



CITY OF

PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 6TH DAY OF OCTOBER, 1993 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Hales and Kafoury, 3.

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

REGULAR AGENDA

- 1635** Cash investment balances for August 26, 1993 through September 22, 1993 (Report; Treasurer)

Disposition: Placed on File.

- 1636** Accept bid of Snyder Roofing and Sheet Metal for roofing construction at various sites for \$106,423 (Purchasing Report - Bid 9)

Disposition: Accepted; prepare contract. (Y-3)

- 1637** Reject bid of Brant Construction for Gabriel Park Wet Meadows and Riparian Development (Purchasing Report - Bid 11)

Disposition: Accepted. (Y-3)

- 1638** Accept bid of V.M. Pilip and Son, Inc., for interior painting of the Multnomah Art Center for \$54,700 (Purchasing Report - Bid 18)

Disposition: Accepted; prepare contract; prepare contract. (Y-3)

- 1639** Accept bid of Tice Electric for NTMP and Traffic Signals 1993 Unit A for \$413,000 (Purchasing Report - Bid 26)

Disposition: Accepted; prepare contract. (Y-3)

- 1640** Accept quote of Bruce Chevrolet, Inc., for two four wheel drive pickup cab and chassis with utility bodies for \$45,246 (Purchasing Report - Informal Quotation #94233A)

Disposition: Accepted; prepare contract. (Y-3)

OCTOBER 6, 1993

Mayor Vera Katz

- 1641** Authorize City Attorney to apply to Oregon Supreme Court for amicus curiae status on behalf of League of Oregon Cities in City of Eugene v. Miller (Resolution)

Disposition: Resolution No. 35196. (Y-3)

Commissioner Earl Blumenauer

- 1642** Authorize an Agreement with Tri-Met for providing bus priority at traffic signals (Ordinance)

Disposition: Passed to Second Reading October 13, 1993 at 9:30 a.m.

- 1643** Accept the street and storm improvement on NE Russell Street from NE 111th Avenue to the easterly terminus, approve Change Order No. 1, make final payment and release retainage (Report; C-9795)

Disposition: Accepted. (Y-3)

Commissioner Charlie Hales

- 1644** Carry over 206 excess accumulated vacation hours for Fire Deputy Chief Ivie (Second Reading Agenda 1573)

Disposition: Ordinance No. 167055. (Y-3)

City Auditor Barbara Clark

- 1645** Citizen Advisors recommendations on appeals to Police Internal Investigations Auditing Committee (Previous Agenda 1538)

Discussion: Bill Hamilton, Police Internal Investigations Auditing Committee (PIIAC) Chair, presented ten cases reviewed by the citizens advisors in the past year with their recommendations in each case.

Case 93-03 involved use of felony stop procedures on a woman alleged to be a burglary suspect. The woman sustained injuries which the officers contend were accidental. All the advisors agree that the IID investigator was harsh in grilling the complainant and request that IID (Internal Investigations Division) investigators do the following: 1) objectively pursue all facts rather than attempt to invalidate complaints and guarantee that all complainants are treated with respect; 2) consider providing third party assistance to observe detectives' interviews; 3) review training procedures to see how such incidents can be avoided and; 4) reevaluate this complaint and report back to the Council and citizens committee as to whether this complaint should be sustained.

OCTOBER 6, 1993

Case 93-05 involved Police called by security guards to handle rowdy customers at a Vietnamese restaurant. The appellant, who sustained a broken jaw in an altercation with a Police officer, complained of excessive force and misconduct. Captain Butzer issued findings of unfounded and insufficient evidence. Advisors reached a compromise directing the Police Chief to reevaluate this complaint and report back to Council.

Case 92-09 concerns a man who claims he was inappropriately taken to Hooper Detox Center and some of his money was not returned to him when he left. Advisors agreed there is nothing to sustain this complaint.

Case 92-11 concerns a complaint that Police did not have permission to conduct a house search after they heard gun fire. At that time Captain Moose issued findings of insufficient evidence for entry without consent. Advisors agreed the Officer's mission to find the gun fire was primary but believe the Bureau should devise a more sympathetic response to families suffering the impact of Police tactics and gunfire in North Portland.

Case 92-13 involved a police officer who complained to PIIAC that he had been told a Commanding Officer shouted a derogatory comment about his chances for promotion at roll call. Advisors confirmed that the Commander's remark, which was determined to be part of a private conversation, was protected by First Amendment rights to free speech. Advisors agreed this is a personnel matter for Police management, not PIIAC.

Case 92-14 involved a complaint from a prisoner that an officer who arrested him 18 months ago injured his knee and also made racist remarks. IID declined the complaint on the basis that witnesses could not be expected to remember an incident after 18 months and that the appellant never complained of injury at the time of his arrest. Advisors found IID's decision appropriate.

Case 92-15 concerns a dispute between a woman whose car was being towed and a tow truck driver. After Police were called the woman complained about excessive use of force and being left in a patrol car for an hour while the officer responded to another call. The IID investigation was halted on advice of the woman's lawyer but after Risk Management denied the risk injury, she appealed to PIIAC. The advisors agree that the evidence supports the Police officer.

Case 93-02 is a complaint by the mother of a teenager about the use of excessive force when they arrested her son as a minor in possession of alcohol. Advisors support the Police finding of unfounded in this case.

Case 93-04 concerns a complaint about an unprovoked attack by a Police officer who also did not show up at the Court hearing. The officer stated he saw the complainant assaulting somebody and in attempting to break up the fight swung the complainant, who was intoxicated, to the ground. Advisors agreed with the Police findings that there was insufficient evidence regarding the court appearance and that

OCTOBER 6, 1993

the serious medical injuries predated the Police encounter.

Case 93-09 concerns a complaint by a magazine subscription company about a Police officer who responded to a call from a cab driver about a woman he believed was senile and possibly the victim of a scam. The officer found the woman was paying a \$65.00 subscription fee for Executive Intelligence Review, a Lyndon LaRouche publication and that her check was being picked up by cab because the woman was too infirm to get to the mail box. The officer told the magazine contact that he would advise the woman not to subscribe. The magazine solicitor complained to IID that the officer unlawfully interfered with a business transaction. IID declined the complaint and advisors agreed, commending the officer for looking out for the elderly woman's interest.

Patrick Ruckert, 2115 N. 147th, Seattle, 98133, spoke on behalf of Maureen Calney, complainant in Case 93-09. He said this incident is in the context of several in Portland, including an alleged investigation of the fund-raising practices associated with Mr. LaRouche by the State Attorney General. Personally, he does not think the officer was out of line or part of a big conspiracy to get the LaRouche organization. He said their concern is that an environment is being created in Portland and Oregon which is inimical to the free expression of ideas and free association. He said Executive Intelligence Review, which costs \$65.00, is a weekly journal with subscribers all over the world and well worth the subscription price. The issue is not to go after an individual police officer but to put the City on notice that it must be very careful about interfering with free speech and other constitutional guarantees. He referenced the Police Bureau's involvement in the spy scandal connected with revelations about the furnishing of records to the Anti-Defamation League.

Commissioner Hales commended the cab driver and the Police officer for their conduct. He said the test was not related to politics but to whether this was a legitimate business transaction.

Regarding Case 93-02, Diane Policar, 19751 River Road, Gladstone, said she first got involved with IID because her son told her Police officers were beating up kids in Lents Park who were picked up for curfew violations. She said this happened to her son in September. She said the Police cannot use physical violence and charged that her credibility has been destroyed by what they stated in their reports.

Mayor Katz asked if her son was involved in a drive-by shooting.

Ms. Policar described the shooting incident, stating that two officers were fine but a third screamed at her. After further questioning by Mayor Katz, she said that her 15-year-old son was remanded to the adult court system. She said her son stated that he did not do it but chose to plea bargain.

Commissioner Kafoury moved to accept the report on the cases that were completed.

OCTOBER 6, 1993

Mayor Katz thanked the committee for the fine job it did on these reports.

Commissioner Hales asked about Cases 93-04 and 93-03. He said his concern is how frequently felony stop procedures are used on an unarmed suspect which result in injury. He said he would be interested in hearing more about whether there is a pattern here.

Mr. Hamilton said one of their recommendations to Council is to review complaints to IID, even those not directly passed on by the appellant, to see if there are patterns. The cases presented today pretty much depended on whether the roughness was thought to be unnecessary.

Mayor Katz said the Charter allows the PIIAC citizens committee to review any case.

Joan Engert, PIIAC staffperson, said since last September the Committee has been receiving a monthly summary of closed cases involving the use of force and those that went to Review Level Committee.

Lt. Dan Elfving, Portland Police, said in his 13 months in Internal Investigations there have been eight complaints involving injury, not including handcuffs being too tight. He said he does not have any information about civil tort claims filed against the City involving injuries.

Commissioner Hales said it looks like the Police are in the process of compiling this information. He asked if the General Orders involved were being reviewed.

Deputy Chief Dan Noelle said the felony stop procedure is systematically laid out during training. He said he does not have information about the number of injuries now but expects to have it within 60 days.

Commissioner Kafoury moved to elect Mayor Katz as PIIAC Chair. Commissioner Hales seconded and the motion carried. (Y-3)

Mayor Katz said she has been attending PIAAC meetings to get a better sense of how the committee is working. She said she has recommendations for changes but is holding back her official report because of the continuing frustration of the citizens committee with the current process and the need to identify some alternatives. She said she has been talking to Chief Moose and Roger Morris of the Police union about some of the changes and while she may recommend no changes in the systemic organization her sense is that something needs to be done. She said while The Oregonian recommended that Council actually do the work, she believes that if the process is dysfunctional on the citizen level it will also be dysfunctional on the Council level because the frustrations would be the same.

Mr. Hamilton said the committee members agreed to hold a retreat to work out their differences. He said what appeared in the Oregonian was confidential information to the Mayor and somebody jumped the gun on that. He said his term is up this month

OCTOBER 6, 1993

but he has agreed to try to bring closure to the confusion before the end of the year.

Commissioner Kafoury said the Police Bureau and PIIAC need to be under the same person. She said she found her two years of oversight very difficult with many tricky issues and lots of rights to be protected. She said the City wants to make sure Police respond appropriately to the public but do not want to encourage a mentality that discourages the Police from wanting to serve here.

Mayor Katz said concern was expressed on the part of citizens that they could even ask the Police Chief and Council to review this. She said there is nothing in the Code to prevent citizens from asking Council to do anything. She said she will try to work with the Police on the systemic changes. The recommendations made by the citizens committee and the Auditor's Office are pretty clear and will go forward but they do not make major changes in the mission and role of PIIAC.

Regarding officer frustration, Deputy Chief Noelle noted that in eight of 10 cases that came back, the findings of IID were upheld. He said he will make sure that information is passed back to the officers, particularly in Case 93-09 where the audit committee commended the officers, so they know their actions are supported.

Mayor Katz said they are almost to closure on a mediation process.

Commissioner Kafoury said it might help to adopt the recommendation that Council have a more visible leadership role and take more responsibility.

Mr. Hamilton said that would help a great deal because there is so much confusion and frustration about what the citizens committee's role is.

Mayor Katz noted the split on the committee about how much to push the system, including subpoena powers which are given in the Charter to the Council but not to the committee. So far the majority of the committee has not wanted to do that.

Mr. Hamilton noted a 75 per cent turnover in committee members in the past two years.

Disposition: Accepted. (Y-3)

At 10:35 a.m., Council recessed.

OCTOBER 6, 1993

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 6TH DAY OF OCTOBER, 1993 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Hales and Kafoury, 3.

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

- 1647** Tentatively deny appeal of Brooklyn Action Corps and approve application of Bruun Property Management and GTE Mobilnet for a conditional use with adjustments, in order to construct a monopole tower with antennas and an equipment building at SE 21st and Lafayette Street (Findings; 93-00267 CU AD; Previous Agenda 1494)

Disposition: Findings Adopted. (Y-3)

- 1646** **TIME CERTAIN: 2:00 PM** - Amend Title 33 of the City Code relating to the Columbia South Shore Plan District, Environmental Zone, Adjustments, and Definitions, amend Official Zoning Maps, and adopt Natural Resources Protection Plan for the Columbia South Shore (Ordinance)

Discussion: Bob Glascock, Planning staff, updated Council on the cultural resources project as it relates to the Natural Resources project which initially had an archeological component but has now been made a separate project. He said they initiated a request for a proposal to hire an archaeological consultant to do an inventory and a cultural resources advisory group has been formed. At Council direction, they are also working with interested parties to determine what can be done voluntarily.

Mayor Katz asked if the City was on sound legal ground to do that.

Mr. Glascock said when the development standards were adopted staff made findings stating that they would be coming back with this future project on cultural resources and that seems to be all right with the State. He said additional inventory work is needed before their significance or the level of protection can be determined.

Commissioner Hales said some resources have been identified to do that work and some work is already underway.

Duncan Brown, Planning Bureau staff, said this plan provides an areawide approach for conservation of significant natural resources in the Columbia South Shore. He noted that the plan has gone through numerous versions and drafts.

Mr. Brown showed a video, outlined major aspects of the Plan and reviewed the LUBA appeal by Alice Blatt and Linda Robinson. Major changes made to the Plan include an increase in the resource protection area to 50 feet, rather than zero to 46 feet, decreased vegetation requirements and elimination of State and federal permits.

OCTOBER 6, 1993

After the Planning Commission hearing Planning staff were asked to address some of the concerns raised, particularly about placing regulations into the Code rather than retaining a stand-alone plan. In July a plan was returned to the Planning Commission with more changes. These included: eliminating archeological requirements which are addressed on a district wide basis; eliminating protection of federally regulated isolated wetlands that do not presently have an environmental zone on them and codifying regulations which protect wetlands and yet allow certain uses under certain conditions. A number of provisions in the Plan provide overall protection of natural resources while allowing development to continue in the Columbia South Shore. He explained the various levels of protection called for, including zoning designations and mitigation standards, depending on the significance of the resource. Non-conforming uses and drainage district activities are also spelled out in the Plan.

Mr. Brown noted that an additional element of the Plan is the Columbia Slough Trail which was separately approved last month by Council. The final portion of the plan is development review; the Plan calls for formation of a mitigation advisory committee to advise the Bureau of Planning on resource mitigation activities. Finally, regarding the regulatory process, wherever possible clear and objective standards are used for protection and mitigation in order to limit the length of the permit process. The result is a Plan which clearly identifies the resources to be protected, at what level, and sets out a series of standards geared toward specific resource characteristics. The Plan covers about 17 per cent of the area, just under 500 acres of which would be zoned EP and protected fully, while about two per cent, about 70 acres, would be zoned EC, which would allow alteration. He said this Plan balances conflicting land uses, such as economic development with the need for natural resource protection, in a manner that complies with Statewide planning goals.

Bernard Galitzki, Bit-Tel Investment, 1809 NW Johnson St., 97209, contended that the zoning designations on his 63-acre property have progressively limited use of their land. He said the zoning is seriously flawed, contending that the City based its environmental zones on wetland areas delineated by the Corps of Engineers and based on aerial photos, not ground reconnaissance. He said their on-site analysis finds large areas incorrectly delineated. He noted in one instance the City erred in calling one area a wetland which in fact is a ditch and charged that the resource protection area had not been properly inventoried, contrary to State law. He requested that the zoning maps be corrected to show scientifically correct wetland and wildlife delineations.

Dorothy Cofield, attorney representing Bit-Tel Investment, 8255 SW Hunzinger, Tigard, said people give lip service to balance but it is not in the Plan. She outlined some of the legal problems she sees with the Plan, contending that the EC and EP lines drawn from aerial photos are not clear and objective standards and should be replaced by the lines delineated in the ground survey done by the Galitzkis.

Second, Ms. Cofield said the impact area placed around most of the resources is in most cases 50 feet, based on scientific studies on the need for buffers. She said

OCTOBER 6, 1993

they do not believe that is the kind of inventory that should be done under Goal 5 as the relative quality of the resource needs to be measured against other resource sites rather than say that every single one needs a 50-foot buffer.

Ms. Cofield also charged that resource sites had been added to the newest inventory but have not been inventoried. In the case of Bit-Tel's property, the EC zone was changed to an EP zone on the southern portion of the property but no new information is provided in the inventory about its quality and quantity. Finally the EC analysis under Goal 5 is supposed to look at the economic impacts of protecting the resources versus not protecting them. The City has determined that 15 jobs per acre would be lost; in the case of Bit-Tel this amounts to 255 people.

Pearl Galitzki, Bit-Tel Investment Co., objected to having one fourth of their property taken for a wildlife habitat without compensation. She said the loss of jobs must be balanced against providing a low level habitat for non-tax paying animals which are not endangered and will prove to be a problem for citizens in the adjacent industrial sanctuary. Human beings and a healthy economy should come first. She said if the City really needs the 17 acres, it should pay for it.

Mayor Katz asked if their property values had not been dramatically improved by the construction of Airport Way.

Mr. Galitzki said the area close to Airport Way was enhanced but the area they are talking about today is some distance from it and was not.

Mrs. Galitzki said they bought the property before there was ever talk of Airport Way and property is of no value until it is sold. She said they have paid taxes on it for 13 years.

Commissioner Hales asked if the Corps had acknowledged the on-ground mapping.

Ms. Cofield said no, the Corps took aerial photos which the City used to delineate the EC and EP lines. Mr. Galitzki hired a private survey firm to do the work. Their report will be submitted to the Corps for a 404 wetlands permit and they will have to do the required mitigation if they want to fill any of those wetlands.

Commissioner Hales asked what happens if the Corps of Engineers acknowledges the resource information provided by the Galitzkis.

Mr. Brown said the resource as defined by federal and State agencies differs considerably from that which the City is required to analyze and protect under Goal 5. The City must look at not just wetlands but also water bodies and wildlife habitat areas.

Commissioner Hales said the City is making a policy decision that more than jurisdictional wetlands are being protected.

OCTOBER 6, 1993

Mr. Brown said yes.

Ms. Spetter confirmed that is done in order to meet Goal 5.

Commissioner Hales asked about development in the EC area and the options for mitigation.

Mr. Galitzki said they could develop those ultimately with proper mitigation, which is very expensive to do.

Mr. Brown said the property owner has a wide range of options for mitigation and explained the ratio which would be required if new mitigation areas are created or existing areas are enhanced.

Commissioner Hales asked if there was the potential to meet the mitigation requirement.

Mr. Brown said yes.

Mrs. Galitzki asked Council to consider how they would feel if asked to give up one fourth of their property.

Alice Blatt, 15231 NE Holladay, 97230, read a letter from Linda Robinson, 1115 NE 135th Ave. 97230, stating that this is a workable, if not perfect, plan and clearly better than the original one adopted in 1990 and successfully challenged. She noted the potential of the Slough for passive recreation, environmental education and as an aesthetic amenity. The 50-foot buffer is the absolute minimum needed if the wildlife corridor is to survive. She noted that property values have increased dramatically because of the tremendous investment of public funds in the Columbia South Shore and stated that it is only fair that property owners sacrifice a few acres to preserve the natural resources. She said the plan represents a carefully crafted series of compromises and asked Council not to tinker with it now and risk throwing everything out of balance again.

Dennis Richey, East Portland District Coalition, said if his property were enhanced manyfold by the construction of Airport Way he would be very happy to make such an economic tradeoff. He noted the lengthy negotiations that followed the litigation and said none of the parties are entirely satisfied with the end product but it is a compromise. If this is not done pretty soon, it will be done all over again in 20 years.

Helen Sherman Cohen read a memo from Winifred and Paul N. Holmes, endorsing the protection plan and calling for adoption.

Paul Shirey, Portland Development Commission, said the Plan represents the best collective efforts of a group. While the Plan is not perfect, all the interests have hung in there through years of negotiation and process. He said after five years of

OCTOBER 6, 1993

involvement it is time to adopt this plan which ensures that the natural resources will not suffer as a result.

Steve Pfeiffer, Columbia Corridor Association, said all sides have suffered from uncertainty, including the development community but this is a plan the Association can endorse. He said this has not been an easy process and now is the time to approve this compromise.

Commissioner Hales asked if the standards were clear.

Mr. Pfeiffer said one of the benefits of this plan is that it is unique to the Columbia South Shore. He said the more objective criteria might serve as a basis for future revision of the E zone in lieu of some of the subjective criteria currently in the Code. He added that he will be participating in a committee formed to review the E zone standards.

Mavis Holt, 1235 SE 115th, member of the Mill Park Neighborhood Association and Papyoc founder, said one of their goals is to find places where adults and young people can relax and interact.

Helen Sherman Cohen, NE Portland, said this Plan shows that politics is the art of the possible. She asked that it be passed without tampering, noting the many compromises that have been made by all the players.

Allen D. Lee, 3640 NE 141st, 97230, said they can live with this plan as it establishes certainty for everyone. The issue of taking people's property concerns him but all have to give up something to balance the varied interests.

Lyn Mattei, Oregon Natural Resources Council and the Sierra Club, (Columbia Group), said she has spent thousands of hours trying to make the area more environmentally viable and to be fair. She said she is not really happy with this Plan, noting unhappiness about the inadequacy of the buffer in the earlier Natural Resources Management Plan (NRMP) and their suit against the Corps of Engineers in 1990 for issuing the regional permit based on the NRMP. She described subsequent events which resulted in the new NRMP, adding that they feel they have lost the South Shore and, while happy with the 50 foot buffer, believe overall a significant ecosystem has been largely destroyed. Regarding the Galitzki wetland area, she said it has long been known that it is a significant resource. She said the City has done an excellent job documenting the value of this area and this information will hold up in court. She asked the City not to make any changes but said she still has a problem with the lack of buffer on site ii, (page A-19 or C-19), which is in an EC zone. The forested section has a wildlife rating of 90, the second highest rated natural resource area in the entire Corridor and the number one site in the Columbia South Shore. She said it is an area which really needs a buffer. She concluded by stating support for the Plan.

OCTOBER 6, 1993

Jean Foster, 7016 NE Tillamook, 97213, urged approval of the Plan in order to preserve the land for recreational use.

Michael Carlson, Portland Audubon Society, said this is the absolute minimum needed to protect the natural resources, noting concern that two of the most highly rated resources are being compromised because of a lower protection level. On one of them, the Four Corners area (site ii), the highest rated habitat area, no buffer is called for on the southeast corner. He said it should have at least a 50 foot buffer and there is no biological justification for not having one there.

Mr. Brown said their evaluation process under Goal 5 is different from the Corps of Engineers or Division of State Lands review in that they have to look at the value of the property as a Goal 5 resource but also compare it to conflicting uses. They subject the property to an ESEE analysis and look at economic, social, environmental and energy impacts of protecting the resource or allowing the conflicting use. On Mr. Galitzki's property the conflicting use, industrial development, was also judged to be important and it was felt some compromises should be made in protecting the resources. Based on this same judgment, the forested area (site ii) on the Winmar property was reflected in the elimination of the transition area from 50 feet to zero. Because about 70 to 80 per cent of Winmar's property will be protected under the Plan, staff felt a reduction of the transition zone from 50 feet to zero was justified in the forested area.

Mr. Carlson said he did not see a biological justification for that.

Mr. Brown said there was no biological justification for the reduction of the transition area on the Winmar property or the EC zoning on Galitzki property. But from the standpoint of balancing different urban needs, there is justification.

Mr. Carlson said the Galitzki property is so valuable because it has a very high wildlife habitat rating, the fifth highest in the entire Columbia South Shore region. He referred to page 73 which shows a site with a C zone and said he does not think it could be altered as the Plan indicates because he doubts a 404 permit would be granted to fill it. Aside from concern about the heavy impacts on the two sites he has described, the Audubon Society supports the Plan and urges adoption. He said it is important to make sure that the highest habitat resources are protected.

Karin Ingels, US Fish and Wildlife Service, 2600 SE 98th, read a letter stating continued concerns that the plan does not do more to protect the wetlands. She referred to site dd, page 13, which is designated for filling. The description of this site is confusing and the map is unreadable. She said this area includes irreplaceable wildlife habitat and asked that the Plan be revised to prevent filling here.

Mr. Brown said this drainage way is also part of the Galitzki site.

OCTOBER 6, 1993

Mr. Carlson said it was the same one he was referring to.

Commissioner Hales asked if Ms. Ingels' agency was a part of this process.

Ms. Ingals said they were not a part of the negotiating process, adding that no State agencies were invited to the table for that portion. However, they have a longstanding involvement with this process.

Commissioner Hales asked whether distinctions were made regarding land within and without the urban growth boundary. He said he thought Ms. Ingals agency and others, such as DEQ, would take into account that differential between the two types of land, urban and resource land, and not assume that all land is equal.

Ms. Ingals said her agency accepts that this is an industrially zoned area and has tried to present a balanced approach although they recognize there will be some wetland filling. Fish and Wildlife has been very supportive of urban programs.

Commissioner Hales said he wants to send a message to State and federal agencies that the City expects recognition for trying to contain growth within the urban growth boundaries. He said he hoped State agencies would think about the critical division of land and how local governments have to achieve balance on the rather small amount of land that is zoned for urban uses.

Mayor Katz asked if State agencies had to sign off on this plan.

Mr. Brown said only through the DLCD. State agencies can testify then.

Mayor Katz complimented Alice Blatt for her efforts and for working though the process.

Alice Blatt, 15231 NE Holladay, 97230, said she was speaking for FOWL, ECCO, and Madison High School science students and citizens who sought to protect this area. Jobs seekers and industry come to Portland for the grass and for what the City and state does best, which is protect the environment. She said this is a coordinated effort to make jobs worth having and give people some psychological as well as economic worth. She showed a video of the area.

Ms. Blatt asked if she could request that the record be left open.

Mayor Katz said additional written testimony could be submitted.

Disposition: Passed to Second Reading October 13, 1993 at 2:00 p.m.

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

OCTOBER 7, 1993

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 7TH DAY OF OCTOBER, 1993 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Hales and Kafoury, 3.

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

1648 TIME CERTAIN: 2:00 PM - Appeal of Far Southwest Neighborhood Association against Hearings Officer's decision to approve the application of WGAS, Inc. for an eight-lot subdivision located at SW 55th Place (Hearing; 93-00225 SU)

Discussion: Linda Meng, Chief Deputy City Attorney, outlined the procedures to be followed.

Tom McGuire, Planning Bureau, said this is an appeal of an 8-lot subdivision off SW 55th and noted the applicable approval criteria. The central issue is a variance approved by the Hearings Officer regarding the length of a cul-de-sac. The Code sets the length at 400 feet to serve no more than 18 dwelling units. This proposed subdivision would extend an existing cul-de-sac, making it 1200 feet long. The length is not at issue but the 8 new units, added to the existing 13, would exceed the 18 maximum standard. If the subdivision request were reduced to five lots, however, it will conflict with the minimum density standards also called for in Title 34. When regulations conflict, the Code states that the more restrictive regulation applies. In this case it is very clear that the minimum density regulation is much the stronger regulation, noting that the cul-de-sac language states they "shall normally" not exceed 18 units. Staff and the Hearings Officer both concurred. Additionally, services have been deemed adequate to serve eight lots and there are no physical barriers that would prevent imposition of minimum density requirements.

Mr. McGuire noted that applicant also requests five additional conditions and showed slides of the site.

Edmund L. Devereaux III, Chair of the Far Southwest Neighborhood Association, said this is not an issue of their being anti-development. The issue is whether this project meets established criteria.

Colleen Culbertson, Secretary, Far Southwest Neighborhood Association, noted that many neighbors were emotional about this project because of the clear cutting that occurred. She said the variance should be reversed and an adjustment be made to the minimum density standard, allowing only five, not eight, houses, because of severe service constraints on this property. She noted that minimum density standard can be waived while there are no such reasons given for waiving the maximum number of houses on a cul-de-sac. She said no hardship is claimed by the applicant, which is the reason for requesting a variance, and it is in the public interest to limit the number to five because of severely substandard water pressure,

OCTOBER 7, 1993

street and intersections and the severe drainage problems, their greatest concern. There is also an extreme grade problem.

Ms. Culbertson also asked for further public review of the drainage plan as they believe further studies are necessary and Lake Oswego and Clackamas County need to be contacted as well. With this developer, past performance should be taken into consideration, including his clear cutting and damage to a neighboring house. Applicant has also misled neighbors about an adjacent lot and they would like to know the connection between two different lots he owns. The neighborhood also believes the applicant should be bonded and expected to participate in off-site improvements. She also charged that a number of things the developer asked for in the preapplication conference have since disappeared and that is why they are asking for public review of the drainage.

Mayor Katz asked what disappeared.

Ms. Culbertson said Mr. Parsons owns a 2.2 acre lot supposedly for his own house and another adjacent lot adjacent which he is using to run the utilities through. The 2.2 acres cannot be developed without the access provided by the other lot and he was told in the preapplication that the lots have to be considered together. He has refused to do that and the City no longer seems to be asking him to consider the second lot which is now up for sale.

Ms. Culbertson also cited a problem with the topographical information and concern with height differences. They believe that because of the steepness of the lots the developer is wrong in stating there will be no cut and fill. They also think the project does not meet Goal 6, Transportation, because of the lack of connections.

Stan Geiger, 12425 SW 57th, contended that there had been a misrepresentation of the site by both the developer and the Planning Bureau. He said Mr. Parsons owns both the WGAS Inc., parcel and the adjoining Tax Lot 7 and argued that the proposal should be resubmitted as one integrated project as was required at the preapplication hearing. He said previous attempts to develop the uphill portion failed due to lack of sufficient water to the site. Mr. Parsons attempted to solve that by obtaining Tax Lot 7 under the pretext that he would build a home here. Since there would be no subdivision without the easement on this lot, it should be included as part of the total site plan. He noted that a lot line adjustment has been requested on the subdivision area which would add enough square footage to Tax Lot 7 to allow two houses. Not including Tax Lot 7 forces incorrect storm water drainage solutions because of the steepness of the site. He concluded by urging that the falsely separated lots be joined and this project be sent back to the Bureau for revision.

Mr. McGuire said in the preapplication process the applicant was asked to include both properties in the subdivision. Unfortunately, technically the property being subdivided is in a corporate name and Tax Lot 7 is in Mr. Parsons' name so the City cannot require that it be brought into the subdivision. Regarding access, he said it would be by easement granted by the property owner. Mr. McGuire said the

OCTOBER 7, 1993

easement does not exist today but the developer is showing that the easement can be granted.

Commissioner Hales asked if sewer service can be provided to these lots without that easement.

Mr. McGuire said no, though theoretically they could run a sewer line through the cul-de-sac and have the houses below that line pump up.

Mayor Katz confirmed that these are viewed as separate lots because of the names they are registered under and asked if that had been a planned approach to deal with this development.

Mr. McGuire said he could not answer that, adding that it is clear from the Code that for legal purposes these are under two separate ownerships.

Commissioner Hales asked if there was an aggregation requirement in the Code.

Mr. McGuire said yes but again, technically these are not owned by the same person.

Charles L. Bushey, 12424 SW 57th Ave., said he is extremely concerned about water flowing downhill onto his property and asked that Council defer its decision until a drainage impact study is submitted with substantial guarantees of protection to his property. He discussed the applicant's drainage proposal which he believes is illogical even though the Hearings Officer said it can be done. The very steep terrain and heavy clay soil should force very strict development standards. He said reducing the volume of surface water can best be done by limiting the subdivision to just four or five homes, not eight. It is also imperative that this developer post a bond to guarantee recourse for neighbors who sustain damage.

Mary Sundberg, 12444 SW 57th, expressed concern about the water runoff on her property. This concern increased when they learned that Mr. Parsons planned to subdivide Tax Lot 7. She criticized clear cutting without a permit and said the development is out of character with the rest of the neighborhood. She said they feel that this would never have happened if they had not sold Mr. Parsons Tax Lot 7 in the naive belief that he would build his own home there. The contract states that the property is primarily for construction of a residential home but they have learned that he plans to cut down 17 trees on the lot.

Sam McKean, 12633 SW 55th Place, 97219, said drainage is his overriding concern, noting the washout of gravel earlier in the year after a rainstorm. The clearcut only made the problem worse and approval should not be granted until a drainage plan is approved.

Mr. McKean read a letter from William J. Addison, 12638 SW 55th Pl., 97219, also expressing concern with drainage overflow and flooding on his property because of

OCTOBER 7, 1993

the steepness of the site and the clearcutting that occurred.

Cheryl Dexter, 12515 SW 55th Place, 97219, said her home was damaged when Mr. Parsons clear cut his property and she has since filed suit. She is also concerned with drainage and believes the plan submitted is filled with too many ifs, maybes and probables. She noted problems with Mr. Parson's development in Sylvania Heights. She also voiced concern about the amount of fill dirt that will be needed and fire safety due to the low water pressure.

Kathy Slininger, 12731 SW 55th Place, 97219, said her concerns are drainage and increased traffic and density. She described steps they have taken to deal with the drainage and erosion problems that have resulted since the clear cutting and said she does not think the measures proposed by the developer will be sufficient. She also charged that turning onto Lesser from 55th poses a dangerous traffic situation.

Kay Durschi, 2230 SW Caldew, Southwest Neighborhood Information, said the clear cut has caused major problems and the drainage problem must be addressed. She said sewage needs to be adequately taken care of, not left in a open ditch, or it will end up in the neighbors' front yards. This is a travesty that should never have happened, adding that SW 55th is one of the steepest streets in the City and a very dangerous intersection. She asked that this be returned for major revisions.

Jeff Bachrach, 1727 NW Hoyt, attorney representing WGAS, said the implication that the applicant obtained Tax Lot 7 through deceit and trickery is unfair. Lot 7 is in a different neighborhood setting among older homes and is very different from SW 55th. He said the only thing that would have happened if Lot 7 had been part of this subdivison application is that the easement required for water and storm lines is now a public easement across Lot 7. He said it was the City that wanted the easement or fee simple in order to extend water and storm drainage through Lot 7 and create a more efficient system. He said nothing would have changed in the proposal if Lot 7 had been included as part of this application; the only difference is that instead of being an easement, the City might have taken it fee simple.

Mr. Bachrach said the concerns about storm drainage were addressed during two lengthy hearings before the Hearings Officer. He read from her decision stating that the evidence in the record clearly shows that a storm water system can be provided that will ensure that this development will cause no harm to residents or property in the proposed development or surrounding neighborhood. He said the approval criteria have been satisfied and final details of the system will be approved by the Bureau of Environmental Services. Nothing in the Zoning Code requires that the technical details be subject to public review. He said changes were made by the developer in the original plan to meet legitimate concerns of City staff and the redesign is what is before Council today.

Mr. Bachrach said Council has no authority to address the technical standards in Code Section 34.070.020, citing a recent LUBA decision where it agreed with the City that this is a direction to technical staff what to require when the final is

OCTOBER 7, 1993

submitted, not a matter to be considered at a hearing. In this case BES testified during the hearings process that the preliminary storm drainage plan will work and there is a feasible solution to the concerns heard today. He explained how the drainage system for this project will work, noting that the developer is required to make fairly expensive offside improvements which will result in better storm drainage throughout the entire area. Regarding water pressure and fire safety, the applicant is being required to provide a looped water system which will improve water pressure for everyone in the area. The Fire Bureau testified earlier that they have no fire safety concerns.

Regarding the intersection with Lesser, the Hearings Officer concluded that additional traffic impacts would be so minimal that it would be unfair to ask this developer to pay for any improvements. Property owners could request an LID if the neighbors desire.

Addressing the cul-de-sac issue, Mr. Bachrach, said this is an eight lot development to begin with because of the City's strong minimum density requirement. Minimum density is a mandatory standard while the cul-de-sac requirement is discretionary. He displayed an exhibit to show that there are 13 other nearby cul-de-sacs which do not meet the Code requirements. He said there is no realistic way to do this project without the longer cul-de-sac, noting that the existing cul-de-sac is already longer than the standard. Regarding the clear cutting, Mr. Bachrach said it was done legally and the developer stopped in mid-permit to give the City an opportunity to review all their laws. He argued that the breakdown in communication was not this applicant's fault and while it is at the root of a lot of the neighbors' dismay it is not relevant to today's case.

Commissioner Hales said all the plat documents show the deviation of the western property line and asked what that meant.

Mr. Bachrach said that is a lot line adjustment which is not a part of this application. When the requirement was made to dedicate the easement across the northern strip of Lot 7 in order to maintain sufficient acreage for that parcel there was compensation with a lot line adjustment. The lot line adjustment compensates for the easement the developer had to give and has been approved.

Commissioner Hales asked if the parcel now under review does not include that sliver of land.

Mr. McGuire said the sliver is technically owned by WGAS but the plat as drawn specifically excludes it. If the lot line adjustment is complete, that sliver has now been removed from WGAS ownership.

Commissioner Hales asked whether the shape of the parcel included removal of the sliver when this went to the Hearings Officer.

OCTOBER 7, 1993

Mr. McGuire said yes, the final configuration after the lot line adjustment was anticipated in the preliminary plat.

Commissioner Hales asked whether the sliver was included when the subdivision was applied for.

Mr. McGuire said the sliver was excluded from the lots to be created although technically it was still part of the ownership and would still be under this subdivision review.

Commissioner Hales said he did not understand.

Mr. Bachrach said because the sliver was owned by WGAS it had to be included as part of the aggregation requirement. But the application also indicated that it was not intended to be part of the final subdivision but rather conveyed as part of a lot line adjustment to Lot 7. It was not needed for density purposes.

Commissioner Hales asked why the aggregation requirement did not apply to Lot 7 but would apply to the sliver, both of which are under the corporate ownership of WGAS. He asked if conveyance of that sliver to whoever owns Lot 7 provide sufficient land area to allow Lot 7 to be subdivided.

Mr. McGuire said it would. He added that had the lot line adjustment not been approved, the sliver would essentially be the same thing as a tract A private street or open space because it is an unbuildable piece of property.

In rebuttal, Ms. Culbertson said including Tax Lot 7 would have made a substantive difference in the outcome. She said the developer needs Tax Lot 7 to develop this property and it makes no sense to say that the sliver was needed for the easement because it does not add any property to the area. Three City bureaus asked for a right-of-way but because of pressure this became an easement. The neighbors are asking for a right-of-way which would affect the lot lines. She said at the last hearing the latest plans had not been reviewed and there was no mention in the record of massive improvements on 55th or for improvements of drainage on 57th. Bringing Tax Lot 7 into the picture would have forced that discussion. The applicant is not paying for off-site water improvements, rather it is the City and the tax payer who is paying for them. She said she is confused about the difference in standards or the legal game that is being played with them.

Mr. Geiger said the project has changed before their eyes with Mr. Bachrach's testimony that the easement is for storm water drainage. He said there is no provision or easement for storm water at the 57th cul-de-sac and that is why it is important to include Tax Lot 7.

Mr. Bachrach said Mr. Geiger is right, there is no storm drainage; the easement is for sewer or water only.

OCTOBER 7, 1993

Bill Baechler, Bureau of Environmental Services, said he reviewed the submittals for storm drainage and concluded that the improvements are necessary to make it adequate. He said 55th Ave. was annexed and has never been improved to public standards. He added that the plans will be submitted for review.

Commissioner Hales said legally this is an appeal of a preliminary plat approval based on land use standards and the question is are the services adequate or could they be made adequate. The technical compliance with the standard must come after the land use approval. The applicant does not have to complete the nth level of technical work to meet the standard. All that has to be known is that it can be done with proper engineering.

Mayor Katz asked Mr. Baechler if he thought it could be done.

Mr. Baechler said yes, it would require both storm sewers and improvement of the ditches. The Bureau will review improvements to the existing ditches to see if they can be made adequate as an element of that system.

Commissioner Hales asked what he assumed to be possible for storm sewer improvements for that portion of the development which is neither on the street or the easement.

Mr. Baechler said as long as the majority of the impervious areas can be piped into the street storm sewer system, what is left can be dealt with onsite.

Mayor Katz said BES has approved previous projects and some of them have failed so her confidence is not high. She asked if the City could legally make an additional requirement that a plan be reviewed in a public forum, such as Council, before approval is granted because of the problems in this particular geographic area.

Ms. Meng said additional approval criteria cannot be added on an ad hoc basis. The decision to be made is whether the proposal meets the criteria in the Code.

Commissioner Hales asked Mr. Baechler if storm drainage facilities could be built to serve eight lots.

Mr. Baechler said yes.

Mayor Katz said without these legal constraints she would recommend quite another action. She said if our standards are not sufficient to deal with the topography of that area she feels terribly frustrated.

Mr. Baechler said because 55th Avenue is unimproved, drainage is very difficult to control. The street itself is part of the drainage system and without a fully developed street, the water just goes where it goes.

Regarding the lot line issue, Commissioner Hales said he finds no basis to try to

OCTOBER 7, 1993

reduce the number of lots from eight to five based on drainage although there is clearly a problem. Vigilance will be needed to avoid creating a Sylvania Heights situation with this development. He said he is grumpy about facilitating this subdivision by blessing the creation of two lots out of one on Tax Lot 7. He said excluding the sliver sets in motion the ability of WGAS, Inc. to convey that property to someone else, thus providing enough land area to subdivide Tax Lot 7 into two lots. He asked if a condition could be added requiring a lot line adjustment to be a straight north/south line that includes the sliver in the subdivision.

Ms. Meng said lot line adjustment has been allowed as part of a separate process and she cannot think of any approval criteria that could be applied to undo that. The adjustment moved the lot line so the ownership has now shifted from the corporation to Mr. Parson.

Ms. Culbertson said there was no notice to neighbors about the lot line adjustment.

Mayor Katz said she would like more certainty about the adjustment because it is significant in terms of the ability to subdivide another lot.

Mr. McGuire said a lot line adjustment is an administrative decision and does not require notice.

Commissioner Hales said he would like to set this over and have staff do some research rather than assume changing the lot line is foreclosed or attempt to impose a condition which turns out to be unenforceable.

Commissioner Kafoury said she thinks the density requirement supercedes the cul-de-sac regulations.

Mayor Katz and Commissioner Hales agreed. Mayor Katz said she is concerned about the sliver and whether staff knew that Tax Lot 7 would be subdivided if the lot line adjustment was approved. She said a red flag goes up for her when the same people own it but under different titles and she needs a better answer. She asked if Council could require a bond.

Ms. Meng said the Code obligates the developer to provide a performance guarantee for the improvements that have to be made.

Commissioner Kafoury said she thought staff said a condition for a bond could be added.

Mayor Katz said she would like to add that condition if possible.

Commissioner Kafoury said she would support additional bonding.

Commissioner Hales moved to set this over to November 3.

OCTOBER 7, 1993

Mr. Bachrach asked if the record was open.

Commissioner Hales said the hearing is continued so the record is left open.

Disposition: Continued to November 3, 1993 at 2:00 p.m.

REGULAR AGENDA

Commissioner Gretchen Kafoury

1649 Liquor license application for Nu Tran, dba How R You, 4806 SE Stark Street, restaurant liquor license (new outlet); favorable recommendation (Previous agenda 1634)

Discussion: Cay Kershner, Clerk of the Council, said a one week's continuance has been requested.

Disposition: Continued to October 14, 1993 at 2:00 p.m.

At 3:45 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council