interstate 5 Project (Ordinance; amend Contract No. 25845)

Disposition: Ordinance No. 165838. (Y-4)

- *1618** Revocable permit to Cascade Aids Project to close SW Stark Street between SW 10th and 13th Avenues and NW 13th Avenue between W Burnside and NW Couch Streets on September 27, 1992 (Ordinance)

Disposition: Ordinance No. 165839. (Y-4)

Commissioner Gretchen Kafoury

- *1619** Contract with Southeast Uplift for \$29,265 to provide the Anti-Racism Action Plan and provide for payment (Ordinance)

Disposition: Ordinance No. 165840. (Y-4)

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- *1620** Contract with Northeast Community Development Corporation for \$330,000 for the Nehemiah Housing Opportunity Program and provide for payment (Ordinance)

Disposition: Ordinance No. 165841. (Y-4)

Commissioner Mike Lindberg

- 1621** Approve Change Order Nos. 1-7 on contract with Triad Mechanical for replacement of Calvary Pump Station (Report; Contract No. 27119)

Disposition: Approved.

- *1622** Contracts with Portland Metro Softball Association (PMSA) and Escom Distribution Limited to develop a sports scheduling program for use by the City and PMSA (Ordinance)

Disposition: Ordinance No. 165842. (Y-4)

- *1623** Authorize an agreement with Multnomah County providing for City funds for Aging Services Division's district senior centers and County funds for Portland Multnomah Commission on Aging and the long term care ombudsman program (Ordinance)

Disposition: Ordinance No. 165843. (Y-4)

- *1624** Authorize an application for a grant from the US Environmental Protection Agency for \$18,000 for the Businesses for an Environmentally Sustainable Tomorrow Program (Ordinance)

Disposition: Ordinance No. 165844. (Y-4)

- *1625** Call for bids to remodel the Matt Dishman Community Center at 77 NE Knott Street (Ordinance)

Disposition: Ordinance No. 165845. (Y-4)

- *1626** Call for bids for construction of an automated irrigation system in Alberta Park, located at NE Killingsworth Street and NE 22nd Avenue (Ordinance)

Disposition: Ordinance No. 165846. (Y-4)

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- *1627** Call for bids to construct a 16-inch water main and an 8-inch regulator vault at Willalatin Tank site, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 165847. (Y-4)

REGULAR AGENDA

- 1607** Accept bid of Grady, Harper and Carlson, Inc., for construction of Portland Public Safety Facility (911 Center) for \$3,723,000 (Purchasing Report - Bid 17)

Discussion: Attorney Michael Mills, representing Tripplett, Wellman, Inc., said the City has a right to waive all irregularities which occur in the bid without substantially affecting anyone's rights, thus saving \$72,000. He said the work would be done in basically the same manner with either contractor. He said the controversy arose when his client's bid was rejected, based on his failure to complete several blanks on the bid form. City specifications indicate that proposals that are incomplete may be rejected but rejection is not mandatory, giving the City the right to waive insubstantial irregularities and select the most advantageous bid. He said his client failed to submit the name of his mechanical contractor and electrical subcontractor in the forms that were provided. Within an hour after the bid opening, the client realized his oversight and called in the names.

Commissioner Lindberg asked if his client was definitely the low bidder.

Mr. Mills said the Purchasing Agent told his client he was low bidder, subject to review. He said his client's bid was \$72,000 lower than the one Council is being asked to award today.

Andrew Jordan, Jr., attorney representing the low bidder, Grady, Harper and Carlson Inc., argued that the bid proposal calls for all information to be submitted on the proposal, not provided later, and that all blanks must be filled in. This requirement prevents bid shopping and prevents the bidder, after the bid opening, from stating that he made a mistake and withdrawing his bid.

Commissioner Lindberg asked if the competitor has the opportunity to change the bottom line bid number.

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Mr. Jordan said he can say that he forgot or that he made a mistake and will either do it for nothing, provide a number, or withdraw his bid and walk away. That is a very big advantage as everyone else is bound to their bids.

Carleton Chayer, Purchasing Agent, said the City was not able to evaluate Tripplett, Wellman's bid on a level playing field with other bidders because of the missing information, which included no bid on Item 3 and leaving Item 13 blank. The City Attorney concurs in the award to Grady, Harper and Carlson. He said as a matter of fairness the City cannot allow contractors to fill in the blanks after their bids are filed and recommended accepting the lowest responsible bid that completed all the items.

Commissioner Lindberg asked Mr. Chayer about the claim that he called Tripplett, Wellman and told them they were the low bidder after adding the alternates.

Mr. Chayer said his office called Tripplett, Wellman and the other low bidder to tell them they were being considered and to ask them to begin their First Source work. He said Tripplett was the second lowest bidder based on the base bid because at that point his office did not know which alternates it was going to choose.

Commissioner Lindberg asked if leaving the items blank automatically disqualified a bidder and if the City had ever awarded contracts to people who did leave things blank.

Mr. Chayer said the specs say it "may" disqualify a bidder but to his knowledge the City has never awarded a contract to a bidder who left items blank.

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

Mayor J. E. Bud Clark

***1628**

Authorize a contract with PRC, Public Sector, Inc., for purchase of a computer aided dispatch system and related services in the amount of \$4,685,707 (Ordinance)

Disposition: Ordinance No. 165848. (Y-4)

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Commissioner Earl Blumenauer

- *1629** Replace Exhibit A of Ordinance Nos. 158705 and 159017 regarding the Citizen Sewer Advisory Board to increase the number of members and revise membership criteria, appointment process and responsibilities of the Board (Ordinance)

Disposition: Ordinance No. 165849. (Y-4)

- 1630** Appoint eleven new members to the Citizens Sewer Advisory Board (Resolution)

Disposition: Resolution No. 35045. (Y-4)

- *1631** Amend Ordinance No. 165188 to revise the Mid-County Sewer Financial Assistance Program rebate schedule (Ordinance)

Discussion: Commissioner Blumenauer said this avoids the headache of having to split the rebates into two separate years. It will cost the City a little in interest but because of administrative savings should be a net no-cost item.

Disposition: Ordinance No. 165850. (Y-4)

- 1632** Amend the Portland Comprehensive Plan to incorporate certain sections of the Transportation Element (Second Reading Agenda 1600)

Disposition: Ordinance No. 165851 as amended. (Y-4)

Commissioner Gretchen Kafoury

- *1633** Amend agreement with Central City Concern for the Inebriate Pick-up Service by increasing the amount by \$24,838 and provide for payment (Ordinance; amend Contract No. 28091)

Discussion: Commissioner Kafoury said funds for this item were budgeted but frozen during the June budget review. Staff subsequently found this was a one-time only item and probably should not have been frozen. She said the Association for Portland Progress is very concerned about the slow response time to calls from their guides to CHIERS and passage of this will allow for purchase of a badly-needed van.

Disposition: Ordinance No. 165852. (Y-4)

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Commissioner Mike Lindberg

- *1634** Agreement with the US Forest Service to jointly implement the 1987 Bull Run Water Quality Monitoring Plan as modified by the revisions of 1991 (Ordinance)

Disposition: Ordinance No. 165853. (Y-4)

Commissioner Lindberg moved Suspension of the Rules; Commissioner Bogle seconded and the motion carried. (Y-5)

SUSPENSION OF RULES

- 1634-1** Report of current water supply status (Report introduced by Commissioner Lindberg)

Discussion: Commissioner Lindberg said water consumption now seems to be at a manageable level, noting that in the last two weeks use has been within the target of 100 million gallons. He said there will still be some uncertainty about the supply until there is enough rainfall to start refilling the reservoirs.

Mike Rosenberger, Water Bureau Administrator, reviewed water use since September 14 when pumping from Bull Run Lake began. He said they have received approval from the DEQ to pump from the lake on a week-to-week basis.

Regarding the conservation programs, he said the rebates for ultra-low volume toilets have been well received, with permits issued to 306 persons. The joint program with the Energy Office and utility companies is underway, with three neighborhoods targeted for implementation in October. He said the Bureau is now confident that it is going to make it through the drought.

Commissioner Lindberg said the water shortage has served as a wake-up call which causes everyone to look at how they use water. He said many of the 28,000 calls the Bureau has received have been from people with suggestions about cutting use.

Commissioner Blumenauer informed Council about joint bureau efforts to study Tanner Creek issues.

Commissioner Lindberg said the water shortage has also expedited regional cooperation.

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Mr. Rosenberger said this has breathed additional life into long term planning efforts. He said they are planning to hold technical workshops in October for technical and commercial users.

Disposition: Placed on File.

At 10:12 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF SEPTEMBER, 1992 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Bogle, Kafoury and Lindberg, 5.

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

1635 TIME CERTAIN: 2:00 PM - Appeal of Dale Rhine, applicant, against Hearings Officer's decision to impose restrictions in approving a nonconforming use request at 4031 and 4033 SE Milwaukie Avenue (Hearing; 91-00863 NE)

Discussion: Mike Hayakawa, Planning staff, said this application sought to establish nonconforming rights on this property from 1987 to the present. He said the property has been in commercial use since 1955 as a printing and reprographics business and that a prior nonconforming use was established for the period between 1981-87 when the property was downzoned from general commercial to residential as part of the Comprehensive Plan. He noted that applicants for nonconforming uses must show that the use was allowed when established and was in continuous use without any periods over two years when the site was vacant. Staff originally reviewed the request as a Type II application and recommended denial because they believed the lithographics and printing business ceased in 1987 when liquidation began. They believed this use differed from the use originally granted and that a conditional use permit was required under the old Zoning Code to change it. Mr. Rhine appealed the denial to the Hearings Officer who established that the liquidation business was the same as the business itself and that there had been some intermittent printing activity during the period in question. However, because he found that activities were less intense, he approved the non-conforming use at this lesser level of activity.

Mr. Hayakawa noted that the appellant argues that nonconforming use rights are retained as long as the site is not vacant and that the Code does not distinguish between levels of activity. Appellant also maintains that the Hearings Officer functioned in a legislative capacity and that the case law he cited is not relevant.

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Jacob Tanzer, attorney for the applicant, said most of the area around the this property is commercial and even many of the houses are used for commercial purposes. He said Mr. Rhine's property is unsuitable for conversion to residential.

Mr. Tanzer cited City Code stating that the nonconforming use is lost if the site is vacant for two continuous years. He said "site" is defined in the Code as the land or lot and "vacant" is defined in the dictionary as empty or unoccupied. He said during the period in question Mr. Rhine returned to the site to sell off his inventory and do a few printing jobs. The Planning Bureau said this was not a continuation or liquidation but a change of use to wholesale, for which there was no approval. He said this use was not wholesale by any known definition.

Mr. Tanzer said the Hearings Officer disregarded that finding and said the use had not been exercised, basing his decision on irrelevant case law. He said he did not think the Code intended to have such a draconian result on an owner who suffered from an economic downturn or had family problems, as did Mr. Rhine, which caused an interruption in the use of a building. He said the nonconforming use applies to the site, not the structure. He argued that there was no two-year period when there was no commercial use and that therefore, Mr. Rhine should keep his nonconforming use rights. Mr. Rhine was not wholesaling but selling off his own equipment. He asked Council to interpret the Code as written and grant the appeal.

John Kelly, 3414 SE 16th, Vice Chair, Brooklyn Action Corps (BAC), reminded Council of its adoption in 1991 of the Brooklyn Action Plan which calls for redevelopment along this section of Milwaukie Ave. with mixed-use commercial and residential. He said the issue arose initially because members of the BAC noticed that the property, which had earlier appeared to be vacant, was being prepared for reoccupancy.

Mr. Kelly said if the appeal is granted, Council will be quashing the Brooklyn neighborhood's vision for redevelopment of this key area. He recommended rezoning the property from R1 to some sort of mixed used commercial, adding that it was not suitable for residential. This would protect the neighborhood in a way that continued nonconforming use status does not. Mr. Kelly asserted that the appellant paid no business license fees or taxes during the years in question, maintaining that Mr. Rhine owned the building but not the business and that his claim to continued use of the building is a pretense. He said the purpose of a nonconforming use is to move the use towards the new zoning and if Council buys the nonconforming use argument advanced by Mr. Tanzer it will totally gut this provision. He asked Council to deny the appeal, modify the incorrect interpretation of nonconforming use advanced by the Hearings

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Officer and, instead, cut off the old use and put in place economic incentives consistent with the new zoning.

Mayor Clark asked if he was talking about a hypothetical new development.

Mr. Kelly said they have been exploring the possibility of redevelopment of a three-block area of which this property could be a part. He said if Council grants this appeal it will place a large obstacle before such a plan.

Elaine L. Smith, 4227 SE 12th, 97202, said this should be a neighborhood for people and supported denial. She said any variance in zoning should be granted only if it benefits the neighborhood as well as the petitioner.

Maureen Leonard, 1111 SE Cora, urged support of previously-allowed uses. She said the Brooklyn neighborhood's redevelopment plan is speculative and it is unfair to unduly burden or disadvantage a property owner in this way.

Siobhan Taylor, 4205 SE 12th, Brooklyn Action Corps, said she believes a compromise between the neighborhood and the appellant is possible but that allowing continuing nonconforming land use will not help in achieving the neighborhood vision for the future.

Debra Canales, Lowell's Print Inn, 3303 SE Milwaukie, 97202 said the neighborhood is much more divided on this issue than would appear from the testimony today. She said there is no reason why the commercial use that has existed there cannot continue.

Larry Doyle, 4103 SE Milwaukie Ave., 97202, President of Sacred Heart Conference of the Society of St. Vincent de Paul, supported the appeal, noting that a year ago Mr. Rhine donated the building when it was empty for use by the Society Conference to help poor people in the area. He said any break in the business was a result of the illness of Mr. Rhine's wife and should not result in having him go out of business.

Mr. Tanzer said the definitions he cited are clearly spelled out in the Code. He said Mr. Rhine has the support of his neighbors, asserting that the neighborhood association opposed it by a sharply divided vote.

In rebuttal, Mr. Kelly said the vote at the BAC meeting was by a two to one margin in favor of appealing the application. He said the St. Vincent de Paul use was illegal. He said the user is not going to be Mr. Rhine but someone else who may operate in a way that is incompatible with the neighborhood. He said they relied on the zoning and nonconforming use clause when they did their Plan.

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Mayor Clark asked about the definition of site and what constitutes occupancy. Is occupancy based on licensing or on other uses.

Ms. Spetter, Senior Deputy City Attorney, said the definition of site is related to ownership. At issue here is whether the interpretation of the Code given by the Hearings Officer is one with which Council can agree, rather than the literal words of the Code. She said the Hearings Officer found that the Code was ambiguous about how nonconforming use can be lost and said what must be asked is if there is a use that was discontinued for two years or not.

Mayor Clark asked if use has to be for reprographics.

Ms. Spetter said there are categories of nonconforming use at the same level so it does not have to be the exact same use. The Hearings Officer rejected the Planning staff finding that it was a wholesale business and that is not before Council today.

Mayor Clark said he did not know how Council could determine levels of use.

Commissioner Bogle asked if the Code addressed full utilization versus less than full utilization.

Ms. Spetter said what you deal with is the concept of nonconforming use, which is a use the City has allowed to exist for awhile after a zoning change so it will not be an undue hardship on someone. As the use winds down, the City can say that the owner does not have a right to go back to something else because he wants to sell his property or use it for a more intense use later. Council can say that normal business fluctuations will not be held against an owner but if a willful decision has been made to change the intensity of the use then there is not necessarily any right to go back at a later date to a more intense use. She said there is no intention for nonconforming uses to continue forever and the Code already provides that if over 75 per cent of a building is destroyed by fire or some other disaster, it may not be reconstructed, indicating that some hardship already exists.

Commissioner Blumenauer asked if, under the interpretation advanced by Mr. Tanzer, you could keep a nonconforming use in perpetuity just by having a structure there, even boarded-up, capable of sustaining that enterprise?

Mr. Hayakawa said yes, if the definition of vacancy is tied to the presence or absence of a structure.

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Commissioner Blumenauer said this seems a tortured interpretation. He said in this case one is torn between the individual circumstances of an owner and the reliance of the neighborhood on its plan. Beyond that, he is concerned with coming up with an interpretation of the Code that would make it impossible to eliminate nonconforming uses Citywide. He said this would be damaging and contrary to Code and Council intent.

Commissioner Kafoury said the credibility of the applicants is not the issue: setting the rules the City operates under is. She said in the past Council has made decisions that have caused a hardship for businesses with nonconforming uses and the rules must be followed consistently.

Commissioner Lindberg asked Mr. Tanzer if, under the definitions he cited from Title 33, even a vacant structure could hold onto nonconforming use rights.

Mr. Tanzer said yes and believes this is an oversight in the Code.

Pamela Webb, architect, 2421 NW Pettygrove, 97210 said Mr. Rhine had business licenses for 1987-91. She said one issue is whether the site was vacant according to the definition. The other issue is whether he actually continued his business in the years 1987-91. She said from the data she compiled, even the Hearings Officer agreed Mr. Rhine did continue his business. The only dispute is whether he continued it at a great enough level to satisfy the meaning of the Code. She said staff told her that you had to have some evidence that some business activity took place during a two year period. She said he did in fact conduct his business during this time, and submitted evidence accepted by the Hearings Officer that he made copies for clients, sold equipment and generally wound down his business. He had business licenses at this address to conduct business out of this property, which he was also trying to rent during the same period.

Commissioner Bogle said since it is established that the business never ceased, is there anything in Code that says it has to be at a certain level to maintain nonconforming use status.

Ms. Spetter said the building has nonconforming use status but the question is at what level of nonconforming use status it may continue, at the level at which it started or at a lesser level.

Mayor Clark said if someone is in business you cannot go out and check to see what their level of business is each month.

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Ms. Spetter said case law has said that a person with a nonconforming use does not have a right to assume it will continue at the same level.

Commissioner Lindberg asked about limitations on the type of business that could operate there if this appeal is granted.

Mr. Haykawa said they would look at this in terms of land use classifications. At the same time Council could approve it for a specific use if it wished but the theory is that all uses within a classification would be appropriate.

Mayor Clark said he was concerned about legal definitions.

Commissioner Blumenauer ask to continue this one week to get a response from the City Attorney about these definitions.

Mayor Clark said the record is closed.

Commissioner Kafoury said she is very worried about Citywide ramifications.

Commissioner Lindberg said another aspect is a common sense look at what really could go in there. Council could direct something that has very low impact.

Commissioner Blumenauer asked that both parties submit factual information about business licenses.

Disposition: Continued to September 30, 1992 at 2:00 p.m.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 24TH DAY OF SEPTEMBER, 1992 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Bogle, Kafoury and Lindberg, 5.

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Linda Meng, Chief Deputy City Attorney; and Officer Sheridan Grippen, Sergeant at Arms.

***1636**

TIME CERTAIN: 2:00 PM - Amend the Comprehensive Plan Map and change the zone of property on the north side of the N Marine Drive and N Vancouver Way intersection, east of the I-5 freeway interchange, from IG2h, Industrial, to CGh, Commercial (Ordinance; 92-00209 CP ZC)

Discussion: Bob Stacey, Director of Planning, said in the past Comp Plan amendments were placed on the Consent Agenda if they were not appealed. Recently, however, he learned that the Hearings Officer's decision is meant to be only a recommendation to Council and that only Council can approve Comp Plan amendments. Thus, the Bureau is now correcting its procedure to conform to Title 33 requirements. He noted that in this particular case the Hearings Officer's decision differed from the Staff recommendation.

Tom Dixon, Planning Bureau staff, said this concerns a zone change from industrial to commercial to allow parking associated with a larger retail building to be built entirely within General Commercial boundaries. The staff recommendation was denial, which was also supported by the Office of Transportation. The Hearings Officer, however, found that City goals and policies were supported and transportation improvements could be made to mitigate its impacts.

Mr. Dixon said the plans call for building a 14,000 square foot building at a very complex intersection, including Marine Drive, which is classified as a Neighborhood Collector Street.

He noted that the applicant's proposal included a transportation impact statement as well as a market needs analysis. He said the property has been zoned industrial since at least 1980. He said Staff believed that the proposed auto-oriented commercial development will become a regional attractor and as such is an inappropriate activity for a Neighborhood Collector such as Marine Drive. The industrial sanctuary policy is also violated and there is no evidence that there is a shortage of commercial property available. Staff also believes approval of an auto-dependent

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development of this kind would violate the energy goal of the Comprehensive Plan which calls for promotion of non-automobile modes of transportation.

Mr. Dixon noted that the Hearings Officer had concluded that the designation requested was consistent with the policy allowing auto-oriented uses next to important transportation nodes, in this case the I-5 freeway. The Hearings Officer found that the potential impacts of such a traffic generator could be mitigated with proper conditions and sufficient traffic improvements. The market needs analysis did indicate there was a lack of sufficient commercial property. Regarding the transportation goal, the Hearings Officer found there was no sufficient land-use activity that justified service to this site currently but that this use might generate demand for such service. The Hearings Officer found that the Albina Community Plan cannot be used as a basis since it was not in effect at the time the application was submitted.

Jack Orchard, 101 SW Main, Suite 1100, 97204, attorney representing the applicant, outlined the prior zoning designations for this property, noting that in 1980 it was rezoned from commercial to industrial. He said it is an island of industrial zoning in a sea of commercially zoned property and as such is dysfunctional. He said the developers believe they will have a better commercial development by allowing parking on this site.

Mr. Orchard said they believe 200 plus jobs will be generated plus \$150,000 in yearly property taxes. He argued that while the development planned for this site is typically found in the suburbs this gives the City an opportunity to capture a regional facility and provide an excellent cost benefit for City.

Walter Valenta, Bridgeton Road, Houseboat #9, 97211, said the commercial zoning is a relic of the past. He said the development planned is a suburban development and should not be placed on land next to a river. He noted that the Albina Community Plan recognizes that this should not be a commercial area but should instead be zoned residential.

Mr. Valenta said the biggest objection to the development centers around transportation issues, noting the objections of neighborhood organizations as well as the Bureau of Planning and Office of Transportation. He said the interchange off I-5 was built primarily to accommodate trucks going to Rivergate, not with the idea that it would be a "power" area. He argued that just because a use is allowed is not a good reason to permit it and said the neighbors have a different vision for the property than use as a discount retail operation with parking.

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Dan Seeman, Kittelson and Associates, described the results of the study his firm conducted on this site regarding traffic generation. He said that, in response to concerns about the operation of the I-5 intersection operation, the developer will pay the \$200-300,000 cost to improve a problem that will be there regardless if they build there or not. Their analysis of the traffic on Marine Drive, the Neighborhood Collector, indicates that the proposed project will contribute four per cent of the traffic to Marine Dr., or 20 trips in and out during the peak hours. Mr. Seeman argued that this land is not a good location for an industrial site.

Individuals testifying against the development included:

Jean Ridings, 21510 NE Blue Lake Rd., Troutdale 97060
Larry Weiss, 173 NE Bridgeton Rd., 97211
Frank Howatt, 438 N. Hayden Bay Dr., 97217
Bill Babechos, 3157 NE Marine Dr., 97211
Gary Kunz, 16111 NE Marine Dr., 97211
Harry Barmon, 55 NE Bridgeton Road, president of Bridgeton
Neighborhood Association
Wally Hobson, 101 SW Main, Suite 905

Opponents argued that traffic from such a retail center would cause the degradation of Marine Drive and infringe on the neighborhood. They said the cost analysis does not take into consideration aesthetics or the value of the water access. Its potential for residential uses was noted.

Individuals testifying in favor of the proposal included:

Al McInnis, 2090 SW Cedar Hills Blvd., 97225
Dick Kathrens, 8801 N. Vancouver, owner of the property
John Beardsley, 2525 SW 1st
Bruce Vincent, representing Dick Kathrens
Alvin Hamlin, deedholder for the estate of E. Dale Gordon,
15341 S. Springwater Road, Oregon City, 97045-9458
Wally Hobson, Hobson & Associates, 101 SW Main, Suite 905, 97201

Proponents said it is not good planning to have one small parcel remain industrial surrounded by commercial property. They argued that the property is adjacent to a dike, not a river, and stressed the jobs and tax revenues this \$20,000,000 project will generate, particularly benefitting Northeast Portland residents.

Laurel Wentworth, Office of Transportation, said the City has invested over 30 million dollars in the general area to provide additional capacity and improvements to industrial areas. She contended that the recent

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reconstruction of I-5 complements these improvements and that it would be inappropriate to locate this commercial use at Marine Drive and usurp an area that could be used for industrial development. Ms. Wentworth said the question is whether the City continues to make an investment in a truck route while taking away the capacity to establish industrial uses.

Jeff Kleinman, 1207 SW 6th, 972204, attorney representing Dick Kathrens, objected to Council hearing this and said the Hearings Officer decision should be upheld. He said it appears that staff, unhappy with the Hearings Officer's decision, is now trying to get around it.

Mr. Hamlin stressed the economic benefits, noting that the added jobs could have a significant impact on North and Northeast Portland.

Commissioner Bogle asked him about minority and female participation in construction.

Mr. Hamlin said they had talked to PDC about it but stopped because of this procedure.

Commissioner Bogle said private builders have more opportunities than the public sector to facilitate use of minority contractors and entrepreneurs.

Linda Meng, Chief Deputy City Attorney, noted that the Hearings Officer decision is considered a recommendation to Council which it may accept or reject. Ms. Meng noted that a yes vote on the ordinance would accept the hearings officer's recommendation to amend the Plan as requested by the applicant.

Commissioner Blumenauer said he believes the procedural change is appropriate but does not totally understand the implications. He said he needed more time to review all the information.

Commissioner Bogle said he would like some language added committing the developer to minority/female participation.

Commissioner Kafoury said she was concerned about using a land-use procedure to do what Commissioner Bogle suggests.

Mike Coleman, Bureau of Traffic Management, described the methodology Kittelson and Associates used to find that trips generated by this site would be basically the same as if it were developed as currently zoned. He said if the property in question were developed as commercial with additional retail

space, the peak trip generation would be substantially higher than if that

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land were left industrial.

Mr. Orchard said this has been a disjointed presentation, not a normal hearing process, noting that this matter took two hearings before the Hearings Officer and the resulting colloquy was reflected in his recommendation to Council. He asked that this be held over to allow Council more time to familiarize itself with the matter.

Commissioner Blumenauer moved to remove the emergency clause. Commissioner Kafoury seconded and the motion carried. (Y-5)

Commissioner Blumenauer moved that the next reading be continued for two weeks to allow time to work with the City Attorney and Office of Transportation.

Commissioner Kafoury said it is important to clarify the process.

Commissioner Blumenauer suggested leaving the record open for written testimony until Oct. 2, 1992.

Mayor Clark said another hearing would not be held.

Disposition: Passed to Second Reading as amended October 8, 1992 at 2:00 p.m. Time Certain.

REGULAR AGENDA

Commissioner Earl Blumenauer

1637 Transmit report on Automobile Seizures and Forfeitures (Report)

Discussion: Commissioner Blumenauer suggested holding this over to Wednesday and hearing it first thing. Council concurred.

Disposition: Continued to Wednesday, September 30, 1992 at 9:30 a.m.

At 3:35 p.m., Council recessed.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council