



CITY OF

PORTLAND, OREGON

OFFICIAL
MINUTES

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

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

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council, and Ruth Spetter, Senior Deputy City Attorney

2168 **TIME CERTAIN: 9:30 AM** - Presentation by the Portland Rose Society (Ceremony)

Discussion: Jane Andrews, Portland Rose Society, thanked Mayor Clark for all that he had done for the City and presented him with a rose bush.

Commissioner Blumenauer estimated that the Mayor had purchased over 2,000 roses to wear in his lapel since taking office.

Disposition: Placed on File.

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

CONSENT AGENDA - NO DISCUSSION

2169 Accept bid of K.J. Murphy Construction and A-1 Quality Work for nuisance abatement services for \$273,778 (Purchasing Report - Bid 60-A)

Disposition: Accepted; prepare contract.

2170 Accept bid of Nutter Underground Utilities Company for 12-inch water main in N Hayden Island Phase IV for \$105,938 (Purchasing Report - Bid 64)

Disposition: Accepted; prepare contract.

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- 2171** Accept bid of Pacific Northern Oil Company for furnishing PS 200 fuel oil for \$234,430 (Purchasing Report - Bid 69A)

Disposition: Accepted; prepare contract.

- 2172** Accept bid of Christenson Oil Company for lubricating oils, greases and turbine oil for \$83,823 (Purchasing Report - Bid 71-A)

Disposition: Accepted; prepare contract.

Mayor J. E. Bud Clark

- 2173** Accept tenant improvement work in the Front and Davis (Old Town) garage as complete, approve Change Order No. 8, waive delinquency and make final payment (Report)

Disposition: Accepted.

- 2174** Confirm appointment of Teri H. Marshall and Robert Mazany to the Urban Forestry Commission (Report)

Disposition: Confirmed.

- 2175** Confirm reappointments of Irma Jean McKinney and Charles W. Carnese to the Towing Board of Review (Report)

Disposition: Confirmed.

- 2176** Confirm reappointments of Robert Wise and Bruce Wong to the Environmental Commission (Report)

Disposition: Confirmed.

- *2177** Authorize new loans from the DEQ Water Pollution Control Revolving Fund not to exceed \$8,200,000 to finance sewer system improvements and restructure the form of security on two outstanding loans from the Fund (Ordinance)

Disposition: Ordinance No. 166129. (Y-5)

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- *2178** Amend contract with Cascade Centers, Inc. (Ordinance; amend Contract No. 25898)
Disposition: Ordinance No. 166130. (Y-5)
- *2179** Authorize an intergovernmental agreement with Multnomah County to provide staff assistance to the Regional Drug Initiative (Ordinance)
Disposition: Ordinance No. 166131. (Y-5)
- *2180** Accept a 12 month grant renewal in the amount of \$455,895 from the Center for Substance Abuse Prevention on behalf of the Regional Drug Initiative (Ordinance)
Disposition: Ordinance No. 166132. (Y-5)
- *2181** Amend contract with ADCOMM Engineering Company for engineering services for the 800 MHz trunked radio system (Ordinance; amend Contract No. 27326)
Disposition: Ordinance No. 166133. (Y-5)
- *2182** Increase contract for design of new North Precinct Police Station. (Ordinance; amend Contract No. 28201)
Disposition: Ordinance No. 166134. (Y-5)
- *2183** Authorize two City funds to be created to track Oregon Arena project costs and services, effective December 30, 1992 (Ordinance)
Disposition: Ordinance No. 166135. (Y-5)
- *2184** Contract with Northwest Geotech, Inc., for geotechnical services, survey and construction monitoring, and provide for payment (Ordinance)
Disposition: Ordinance No. 166136. (Y-5)
- *2185** Contract with Tres West Engineers, Inc., to design the HVAC retrofit for the 3rd and Alder Parking Garage tenant spaces, waive consultant services procedure and provide for payment (Ordinance)
Disposition: Ordinance No. 166137. (Y-5)

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- *2186** Authorize voluntary transfer of vacation and compensatory time accruals from City employees to co-worker in the Bureau of Emergency Communications who, because of long-term non-occupational illness, will otherwise be subject to a severe loss of income (Ordinance)

Disposition: Ordinance No. 166138. (Y-5)

- *2187** Authorize Mayor and Auditor to execute a labor agreement between the City of Portland and the Portland Police Commanding Officers Association relating to terms and conditions of employment of represented personnel (Ordinance)

Disposition: Ordinance No. 166139. (Y-5)

Commissioner Earl Blumenauer

- 2188** Accept completion of the Sump Upgrade Project Phase I and make final payment to S-2 Contractors, Inc. (Report; Contract No. 28056)

Disposition: Accepted.

- *2189** Consent to transfer of ownership from a partnership to a sole proprietor of Borgens Disposal Service franchise agreement (Ordinance)

Disposition: Ordinance No. 166140. (Y-5)

- *2190** Agreement with the Oregon Department of Transportation to provide for the SE Johnson Creek Boulevard, 32nd Avenue to 45th Avenue Project (Ordinance)

Disposition: Ordinance No. 166141. (Y-5)

- *2191** Designate and assign one City-owned land development control strip as public street area (Ordinance)

Disposition: Ordinance No. 166142. (Y-5)

- 2192** Authorize the Bureau of Environmental Services to transfer ownership of multi-family recycling equipment (Second Reading Agenda 2146; waive Section 5.36.010)

Disposition: Ordinance No. 166143. (Y-5)

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- *2193** Revocable permit to Nestle USA for vapor recovery wells at 3342 SE Morrison Street (Ordinance)

Disposition: Ordinance No. 166144. (Y-5)

Commissioner Dick Bogle

- 2194** Confirm appointments of Dennis Nelson, William A. Graham, Pauline K. Nelson, Park Woodworth, Bernard V. Foster, Susan K. Hammond, Marc S. Pettibone, James E. Thompson and George T. Van Hoomissen, Jr. to the Taxicab Board of Review (Report)

Disposition: Confirmed.

Commissioner Mike Lindberg

- *2195** Accept charitable contributions to acquire property for addition to Hoyt Arboretum (Ordinance)

Disposition: Ordinance No. 166145. (Y-5)

- *2196** Call for bids for filtration system replacement at Wilson Pool, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 166146. (Y-5)

- *2197** Call for bids for computer hardware and software, for the Bureau of Parks and Recreation, Operation Center, not to exceed \$80,000, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 166147. (Y-5)

- *2198** Authorize an agreement with Kennedy/Jenks Consultants in the amount of \$47,000 to conduct a comprehensive Water Reuse Study (Ordinance)

Disposition: Ordinance No. 166148. (Y-5)

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REGULAR AGENDA

Mayor J. E. Bud Clark

- 2199** Establish criteria for the City of Portland sister city relationships (Second Reading Agenda 2132)

Disposition: Ordinance No. 166149. (Y-5)

Commissioner Earl Blumenauer

- 2200** Consider vacating a certain portion of SE Fern Avenue and a portion of SE Platt Avenue at the request of Leonard Anderson and Noboru Okazaki (Hearing; C-9798)

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

- *2201** Accept jurisdiction from Multnomah County of certain County roads, lying within the corporate limits of the City of Portland, pursuant to the Intergovernmental Agreement authorized by Ordinance No. 155651, passed by Council March 1, 1984 (Ordinance)

Disposition: Ordinance No. 166150. (Y-5)

- *2202** Authorize the Purchasing Agent to sign a purchase order to serve as a contract with ALMAC/CARROW Electronics, for the Bureau of Environmental Services at the estimated amount of \$55,000 without advertising for bids (Ordinance)

Disposition: Ordinance No. 166151. (Y-5)

Commissioner Gretchen Kafoury

- 2203** Consider the LUBA remand on appeal of Steven Adler against the City of Portland regarding a conditional use application for a bed and breakfast at 5420 SE Westwood Drive (Hearing; LUR 91-00460 CU)

Discussion: Adrienne Brockman, Deputy City Attorney, said this matter had been remanded by the Land Use Board of Appeals because of the City's failure to announce, at the Council hearing, that anyone can ask for the record to be

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kept open for seven days to allow new evidence to be admitted. She said one of the problems with the Code however, is that it does not recognize the right to rebut evidence and, after consulting with other attorneys in town, she concluded that time also had to be allowed for rebuttal.

Ms. Brockman said her goal was to keep the parties in the exact same position they would have been in had the City not committed this procedural error. Now, following the LUBA decision, new evidence is being inserted where it would have been placed had the error not been made. She noted the conflict between the parties as to when the record should be opened. Council heard testimony from both sides in November and decided to open the record then rather than waiting until February as requested by Mr. Adler. The record was then opened for eight days at which time Mr. Adler presented new evidence which was followed by rebuttal evidence from Ed Sullivan, attorney for the opponents. She said Council has three choices: 1) approve the bed and breakfast and request Mr. Adler to prepare findings; 2) find that Mr. Adler's evidence is not persuasive, sustain the prior decision and adopt Mr. Sullivan's findings and; 3) rehear the matter based on the new evidence.

Ms. Brockman said Mr. Adler had submitted a request to address Council today but if Council feels its has reviewed the material and has no questions, public testimony is not necessary.

Commissioner Kafoury said she has reviewed the record over several months and moved to affirm Council's prior decision and adopt the findings submitted by Mr. Sullivan. Commissioner Blumenauer seconded.

Commissioner Kafoury moved to add to her motion that Council not reopen the hearing to allow additional testimony. Commissioner Blumenauer agreed.

Mayor Clark and Commissioner Lindberg also noted that they had reviewed the record prior to voting.

Commissioner Blumenauer said he hopes the State Legislature and City Attorney can find a way so that citizens are not forced to jump through procedural hoops over and over again as happened in this case.

Ms. Brockman agreed, adding that the whole issue needs to be clarified by the legislature.

Commissioner Kafoury said she would be happy to work with Ms. Brockman on draft legislation.

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Mayor Clark said the bed and breakfast ordinance should state that these facilities are a privilege and not a right.

Disposition: Council's prior decision affirmed. Findings adopted. (Y-5)

City Auditor Barbara Clark

2204 Assess benefitted property for the costs of constructing the SW Lower Drive and Private Property Sanitary Sewer System (Hearing; Ordinance; C-9759)

Discussion: Cay Kershner, Clerk of the Council, noted that a report on the remonstrance had been submitted to Council earlier.

Doug Bomarito, attorney representing Susan Mesher, said his client's property on SW Montgomery Dr. should not have been included within this sewer LID just because of its proximity to other homes which need this sewer. He said Mrs. Mesher will not use it and questioned why she was included while three other homes on Upper Drive, which have not used it and have no plans to do so, were excluded. He said these three houses, as well as Mrs. Mesher's, pump their sewage to the streets in front of them while the other 11 houses use the gravity system that is now being replaced by this LID. He asked the Council to reverse the assessment.

Mr. Bomarito noted that the former owners of the Mesher property, in order to pump up to the system the house is currently on, signed a waiver that was to have been recorded against the property. However, no such waiver was recorded on the title nor was Mrs. Mesher ever given notice of such a waiver, now being cited as the reason for her inclusion in this district.

Commissioner Blumenauer asked if she signed the waiver.

Mr. Bomarito said no, the former property owners did and Mrs. Mesher never had notice until the waiver was produced in 1991. He said he does not think the City has adequate legal basis to require her to be in the district.

Dick Backstrom, City Auditor's Office, said the property does have service to the new sewer system and a waiver was signed in 1961 which gave temporary service to a sewer in Montgomery Drive, which was one that this property did not pay for.

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Mayor Clark asked why the other three properties were excluded and hers was not.

Mr. Backstrom said he was not sure but that was the way the district was drawn by the Bureau.

Commissioner Blumenauer said he feels comfortable with Dan Vizzini's memo which states that the property owner did not pay anything for the right to be hooked up to the other sewer. He said if they are excluded here they will not be paying anything for the permanent sewer either. He said the City has the legal authority to require their participation but he does not think there is a problem if Council wants to wait until more information can be provided.

Commissioner Lindberg asked if the Mayor's question about why the other three properties were excluded was answered in Mr. Vizzini's memo.

Commissioner Blumenauer said the memo detailed why people were in or out of the system and the costs. He suggested passing it to a Second Reading and asking staff to be present then to answer the question.

The Clerk noted that Council wished to delay voting on the remonstrance until next week.

Disposition: Passed to Second Reading January 7, 1993 at 9:30 a.m.

2205 Assess property for sewer system development charges through November, 1992 (Hearing; Ordinance; Z0229 through Z0248)

Disposition: Passed to Second Reading January 7, 1993 at 9:30 a.m.

At 10:00 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 30TH DAY OF DECEMBER, 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 and Ben Walters, Deputy City Attorney.

Commissioner Bogle reflected on his terms as Commissioner, including changes in the Fire Bureau, new parking regulations and other successful initiatives, such as the 911, drug house and derelict buildings ordinances. He said he has most enjoyed working with neighborhood concerns.

2206 TIME CERTAIN: 2:00 PM - Reconsider appeal of Wilkes Community Group against certain conditions imposed by the Hearings Officer in approving the application of KMAC Corporation for an 11-lot subdivision at 1904 NE 155th Avenue (Hearing; Previous Agenda 2087; 92-00288 SU)

Discussion: John Southgate, Planning Bureau staff, said this is a rehearing of an earlier appeal of a Hearings Officer's decision regarding conditions requiring a street connection on NE 157th and a pedestrian pathway. He said Council directed staff to work out a compromise design to make these requirements more acceptable to the neighborhood but procedural problems arose with the proposed solution and a reconsideration is now necessary. He said the neighborhood and the developer have come up with a compromise which would incorporate the street connection but strike the requirement for the pedestrian pathway.

Commissioner Kafoury asked the City Attorney if findings would be needed if testimony was taken today.

Ben Walters, Deputy City Attorney, said if a hearing is held today, the record could be kept open for seven days and that would carry it over into the next year. He read a statement regarding procedures to be followed regarding testimony, the record and appeals. Mr. Southgate cited the relevant approval criteria in the Code.

Spencer Vail, representing the developer (who was not a party to the appeal), said they met with the neighborhood association and property owners to discuss what had transpired.

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Alice Blatt, Chair of the Wilkes Community Group, said at that meeting a unanimous vote was taken affirming their position that the pedestrian pathway originally proposed is totally unsafe. She said they still have concerns about the street connection but have agreed that they can live with the street connection between 157th and Hancock, if Council removes the requirement for the pedestrian pathway. She said they still believe the street connection poses a serious safety hazard and hope some traffic devices, such as a street bump or curb extensions, can be included in the agreement.

Commissioner Lindberg asked Ms. Blatt to address the specific safety issues involved on the pedestrian pathway.

Ms. Blatt said the original pathway was a long narrow "tube", a football field in length, unsupervisable and presenting a multitude of factors for which there is no benefit and no solution.

Commissioner Blumenauer said the evidence was persuasive that the "tube" design on the south end was not the best one. He said an alternative design had been suggested but evidently other people do not wish to pursue it.

Ms. Blatt said because of Ms. Imperati's memo they believed they had to return to the original proposal by the Hearings Officer, which is for the "tube" design. She argued that granting an exception in this case would not weaken the overall City policy regarding connectivity.

Michelle Lisch, Police Officer, said this pathway could be called "burglar alley" by allowing access to all the side and backyards of all homes aligning the walkway. She cited what had happened in Argay Terrace where a large wall was erected which resulted in every single home there being burglarized. Another concern is lack of accessibility.

Mr. Vail asked that the Hearings Officer's decision be amended to grant the neighborhood appeal with respect to the pedestrian pathway but deny the appeal regarding the 157th-Hancock connection. This would amend condition B to call for the narrowest connection feasible and ask that serious consideration be given to the use of curb extensions and other deterrents to reduce speed and non-neighborhood trips through the area. Secondly, Condition C would be amended to delete the reference to the pedestrian way.

Commissioner Kafoury moved the compromise proposal on Condition B which

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leaves the decision about the design to the Office of Transportation but urges them to consider certain factors regarding the street connection. She also moved to amend Condition C to delete the reference to the pedestrian way. Commissioner Bogle seconded.

Mr. Walters clarified that the motion approves the Hearings Officer's decision with these amendments. He noted that the developer is not a party to the appeal.

Commissioner Blumenauer said this is a reasonable compromise, the most important issue being the connectivity of the transportation system. He said the legitimate concerns of neighbors can be met through the use of curb extensions and other traffic devices. He clarified that no one on Council was interested in a tunnel, noting that the recommendation had come from the Hearings Officer.

Disposition: Approve Hearings Officer's Decision as amended. (Y-5) Prepare findings for January 13, 1993 at 2 p.m.

2207

Tentatively grant appeal of Wilson Neighborhood Association and Bridlemile-Robert Gray Neighborhood Association against the Hearings Officer and Design Commission decisions to approve the application of Robert and Rafik Eskandarian for a 14-unit PUD located at SW Terwilliger, near SW Westwood (Findings; Previous Agenda 2086; DZ 138-90/CU-123-90/S-61-90)

Discussion: John Southgate said findings were originally distributed on Monday and since then a revised set, submitted by the neighborhood, was issued and distributed earlier today. He said only on Monday did the neighborhood become aware that, as the prevailing side, they could draft findings. He said there have been some changes in the latest version, which may raise concern because of the lack of time to review them. He also noted a letter from the opposition objecting to the findings. He said Council has the option of adopting either the findings as submitted on Monday or those submitted today. A third option is to postpone this to allow more time for review although that would mean it would not be voted upon by the same Council that heard the appeal originally.

Mr. Walters said a new hearing would not be needed but the new Council members would have to review the record and testimony in order to participate.

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Commissioner Blumenauer said he had not reviewed the new findings but since he was going to vote no he did not think it would make a difference. He said he had no problem going ahead today.

Commissioner Kafoury said she reviewed the Monday version and scanned this one. She asked Mr. Southgate to summarize the revisions.

Mr. Southgate said most of the revisions do not change the substance of the earlier version, noting Council's main concerns with the scale of design and the failure of the guidelines to meet the landscaping requirements. One difference concerns grading, where there was found to be some violation of the 2:1 slope requirement. Also, he was convinced by applicant that the project violates the forest view guideline as applied to the southern end of the project. He said the other changes further clarify the basis for Council's decision.

Commissioner Kafoury moved to approve the revised findings. Commissioner Lindberg seconded.

Stephen Janik, attorney representing the applicant, said he wants to make sure that record does not contain a copy of the December 23, 1992 Justin Dune memo or November 12 draft findings from Mr. Weir as both were submitted after the record was closed. He objected to adoption of the revised findings, arguing that no one has had a chance to review them and that there had been substantial changes from the earlier version. He said the issue of grading was never discussed in front of Council and yet now Council is making a finding of fact on it. Also, the issue of whether the forest view standards were violated was not an issue in the case and should not be used to justify Council's reasoning. He said these last minute changes are simply efforts to beef up the other side's position and adoption of these findings will help assure a remand.

Mr. Janik contended that these findings are legally insufficient and do not support the decision Council reached. He said the findings issued Monday find this project out of scale but the only standard of scale occurs in the part of the Terwilliger Plan called "The Character of Terwilliger Statement" which is not a set of legal approval criteria. He charged that Council erred in interpreting the standard for a continuous invisible landscaping screen along Terwilliger, particularly as it used these same standards to approve the eye clinic at OHSU. He also raised objections to the votes of Commissioner Bogle and Commissioner Kafoury, stating that they were not objective, and asked that they be withdrawn.

John Holmes, appellant's representative, said Council members gave this appeal due consideration and then made a decision to uphold it. He said the he

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reviewed both the earlier and later versions and found Mr. Southgate's explanation of the changes to be entirely consistent even though appellant may not agree with every position taken by staff. He said they believe, however, that it substantially reflects Council's decision. He disagreed with Mr. Janik's objections and urged adoption of the findings.

In rebuttal, Mr. Janik objected to the revised findings and the changes, which they have not had a chance to review. He said if Council does adopt findings, it should be the Monday version.

Mr. Holmes said he thought Mr. Southgate's statement regarding the findings was absolutely correct.

Commissioner Lindberg asked if the revised findings were a 180 degree turn in direction as Mr. Janik has suggested.

Mr. Southgate said the most substantial changes involved the forest review guideline. He said he thought Mr. Janik's objections would remain no matter which version Council adopted.

Commissioner Lindberg asked if there were any legal problems about making changes in the findings on the day of the hearing without giving the other side a week to review them.

Mr. Walters said the Code does not mandate an opportunity to review the findings.

Commissioner Blumenauer said he is reluctantly voting no because he believes there is difficulty sustaining the majority position. He said he shares the neighbors concerns about the past history along Terwilliger, including the Casey Eye Clinic. He said a similar application submitted now would not be permitted and this case may clarify the Code further and speed up adoption of measures such as a tree preservation ordinance so that there can be certainty rather than moving targets.

Commissioner Bogle said his vote is based solely on the record and not on his familiarity with the area.


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Commissioner Kafoury stated that this decision, and her earlier decision, are based on fact. She said she believes the record shows that the proposal does not meet Council goals for consistency with the character of the area or provide appropriate screening.

Disposition: Findings Adopted. (Y-3; N-2 Blumenauer and Clark)

At 2:55 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By **Cay Kershner**
Clerk of the Council

THURSDAY, 2:00 PM, DECEMBER 31, 1992

**DUE TO LACK OF AN AGENDA
THE PORTLAND CITY COUNCIL
DID NOT MEET**