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CITY OF  
**PORTLAND, OREGON**

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OFFICIAL  
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 25TH DAY OF JANUARY, 1995 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Ben Walters, Deputy City Attorney; and Joe Mitchum, Sergeant at Arms.

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

**CONSENT AGENDA - NO DISCUSSION**

- 70** Cash investment balances for December 15, 1994 through January 11, 1995 (Report; Treasurer)

**Disposition:** Placed on File.

- 71** Accept bid of Oregon Fire Equipment Co., Ltd. for turnout coats and pants for \$109,902 annually for two years (Purchasing Report - Bid 74-A)

**Disposition:** Accepted; prepare contract.

- 72** Accept bid of James W. Fowler Co. for Parkrose sanitary sewer for \$4,948,785 (Purchasing Report - Bid 76)

**Disposition:** Accepted; prepare contract.

- 73** Accept bid of Copenhagen Utilities & Construction for NE Multnomah Street lighting project for \$1,283,362 (Purchasing Report - Bid 79)

**Disposition:** Accepted; prepare contract.

**Mayor Vera Katz**

- \*74** Agreement with Multnomah County District Attorney's Office for child abuse multidisciplinary intervention (Ordinance)

**Disposition:** Ordinance No. 168452. (Y-5)

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- \*75** Intergovernmental Agreement with Oregon State Police for Multi-Agency DUII enforcement (Ordinance)

**Disposition:** Ordinance No. 168453. (Y-5)

- \*76** Agreement with the Bureau of Alcohol, Tobacco and Firearms to reimburse overtime for Portland Achilles Task Force (Ordinance)

**Disposition:** Ordinance No. 168454. (Y-5)

- \*77** Authorize disbursement of City money in connection with forfeiture of property at 1611 NE Siskiyou Street, declare forfeited property to be surplus and authorize its sale and conveyance (Ordinance)

**Disposition:** Ordinance No. 168455. (Y-5)

- \*78** Authorize agreement with Toyota Motor Sales, USA, Inc. for a license to use a site to make inspections of commercial motor vehicles (Ordinance)

**Disposition:** Ordinance No. 168456. (Y-5)

**Commissioner Earl Blumenauer**

- \*79** Agreement between the State and the City for cooperative assistance during snow and ice operations (Ordinance)

**Disposition:** Ordinance No. 168457. (Y-5)

**Commissioner Charlie Hales**

- \*80** Accept a \$40,704 grant from the State of Oregon for construction of a playground and park lighting at Ed Benedict Park (Ordinance)

**Disposition:** Ordinance No. 168458. (Y-5)

**Commissioner Gretchen Kafoury**

- \*81** Amend Title 29 to lower housing code enforcement fees for some vacant buildings, revise definitions and correct typographical errors (Ordinance; amend Code Chapters 29.10 and 29.70)

**Disposition:** Ordinance No. 168459. (Y-5)

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- \*82** Declare surplus, accept sale agreement and convey property at SE 64th Avenue east of Division Street (Ordinance)

**Disposition:** Ordinance No. 168460. (Y-5)

**Commissioner Mike Lindberg**

- 83** Accept completion of the Vancouver Basin CSO Sump Unit 3 construction project and authorize final payment to Moore Excavation, Inc. (Report; Contract No. 29465)

**Disposition:** Accepted.

- \*84** Contract with GTE Mobilnet of Oregon Limited Partnership for a portion of the Vernon Tank site for a monthly fee and other consideration (Ordinance)

**Disposition:** Ordinance No. 168461. (Y-5)

- \*85** Authorize and accept an earnest money agreement and convey Water Bureau property at SE 63rd Avenue and Division Street to Larry H. Draper (Ordinance)

**Disposition:** Ordinance No. 168462. (Y-5)

**REGULAR AGENDA**

- 66** **TIME CERTAIN: 9:30 AM** - Endorse the Cheap and Skinny Streets Program and direct implementation of a pilot project in Brentwood-Darlington and expansion to other neighborhoods (Resolution introduced by Commissioner Blumenauer)

**Discussion:** Commissioner Blumenauer said the cheap and skinny streets program allows the City to go into partnership with a neighborhood that was long an orphan, ignored by the County and the City. Now there is an opportunity to provide streets and sidewalks at half the normal \$10,000 cost of a Local Improvement District (LID) because of the sewer work already going on there. There is also some possibility of further subsidy from Housing and Community Development funds, bringing the cost down to an average of \$1,700.

Andre' Baugh, Bureau of Transportation Engineering, described the program components and the pilot project with Brentwood Darlington. Components include a guaranteed \$1,700 cost for a 5,000-square-foot lot, a 20-foot wide street, five-foot sidewalks on both sides of the street, street lights, trees, driveways and street drainage. Customers may choose other options regarding street widths, driveway extensions and

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landscaping, but without subsidies. At the core this is still an LID and a majority of residents must agree to the project, which would improve 40 square blocks. He said extensive use has been made of volunteers to get the word out.

Tanya Collier, Multnomah County Board of Commissioners, said it is rewarding to see all this work in an area that has been ignored for too long. This will help strengthen the neighborhood and fits in perfectly with the planned community center and park improvements. She described some of the services planned for the new center.

Jim Peshcka, President, Brentwood Darlington Neighborhood Association, said this is one of the best examples of better and smarter government, combining a multitude of projects. A lot of people in the area have long wanted sidewalks and streets and are no longer willing to be forgotten. Pride in the neighborhood has increased while crime has decreased, easing fears of residents about getting out of their homes. The street configuration will slow traffic and this project will tie everything together. He noted that unlike the mandated Mid-County sewer project, where the cost went higher and higher, this project has a guaranteed cost which makes it much easier to sell.

Tom Gruenfeld, President, SE Uplift, said the Board has not reviewed this but the Executive Committee wholeheartedly supports it. This particular project is of great interest because it is the kind of thing neighborhood associations can do best, developing leaders who can gain support for such programs in areas that need help.

Nick Sauvie, Community Development, 7455 SE 52nd, 97206, said unfortunately when someone comes to this neighborhood what they see now are rutted and unpaved streets which does not reflect what is actually going on here. Doing all the improvements at the same time makes sense and everyone can clearly see the benefits that come from improving streets. This project also supports housing improvements and the work of the safety action team.

Ginny Peckinpugh, 4862 SE 63rd, 97206, Rose Community Development, said this will transform the neighborhood and build trust in government. The outreach involved will also allow them to inform people about home improvement loans and other available programs.

Mary Davis, Vice President, Brentwood Darlington Neighborhood Association, said outer City neighborhoods are now getting the word that the City is serious about dealing with safety and transportation issues. She said this is a neighborhood that is tremendously interested in safety.

Mayor Katz said the demographics are still somewhat disturbing.

Commissioner Blumenauer said there are hundreds of housing opportunities for moderate income families and a real opportunity for improving livability.

**Disposition:** Resolution No. 35360. (Y-5)

86

Request to address Council regarding City bureau processes  
(Communication)

**Discussion:** Fay Shon, 3921 SW Sweetbriar Dr., said she needs to relocate her driveway to accommodate an uphill neighbor and, while not at all reluctant to do so, the question is where. The neighbors directly across her graveled street have unlawfully appropriated the entire right-of-way by erecting unpermitted fencing, barriers and landscaping. She described frustrating and unresolved efforts to resolve the situation with Transportation staff, the City Attorney and Commissioner Blumenauer. She asked for an immediate review by the City Attorney.

Mayor Katz asked her to contact Michael Mills, the City Ombudsman, since the City Attorney is under her jurisdiction, to see if they can get to some resolution.

Don Gardner, Office of Transportation, said the information he received is that Ms. Shon's driveway appears to encroach on an adjacent property. He said their staff person discussed with Ms. Shon how she could change her driveway and then began receiving letters from neighbors complaining about Ms. Shon driving over their property. He described the street configuration, noting that three homes have access, and there appears to be a property dispute among abutting owners. He said Transportation sent a letter to them that said if there is a problem and if Ms. Shon needs to realign her driveway, staff will return to them about what adjustments may be needed. The neighbors did not object to that and what they are now waiting for Ms. Shon to tell them what she wants to do, adding that in their view it works as it is or, if something needs to be done, another three feet of asphalt or concrete added to the side would take care of the problem.

Vic Deedy, attorney representing Ms. Shon, said he met with City officials several times, including Mr. Johnson, the Supervisor in Transportation, who failed to take care of the problems as promised. First, he promised that the barrier, which very seriously impedes emergency vehicles, would be removed. He also stated the people downhill who built barriers on the road would be dealt with. Ms. Shon's driveway does not cross any property but her own and the Police have

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cited her neighbors for obstructing her driveway. There has been no response either from the City Attorney even after being referred there by Commissioner Blumenauer.

Mayor Katz asked her to meet with the Ombudsman.

Commissioner Kafoury said neighborhood mediation might be the answer in this case also.

**Disposition:** Referred to Commissioner of Finance and Administration.

**Commissioner Gretchen Kafoury**

- \*87 Authorize Restated City Agreement with United States National Bank of Oregon regarding Portland Community Reinvestment Initiatives, Inc. (Previous Agenda 48)

**Disposition:** Continued to February 1, 1995 at 9:30 a.m.

- \*88 Authorize amended Indemnification and Reimbursement Agreement with Portland Community Reinvestment Initiatives, Inc. (Previous Agenda 49)

**Disposition:** Continued to February 1, 1995 at 9:30 a.m.

**Commissioner Mike Lindberg**

- 89 Establish an Advisory Committee to examine the final transfer and consolidation of certain City of Portland facilities at Metro (Previous Agenda 61)

**Discussion:** Commissioner Lindberg said in 1989 a package of City facilities was turned over to the Metro Exposition and Recreation Commission for management and everyone is aware there are significant financial challenges facing those facilities. They were turned over because these facilities were viewed as a regional resource, drawing from a regional audience. He believes that is still the case but, unfortunately, a financial solution has not emerged, particularly since transfer of the Coliseum to the Oregon Arena Corporation, which had a significant profit which was used to help fund the other facilities. The City never reached closure with Metro on operation and ownership issues. This resolution represents efforts to resolve these issues and Metro has already passed a similar one. The City's differs only in asking for an earlier start date so the committee results can be used in the City's next two-year budget process. He said this will be an open process involving all the constituent user groups. He said two City Council members will serve on the committee and volunteered to be one

of them. He said the City wanted to add members from the Regional Arts and Cultures Council but Metro objected, adding that it is probably better to have elected officials be members and then reach out to the other constituencies. He moved to strike inclusions of those two members from the resolution. Commissioner Hales seconded.

Hearing no objections, Mayor Katz so ordered.

Mayor Katz said if no one other than Commissioner Lindberg volunteers to serve, she will appoint the other member.

Commissioner Lindberg said this will be the opportunity to resolve some of the funding and other issues that have gone on year after year.

**Disposition:** Resolution No. 35361 as amended. (Y-5)

**City Auditor Barbara Clark**

**90** Assess property for sewer system development charges through December, 1994 (Hearing; Ordinance; Z0593 through Z0595)

**Discussion:** Dan Vizzini, Auditor's Office, said no written remonstrances have been received to this group of assessments.

**Disposition:** Passed to Second Reading February 1, 1995 at 9:30 a.m.

At 10:30 a.m., Council adjourned, reconvening at 11 a.m.

**\*67** **TIME CERTAIN: 11:00 AM** - Authorize issuance of a blasting permit to Frontier/Traylor, Tri-Met J.V. (contractor/permittee) for construction of the Westside Light Rail (Tri-met Contract WCO500, 93-0561B) tunnels and cross-passages (Ordinance introduced by Commissioner Blumenauer)

**Discussion:** Commissioner Blumenauer said that Attachment C should be included as part of Agenda Items 67 and 68. Noting that this is the largest public works project in the history of the community, he said the West end of the project is on track. No blasting is anticipated to date on the East end although there may be a request to modify the existing permit if blasting proves necessary there. He complimented the technical staff and the community for their work in trying to resolve some of the issues involved in a difficult project.

Karen Rabiner, Office of Transportation, City Project Manager for Westside Light Rail, said these permits will allow blasting in the two three-mile tunnels and the Washington Park Station shaft and cavern. She described the route and the configuration of the tunnel which is

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divided into three segments, or reaches, depending on the geology of the area and the method of construction. Tri-Met is requesting permits to blast 24 hours a day in a number of areas in order to create the tunnels, elevator shafts, the underground station cavern and crossings. Because of the geography in the East portal, Tri-Met is also requesting a permit to extend the starter tunnel from 435 to 1200 feet. Based on input from the public and the Corps of Engineers, the City has drafted permits with a number of conditions placing limits on blasting hours, as well as noise and vibration limits. A process to oversee the permits and respond to complaints has also been recommended.

Ms. Rabiner described the number of hours blasting will be allowed in the different areas of the project and outlined the limits set for noise and vibration levels. To help the City Engineer oversee the permit terms, a special hearings officer, Kerrie Standlee, will be appointed to settle the disputes about appropriate vibration monitoring procedures. He will also be asked to monitor the effectiveness of the mitigation program, hear complaints and gather evidence as to whether citizens are experiencing unreasonable impacts. He will be able to change the terms of the permit, including imposing a moratorium on nighttime blasting if necessary.

Mayor Katz asked if citizens had reviewed the selection of the Hearings Officer.

Ms. Rabiner said some neighbors knew but many probably have not heard until today.

Joe Gildner, Assistant Resident Engineer for the tunnel, focused on the mining activities for the tunnels and Washington Park station, including the work sequence, expected impacts, quality control and monitoring programs, and mitigation options for impacted neighborhoods. He said Tri-Met has received permits from the City Noise Officer for all the surface work.

Mr. Gildner said they expect the tunnel to encroach into the City this Spring and plan to do between six to eight detonations in the two running tunnels over a 24 hour period. They still are confident that "Bore-regard", the boring machine, can do the work as it has been reconfigured to adjust to geographic conditions. He described how it would be used, adding that its recent performance has averaged one foot an hour which is very encouraging. He explained the detonation work involved in excavating the two elevator shafts at the Washington Park Station and the expected impacts. He said the contractor had an excellent record in controlled blasting but, because of ground conditions, has had to continually refine his efforts while minimizing ground vibrations. Despite their best efforts, Tri-Met acknowledges that some



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people were negatively impacted and, in response, has developed monitoring and mitigation programs. He noted an ongoing disagreement about the way Tri-Met measures ground borne vibrations, adding that the procedures used are based on guidelines suggested by their consultant. He said they have very strict vibration standards, 400 percent below the equivalent standards recommended by the Bureau of Mines. The Corps of Engineers has reviewed their procedures and indicated that proper techniques are being used for measuring ground borne vibrations. Since Tri-Met understands some homeowners still disagree with these procedures, it is committed to work with the special hearings officer to put this issue to rest. They are also monitoring animal behavior at the Washington Park zoo to assess the potential impacts of the vibrations.

Mayor Katz asked what the mitigation for animals would be if there are problems.

Mr. Gildner said some animals may need to be relocated or the detonations might possibly be reconfigured although they expect less of an impact because of the depth at which they are blasting.

Regarding mitigation, Mr. Gildner said the goal is to avoid high levels of noise and vibration or causing unreasonable sleep deprivation. Tri-Met has started an outreach program to meet with residents ahead of time and explain what to expect. Temporary substitute housing will also be available on demand and, in addition, they are providing volunteer construction agreements whereby the property owner will waive a claim except for physical damage as a result of blasting. This gives Tri-Met an opportunity to tailor mitigation to individual properties.

Tom Walsh, General Manager, Tri-Met, said despite problems with "Bore-regard", Tri-Met remains on schedule and expects to finish the project by the fall of 1998 within budget. The decision to construct a tunnel was the right choice but a risky one as tunnels are far more art than science. However, the risks are manageable. While blasting impacts on residents are undeniably severe in some instances, the mitigation efforts are reasonable and unprecedented. He described the consequences of limiting blasting hours in terms of time and additional cost, estimating a 9-week extension and a \$10 million additional cost if blasting was cut from 24 to 18 hours. He asked for approval of this permit.

Mayor Katz asked how costly "Bore-regard's" delay was and if it can be made up.

Mr. Walsh said changes to that contract are about \$16 million and they estimate additional change orders will exceed another \$20 million.

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Total cost of the tunnel was originally \$103 million and is now estimated to be in excess of \$140 million. That sum cannot be recovered but adequate project contingencies have been built so that other project segments do not have to be changed. The schedule in the east portal is 10 months behind but they expect to recover five of those 10 months. They have not given up the hope of recovering the other five months through a change in excavation methods or sequencing.

George Van Lanen, 1712 SW Highland Parkway, 97221, said it now appears the neighbors and Tri-Met are far more willing to compromise and get the project finished in a way mutually satisfactory to both. He said one concern has been the geology, especially with "Bore-regard" and Tri-Met is using that to come down and ask for additional permits. He said if blasting becomes an issue again they will all return to Council as the neighborhood is determined that this project be run in a manner it can live with.

Kent Layden, 1650 SW Highland Parkway, said neighbors recommended to Tri-Met, after hearing about the experiences of Washington County residents, certain amendments to the blasting permits. These have been added and they now believe this is workable and livable for the neighbors. They have confidence in the hearings officer and his ability to make judgments that will satisfy neighbors and provide accurate information. If the conditions are not acceptable the neighbors will be back in full force.

Norm Winningstad, 1517 SW 66th, 97225, said his neighbors completely support Tri-Met's objectives but not at the cost of four months of hell. He questioned the accuracy of Tri-Met's information, contending that they ignore knowledgeable comments made in public hearings about technical matters and rely too much on their experts. He said, to confirm his belief that their measurements were wrong, he had to hire a Ph.D to match Tri-Met's. His Ph.D came up with measurements to show that Tri-Met was not in compliance by almost a factor of four. He said Tri-Met should discuss what people feel, not what sheetrock feels. He said he is outraged by their obfuscation and would like to get together with the independent committee as no one else is listening.

Mayor Katz said she hopes the hearings officer will help with such complaints and that this will be a mechanism the community feels comfortable with.

Mr. Layden said he too hired an expert at his expense to review the data and does not disagree with Mr. Winningstad about his past experience. However, he now believes they have reached an understanding on the technical measurements and is confident that the hearings officer will be able to make a judgment everyone can live with.

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Mitch Olejko, 1680 SW Highland, 97221, said Tri-Met did change their plans in response to community concerns and has also agreed to allow the hearings officer to seek independent advice on blasting issues, including measurement. He said the tunnel was and continues to be the right decision, adding that it was too bad Washington County did not have a comparable process to what is being proposed here. He said they are willing to absorb temporary inconvenience and adverse impacts in order to preserve the Canyon.

Jim Milne, construction engineer, supported the tunnel project and complimented Mr. Walsh for his leadership and awareness of the conflicting interests. He said this is a very risky, complex kind of construction and problems are part of the cost of taking major steps to improve the community.

Carla Waltman, 6525 SW Canyon Court, Round Hills Condo Association, described the adverse effect of the blasting on her and asked that the blasting permit not be granted but rather that a governing committee be formed to hear complaints so that citizens will not go through what Round Hills residents were forced to go through because of Tri-Met's negligence. She said she considers the impact to be a taking because she cannot work in her residence and has had to relocate. She said she believes Tri-Met will bend every legal rule it can unless there is a checkpoint process.

Chuck Weise, President, Round Hills Condo Association, said he agrees 100 percent with Mr. Winningstad about the incorrect measurements Tri-Met used. He said Tri-Met may talk about how careful it is about citizens but condo association residents were left out of the process from Day One. He said Tri-Met's "expert" told the Washington County hearings officer that condo residents would not even know Tri-Met was underneath them. He said in addition to the human element, there has been extensive property damage, including broken water pipes, cracks, loss of electrical power, etc., due to the constant vibration. He said Council should consider this in deciding how it will proceed with the people affected in Multnomah County.

Jonathan Ater, 1612 SW Upland Dr., 97221, Citizens for the Canyon, said the tunnel is the right decision although everyone sympathizes with those disturbed by the blasting. While what has happened in the past cannot be changed, they believe Tri-Met has been very responsive to citizens in recent months and recommend granting the permit.

Kristen Kayden, 1722 SW Highland Parkway, said she supports the tunnel but was told some time ago by Tri-Met that she would feel nothing from the blasting beneath her home. They also agreed to videotape the inside of her home to show any damage, if it should occur.

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However, they have not yet contacted her and she wants them to be held accountable.

Commissioner Blumenauer said no one denies there have been problems but what is before Council today is a permit and a process to give everyone confidence that they will be treated properly. He said he cannot speak for the process in Washington County but in this case Tri-Met has stated what they are willing to do and the City is providing a process with built-in protections and a technically-skilled hearings officer for resolving disputes. He said even those who do not live in the City can come back if this falls short of the mark.

Jeanette Doherty, 1934 SW Highland Rd., asked if the elevator shafts could be blasted in another way to cut down the blasting time. She said she declined ODOT's offer to videotape her house because the tape becomes a public record, open to all.

Kerrie Standlee, Special Hearings Officer, said it has been his experience, as a consultant to Washington County, that once Tri-Met learned of a problem they did a good job of addressing it. He said he will meet with both the Tri-Met and the citizens' blasting experts to establish a monitoring procedure as two different procedures are currently being used, resulting in different data which clouds the issue. He said most concerns can be taken care of, although some people may be more sensitive and need to accept one of Tri-Met's mitigation offers.

Commissioner Lindberg said it sounds like the complaint process has not been perfect as he has heard stories about unreturned phone calls and slow response times.

Mr. Stanley said some of that was due to a jurisdictional problem because some affected citizens in Washington County had no one to take their concerns to. In this case, the City has jurisdiction and a mechanism to address them.

Mayor Katz told him if he finds there is no response, he should not be shy about coming to Council.

Commissioner Lindberg asked for clarification about the dueling experts in terms of sound and vibrations. Did Tri-Met respond and change its monitoring?

Mr. Gildner said they have been exchanging information with the neighbors' consultant but there is a fundamental difference about where to place the measurement instruments. They expect to focus on that with the hearings officer and are running additional field experiments to respond to the concerns raised by the consultant and neighbors to

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make sure they are using the right methods for measuring ground vibrations. They hope to come to agreement on the steps involved in placing the instruments.

Mayor Katz said she assumes the hearings officer will have the opportunity to hear the experts on both sides of this discussion.

Ms. Rabiner said yes, they hope to get all the experts together in the same room. Tri-Met will agree with what the hearings officer decides is proper.

**Disposition:** Ordinance No. 168463. (Y-5)

- \*68** Authorize issuance of a blasting permit to Frontier/Traylor, Tri-Met J.V. (contractor/permittee) for construction of the Westside Light Rail (Tri-Met Contract WCO500, 93-0561B) Washington Park shafts and station cavern (Ordinance introduced by Commissioner Blumenauer)

**Disposition:** Ordinance No. 168464. (Y-5)

- \*69** Authorize modification of blasting permit to Frontier/Traylor, Tri-Met J.V. for construction of the starter tunnels as part of the Westside Light Rail tunnel project, Contract WCO500 (Ordinance introduced by Commissioner Blumenauer; amend Ordinance No. 167683)

**Disposition:** Ordinance No. 168465. (Y-5)

At 12:40 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 25TH DAY OF JANUARY, 1995 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

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

**91**      **TIME CERTAIN: 2:00 PM** - Appeal of Norway Development Company against Hearings Officer's decision to impose certain conditions in approving application for a zone change to remove a portion of the environmental conservation zone from Phase Two of the Springbrook Subdivision (Hearing; 94-00456 ZC)

**Discussion:** Ruth Spetter, Deputy City Attorney, outlined hearing and appellate procedures.

Al Burns, Planning Bureau, said this is an appeal of a zone change in an environmental conservation overlay zone where the applicant argues that the reason for applying the zone in the first place either no longer exists or has been addressed by some other means. The applicant also contends that the same criteria that govern the original adoption of the Environmental Conservation Zone also have to govern any changes in the Zone. Mr. Burns said the Springbrook Subdivision was in two phases, with Phase I being completed before environmental zones were placed in this area. Between the time Phase II received tentative approval and final approval, the East Buttes and Wetlands Environmental Zones were then placed on the site. The Hearings Officer and staff found in a portion of Springbrook II the resource was lawfully removed as permits to build roads and construct utilities had been granted before the effective date of the environmental zones. Thus, the Hearings Officer found there was no longer a need to apply the conservation zone to an area where no resources existed. However, she found that the resource still existed around the edges and that protection of this area needed to be addressed by other means. The Hearings Officer determined that without the zone change all but three lots would have to go through Type II environmental review. Mr. Burns said the usual rule for measuring environmental zones was used, with 25 feet measured in from each side of the narrow strips at the edge of the lots being designated a transition area, rather than a resource area. However, since such transition areas would have no standards to protect trees this would amount to no protection at all, the Hearings Officer placed a condition of approval stating that any work in the shaded area (see Exhibit H-5) must go through Type II administrative

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review and any approval criteria that apply to the resource area of an environmental conservation zone would apply in these areas. That assures that the narrow strip will receive some protection.

Mr. Burns stated the applicable approval criteria and showed slides of the site. He said Mr. Cox will argue that environmental zones never should have been applied to this subdivision in the first place but the City's position is that the opportunity to appeal the East Buttes Protection Plan has passed. The other basis of the appeal is the belief that the protection provided by the Hearings Officer is too extreme.

William Cox, 0244 SW California, attorney representing Norway Development owned by Carl Coffman, showed a picture of the East Buttes and Terraces Conservation Plan (Exhibits A and B) inventory which included the subdivision property and compared it to a picture taken six months earlier. He said the picture taken later shows none of the houses, streets or construction activity that had already taken place. Nevertheless, an Environmental Conservation (EC) overlay was placed on it. He said the inventory was to have included a conflict resolution process, which never took place, as evidenced by Resource Site 135. He said the owner should never have tried to go into this process in the first place as Phase I was already done and Phase II already had the streets in place. None of that was identified in the inventory. He said they tried very hard to work with City staff so that the builder does not have to go through a lot-by-lot EC review, at a cost of about \$2,000 per lot. They understood that the dark areas shown on the map would include the EC zone but every EC zone calls for a transition zone on it. He said the Hearings Officer has basically amended the Code in a quasi-judicial, rather than a legislative, process by stating that there is no transition zone on this property. The result is that while builders may not have to get EC reviews for each house print, every purchaser must do so in order to put in a fence or backyard swing set. Anyone who does not go through that is a criminal. If the Hearings Officer had left this as an EC zone and not stated that the transition zone will not be effective, the applicants would have been happy but now, in effect, they have a single family residential subdivision where people are unable to put up fences in their backyards. He stressed again that no conflict resolution was offered when the EC zone was placed on the property.

Mike Reichenbach, arborist, 4422 Norfolk Street, West Linn, said he visited the site three times and did an overview, noting that there were several decay organisms present in the trees that would increase the risk of their failure. Some are in the EC zone and some are not. He said as trees are removed for building sites, the remaining trees will be subject to increased risk because of the increased winds. He said the result could well be that there would be no resource left to protect.

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Carl Coffman, Norway Development, showed photographs of some of the trees Mr. Reichenbach described. He said this development was designed and created before any EC zone was considered, adding that not all trees were removed, only those needed in order to build the streets and put in the utilities. He noted market demand for treed lots. He said what they object to is having to get permission from someone in the Planning Bureau to build a fence in the backyard and do not believe it is appropriate to force people to go through a \$2,000 review process to do so. Nor should people have to risk having trees fall on their houses. He said when the conservation plan was discussed in July 1994, they had 39 approved and platted lots in Phase I and one in Phase II but never received any notification about the zone overlay. He only learned about it from another builder.

Ella Nimz, 1601 NE 156th, said this process has delayed her family's ability to build a home on the lot they bought, for which they paid a higher than normal price because of the trees. She said they have no intention of cutting any more trees than necessary but because of the proximity to the train, they need a fence to protect their children. The previous neighbors managed to have fences and trees and they should be trusted to do the same.

Mark Nimz, 1601 NE 156th, said a number of trees have already fallen and others are unsafe. However, their intention is to save as many as possible.

Bill Betai, 9828 E. Burnside, Suite 200, said this is a good development, particularly in East Portland where good middle-income housing is needed. He questioned why environmental zoning would be imposed on individual property owners after the building permits were issued. He asked for elimination of the EC zones.

Warren Schumacher, 12117 SE Stevens Court, 97266, said he is a real estate broker who has lost sales in Springbrook because people do not want to go through the expense or hassle of the \$2,000 process in order to put a gazebo or swing set in their backyards. Noting that the railroad runs on two sides of the property, he argued that this strip has been singled out unnecessarily and unfairly.

Kevin Nielsen, Leland D. Nielson Construction, 8000 NE Parkway Dr., Suite 300, Vancouver, WA, 98662, said they see the goal of the EC zone as attempting to preserve as much natural foliage as safely possible when constructing a personal residence. The current criteria is cost prohibitive and untimely, as it takes between eight to 12 weeks at least to get an EC permit to allow them to do what they would do anyway. He said they are currently building the three homes in Phase II that are out of the EC zone and on each one they have excavated to the minimal



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degree possible for safety to preserve the trees. Potential home purchasers have without fail said they want to preserve as many of the large trees as possible. His company is also concerned about who is responsible for any damage an unstable tree might cause if the City, by virtue of the EC zone, takes away their ability to safely build.

Ward Harter, Harter Custom Builders, 1491 SW Lillyben Ave., Gresham, 97080, said he is the owner of Lot 54 which independently went through EC review and hopes this situation does not scare off prospective buyers as he understands that houses that cannot be fenced do not sell. He expressed concern about leaving trees which are considered unsafe on the property.

Pat Speer, Kelly Speer Homes, 540 SE 119th, 97216, said he was the unlucky builder who found out he was in an EC zone during Phase I when he came down to get a permit. He said he received no notice of the EC zone on that lot or two others. He was also the unlucky builder who had to go through the first EC zone in Phase II. He said developers know the public wants trees and will save every tree they can even without the overlay. Going through the review process is very expensive and time consuming, creating hardships for individual buyers.

Commissioner Blumenauer asked why he went through the review process.

Mr. Nielson said in order to get the primarily building permit.

Mayor Katz asked if he received notification.

Mr. Nielson said no.

Alice Blatt, 15231 NE Holladay, 97230, representing the Wilkes Community Group, said neighbors on the periphery of Springbrook contacted them with concern about what the developer is claiming, that much of the resource is gone so why bother with the rest. Some even state that they are moving because when they bought here they were assured this wetland area would be protected. She described the area and contended that the first developer had desecrated the area by removing a large number of valuable trees. However, after he left, the second developer showed a valid understanding of the resources.

Ms. Blatt said the south end has been a wonderful, wooded resource next to the freeway and they are not pushing to protect dead trees, merely to protect the remains of a highly-impacted resource, including a designated wetland where mitigation is needed. The developer is asking the neighbors to accept on faith that he will protect the values that still remain even though the wetland was not protected. In 1989, before Mr.

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Coffman bought this property, the north 10 acres was designated as wetland and criteria were set for maintaining the streams on either side. To this day, these conditions have not been satisfactorily fulfilled and that is why the neighbors do not have faith that the developer will save the trees and protect the resource. She described a meeting she attended with the developers and property owners in Phase I where she observed the extreme resistance of property owners to fulfill any of the criteria -- they had either no knowledge of the resource or did not care and resented the wetland vegetation requirements.

Ms. Blatt said the Wilkes Community Group board voted unanimously to ask the City to retain the EC zone on this property and disagrees that the reason for applying it no longer exists. Because a large percentage of the upland wooded area has already been removed, it is that very loss that makes EC protection and adequate mitigation crucial. She argued that the tree removal for roads seemed excessive and utility construction could have followed a much more environmentally sensitive course. She said many people in the adjoining neighborhoods do not find this a compatible development. For instance, the footprints occupy a much larger portion of the land than in other nearby developments. Previous land also remains in Phase II. Regarding the taking issue, she asked what about takings from the community by the developer, which in this case are profound.

Paulette Rossi, 3710 NE 147th, 97230, said environmental conservation zones are needed to recognize the complexity of life systems in the City. Environmental review says stop and see how growth fits into the community. Two street trees will not replace one habitat tree and the land in Phase II has vegetation that fosters a sustainable earth.

In rebuttal, Mr. Cox passed around photographs of Ms. Blatt's and Ms. Rossi's homes, both of which have no trees but do have fences, to illustrate the character of the neighborhood. He said the character is pretty well established as shown in Exhibit C and homes built in the 1960's preserved little or no vegetation while those in Phase I have. There is no truth to the claim that the wetlands have not been treated according to applicable standards in place at the time of application. The fact that no notice was given to owners limits the ability to claim that this is a collateral attack. He said they do not believe the EZ was properly applied and legally should be removed. If the EC zone is left on the back of the lots where it is now, the Code is left intact and the first 25 feet remains a transition zone rather than using an administrative, quasi-judicial hearing to make a legislative amendment. Then there will be no problem with fences or protection for kids. The claim that anything has been done outside the Code in Phase I is irrelevant and also untrue.

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Regarding notification, Mr. Burns said staff checked the computer printout and found that Norway Development did receive notice; no lots were identified. Secondly, he said cutting down a high-hazard tree does not require environmental review as that is a qualified exemption.

Commissioner Kafoury asked if you could put up a fence in an EC zone between the train and your property.

(Mr. Burns' reply cannot be heard on the tape.)

Commissioner Hales said Council would have the option of modifying the Hearings Officer's decision to deal specifically with fences.

Commissioner Kafoury said there could be conditions so the requirements are not monstrous.

Mr. Burns said they have approved fences in environmental zones.

Mayor Katz asked about eliminating the transition zone.

Mr. Burns said eliminating that means that what is left would be protected.

Mayor Katz asked if that could be done on an administrative level.

Mr. Burns said the Hearings Officer believed it could through the conditions of approval.

Ms. Spetter said she found the report difficult to follow but understands the Hearings Officer was trying to be creative here or otherwise deny the request for removal. She figured she was giving them something by eliminating where the houses would go. Possibly Council has that authority but she is not sure the Hearings Officer does as the 25-foot transition zone is required in the Code.

Commissioner Hales suggested dealing with that in conditions if necessary.

Commissioner Lindberg asked if was true that people had to spend \$1,500 to \$2,500 to get permission to build a fence or put in play equipment. Would people have to spend that amount anytime they wanted to place a structure on their property?

Mr. Burns said in the Hearings Officer's decision there is room for a house and yard but if people wanted to cut down trees or fence the perimeter in the Conservation zone, they would need to go through the

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process. They would have to pay current application fees of about \$700. The Hearings Officer found that the primary use of the property was the house but recognized that there were accessory and exterior uses which might be necessary and did not close the door on those.

Commissioner Lindberg asked where the \$2,000 figure came from.

Mr. Burns said from such things as surveying costs or preparing plans.

Commissioner Blumenauer clarified that people who purchase these lots are looking at going through an administrative procedure for fencing their yards.

Mr. Burns said yes, for any activity that occurs in the shaded area, including fences.

Commissioner Blumenauer said most of the homes in the neighborhood generally have such things as decks, gazebos, play structures, etc. He asked if each time that happens outside the narrow building footprint, people would have to come downtown to go through the process.

Mr. Burns said generally, yes.

Mayor Katz asked Commissioner Hales if the Environmental Zones Task Force had looked at these issues.

Regarding notice, Mr. Cox said State Goal 5 requirements state that citizens must have opportunities for involvement. They also include basic legal notice requirements and call for keeping citizens informed as more is known about the specificity of the resource, conflicting uses and ESEE consequences and implementing measures. He said even if Planning staff gave notice it did so before focusing on this particular property and once they did find something like a conflicting use they are supposed to deal with those issues specifically, not send out a one-time general notice. That is not the intention of the Oregon rules.

Mayor Katz said she is not sure whether the City met its legal obligation on this score or not.

Mr. Cox said while the application fee for EC review is about \$700, people also must go through a preapplication conference costing over \$300 beforehand. Then in order to meet the standards to meet the EC application requirements they must submit site plans, a mitigation plan, tree and shrub inventory, topography map, soil type identification, etc. How can an applicant do this in order to put up a fence or a swing set. He said Mr. Burns is not quite accurate as everything that happens in the EC zone has to go through this process.

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Commissioner Hales said the Task Force is considering these requirements but that would have no effect on this proceeding which is under existing rules. However, after two years experience with the Environmental Zone regulations, he believes they are very problematical and that is why the committee has been asked to make recommendations for changes. He noted the strict timetable LCDC has imposed on the City to get them adopted by May. Meanwhile Council must exercise common sense to the extent the Code allows and, in this case, he believes it should support the Hearings Officer's recommendation to shrink the zone and then deal specifically with the issue of fences. He suggested amending Condition A to exempt fences which meet the Code height provision from review under a Type II procedure. That would allow builders or property owners with that strip of EC zoning on the back of their lots to build a fence without a full-blown environmental review.

Commissioner Hales asked staff to bring back findings and amended conditions to deal with that and which state specifically that the 25-foot transition zone that does not apply in this case because of the narrow width of the protected area. He moved to amend the Hearings Officer's decision and make those two additions.

Mayor Katz said Council will adopt this conceptually and get the added wording back later. Commissioner Lindberg seconded the motion and roll was taken (Y-5).

Commissioner Blumenauer said he feels uncomfortable about this as it seems awkward. He said he is willing to see what comes back but is concerned about what is going to happen in the real world in the next 10 years.

Commissioner Hales said the way the Zone works now sets up a lot of unrealistic expectations that somehow applying an E zone to this undeveloped parcel is going to accomplish by regulation what has not been accomplished by other means. While it is true that there is a lack of green space in this neighborhood, environmental zoning is not going to do much to protect that if the City routinely insists that its density requirements be met too. Those instances when administrative review is needed will be reviewed also and hopefully there will be fewer such cases in the future. However, in this case, the proposed amendments are the best Council can hope to accomplish.

Commissioner Kafoury said she does not have as much discomfort about the E zones as she believes there is a broad protection purpose to be served. However, there should be a way this can be worded so a family

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can build a safety fence without violating the need for protection of the E zones.

**Disposition:** Tentatively deny appeal and uphold Hearings Officer's decision with amended conditions. Planning Bureau prepare Findings for February 8, 1995 at 2 p.m.

AT 3:30 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 26TH DAY OF JANUARY, 1995 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Hales, Kafoury and Lindberg, 4.

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

92 OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council;  
**TIME CERTAIN: 2:00 PM** - Welcome new firefighter trainees and paramedics (Presentation by Commissioner Hales)

**Disposition:** Placed on File.

93 **TIME CERTAIN: 2:05 PM** - Council review of Hearings Officer's recommendation to approve a modification to Condition A of CU 99-89/S 37-89 regarding medium-density areas of the Forest Heights PUD (Hearing; 93-00901 PU)

**Discussion:** Tom Bizeau, Planning Bureau, noted that the preliminary plan for this PUD, approved in 1991, was a concept plan showing where the various low and medium density tracts would be placed with a general outline of the roads serving it. The plan now is to complete the phasing for 4, 5 and 7 on the northern half. Much of the southern half has already been approved for low density lots and for 200 medium density units in the first three phases. This recommendation is in response to a modification by the applicant to move some of the medium density from Phase 7 in the northern portion to Phase 5, slightly reducing the number. A total of 220 medium density units, originally in Phase 7, were moved and placed around Miller Road in the central portion of the project. This particular recommendation by the Hearings Officer is intended to change Condition A of Phase 3 which stated that the applicant needed to have covenants with the City that guarantee that certain parcels be dedicated for medium density purposes. With this approval, a new area would be dedicated for medium density, with new numbers for medium density in those areas. The reason for making this change is to eliminate medium-density at a particularly difficult portion of Phase 7 and move it to the central portion of the PUD to make it more accessible to a private transit system along Miller Road. The neighborhood is protesting some of the density issues that have arisen in this case. The Hearings Officer looked at the original

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ordinance which required that there be 2,103, or substantially equivalent, units in the PUD. This approval would reduce that amount to 90 percent of 2,103 units. The Hearings Officer found that to be substantially equivalent.

Richard Whitman, attorney for Nauru Forest Heights, the applicant, said this modification stems from work that began in 1992 when they began looking at the plans for the remainder of Forest Heights. Concern that the density originally planned in 1981 could be achieved has been an issue all along. Part of the reason this modification is being proposed, and why they are bringing plans for the whole rest of the project at one time, is that they want to assure the City they are living up to the density commitment. They have had substantial input from the Bureau of Planning and the plans reflect that input. These applications represent a very significant increase in housing for the City, almost 1,000 units, much larger than all the other residential projects combined that have come before the City in recent history.

Don Hansen, project manager, said the prior-approved plan was a framework plan and the current design effort is much more detailed. He said the first thing he did in trying to refine the plan was to look where the multi-family housing was sited in Phase 7. His evaluation revealed that 4.8 acres was usable so in order to do the 200 units the density would have been at about 46 dwelling units per acre which they did not believe fit well on the site, which is next to the Skyline Scenic Corridor. There would have been a lot of difficulty with the 35-foot height restriction and traffic would have been funneled out to Skyline. They immediately looked at shifting some of the density down to a more central portion of the site along the Miller corridor, their flattest and best development site and the best place for the school. He described where the units slated for Areas D, Q and T (96 units) would go. He said they looked at these areas very closely and tried to configure the streets, access and density so that they worked well. Their reasons for shifting the density down was to concentrate more people in the center where they would have access to the park, the future commercial center and the transit system on Miller. They also believe it will reduce vehicle trips.

Mr. Whitman dealt with several legal issues raised by the appellants about this modification. He said the applicable criteria is the original 1975 zone change ordinance that said Forest Heights had to develop to density substantially equivalent to 2,103 units. The question for Council is whether the 1,878 units proposed is substantially equivalent. He noted that projects are required, under the City's minimum density requirement, to develop at 90 percent of the maximum density allowed. He said the reason they use the 1,878 number, which is slightly above the 90 percent level, is that they are asking for a range of density for



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each of the remaining medium-density areas to avoid future arguments about what the density should be for each parcel. They expect to achieve more than 90 percent density but that range gives them the flexibility to move forward.

The question arose among Council as to how much time the neighborhood should be allowed.

Ruth Spetter, Senior Deputy City Attorney, noted that this is not an appeal but that the following ones are. They will not be bundled.

Commissioner Hales said then the normal format would apply for each of those items, if people want that much.

Mayor Katz said since this was not an appeal she will give the Neighborhood Association five minutes, unless Council feels differently.

Commissioner Kafoury disagreed.

Arnold Rochlin, Forest Park Neighborhood Association, said the notice said there would be four hearings, with 15 minutes of testimony allotted for each.

Mayor Katz said she disagreed but would allow them 15 minutes anyway.

Molly O'Reilly, representing herself and the Forest Park Neighborhood Association, questioned why the developer is asking again for a reduction in density. She said this development will create a lot of traffic, impacting five neighborhoods and an area with few connecting streets. This impact was to be eased by private transit and if it fails, the City will have a problem. As a longtime advocate for transit and downtown density, she said she is struck by how contemporary the original conditions imposed on Forest Heights 20 years ago are and how much they reflect Region 2040 policy today. She said losing 205 homes here may result in sacrificing transit in the process. The neighborhood has no problem moving density to the center but strongly objects to losing 153 medium density and 52 single family homes. The medium density units are particularly essential to ensuring that there is effective transit.

Regarding the substantially equivalent argument, Ms. O'Reilly quoted from Hearings Officer Elizabeth Normand's 1992 decision allowing density to be shifted from medium density Tract U to Tract 2. In that decision she states "the R10 zone would allow a total of 2,284 units on the 601 acre site..... This assumes 4.5 acres for commercial uses and 72.11 for roads. The net use of the acreage is 524.37 acres. The total

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number of housing units approved for the PUD is 2,103 or 92 percent of the maximum density allowed under the R10 zone." The City apparently found at that time that the 92 percent was substantially equivalent to the maximum permitted as required by the zone change ordinance. Ms. O'Reilly said over time the density in the preliminary plan has come to be confused with the density allowed by the zoning. But if 2,103 is 92 percent of the maximum allowed by R10 zoning, then reducing that by 205 more units leaves the total at 82 percent of maximum density. She noted that Ms. Normand also stated "approval criteria require that the final development plan be in conformance with the preliminary development plan." It does not say "substantial compliance" as the applicant asserts in his application. She said Council should retain the agreed upon 2,103 homes at 92 percent and question if mass transit will still be feasible if 153 medium density households are lost. Perhaps in a few years the difference between successful and ineffective transit will be the close to 20 riders applicant is asking to send away today.

Ms. O'Reilly said the Code requires that all parts of a PUD up for final approval be platted and asked that the City require the applicants to plat all the medium density tracts now, rather than later, as the applicants propose. If Council does not hold them to this, they will be back in for more changes. She noted Mr. Whitman's letter to Elizabeth Normand of September 21 stating that the final density for Forest Heights remains to be determined based on the final PUD plans for the remaining medium-density area. She said the medium-density tract is the "hole" in Forest Heights, a hole that can be changed any time until the final plat. She described a number of density shifts which have already been allowed by the Hearings Officer even though, in approving Phase 3, Council stipulated that all areas designated for medium density residential development be developed only as described in a preliminary development plan, except as allowed by the City Council. Staff forgot to invoke this as did the Hearings Officer who allowed the density to move. She said the only irrevocable guarantee against shuffling density around like a shell game is platting. While all the single family has been platted, the medium density units are waiting to the end and getting squeezed.

Ms. O'Reilly said this is the last opportunity for Council to require what it has proclaimed regarding density as after this decision the developer will hold all the cards. She also expressed doubt that Forest Heights wants the bus to succeed. She asked that the City require the 2,103 housing units as approved in the preliminary development plan, bringing the final plan into conformance with the preliminary plan as required by Code. Also, prior to approval of the three final stages, Council should instruct the developer to return with plats allocating all low and medium density tracts. By requiring plats for all tracts now,

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there will be no more requests for density changes. Without plats, these requests will continue, perhaps for decades. The stakes in Forest Heights are high as the density either happens now or it does not.

Mr. Rochlin objected to the Hearings Officer's recommendation, contending that she had no authority under the Code to make a decision on this matter. He asked for exclusion of the Hearings Officer's report and recommendation from the record as it is highly prejudicial.

Chris Wrench, 3103 NW Wilson, 97210, said she is not representing the Northwest District Neighborhood Association (NWDA) today but did represent it when Forest Heights gained its first permit. She said NWDA fell for the argument raised in favor of Forest Heights when they were told this was going to be a pedestrian-friendly, transit-oriented, densely-built PUD where a large proportion of commuters would use transit. There were to be asphalted pedestrian paths between houses leading directly to bus stops. On the basis of such assurances, NWDA alone supported the project. However, she now sees no pedestrian paths between houses or bus stops and finds this to be instead a typical Washington County subdivision, which spews traffic onto Cornell. She asked Council to live up to the intention it supposedly began with.

Denise Dodson, 9637 NW Silveridge Loop, said she lives in Tract U of Forest Heights where asphalt pathways run all through the houses. She takes the bus downtown everyday. She argued that the density should be allowed to be changed at various points as the situation changes, noting that part of Tract W was designated as a conserve so the space originally there was decreased. If changes are needed to make the development more aesthetically pleasing, that should be allowed.

Mel Zucker, 2222 NW Ramsey Dr., said the density issue was never brought to the Forest Park Neighborhood Association or the Board and the individuals purporting to talk to the neighborhood do not. The Forest Park neighborhood has consistently been on record against high density, originally fighting this development all the way to the Supreme Court. This position has never varied. Mr. Zucker said he thinks this project stinks but what Forest Heights proposes here seems reasonable. Making them go to greater density will just make it worse. Noting adjacent housing projects being developed to the highest density, he said Council is trying to apply density goals which do not work in the hilly areas and could turn them into the mud slide hills of L.A. if the density is not cut back. The cumulative effect of all these developments should be considered and Council's prime goal should be to do no harm.

Commissioner Lindberg said historically the Forest Park Neighborhood

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Association did not favor higher density or development in this area. However, the NWDA wanted to enforce density requirements to encourage transit. Also, City staff placed density requirements right from the start on the project.

Mr. Zucker said the original proposal was for high density and the neighborhood came in with documentation that the roads could not handle it. As a condition, the bus was added. The effect on the bus of this change in density will be miniscule as a very low percentage of people who have the income to buy in Forest Heights will use mass transit.

Alex Pierce, 650 NW St. Helens Avenue, said the Forest Park neighborhood has fought this project since a zoning change was initiated in 1973 to change the density in Forest Park Estates from R20 to R10. Now the developers are asking for lesser density while the City and some neighboring residents oppose it because they believe the bus system will then carry fewer passengers. This bus system will always have few riders because Forest Heights residents are not at income levels which will suffer the inconvenience of bus service, noting that Tri-Met had service to this area at one time but discontinued it due to the lack of ridership. He claimed that opponents of the density reduction also opposed having the Royal Highland sewer line run downhill to Cornell Road because it would cause more housing in the neighborhood. Consequently the Royal Highland sewer is pumped uphill, an inefficient and costly alternative. The message is more density in your neighborhood but not in mine.

Earl Grove, FPNA, Chair of Transportation Committee, said during the two years when Molly O'Reilly was president, Mr. Zucker was not present at the meetings and it was at this time that the Neighborhood Association revised its position on density and decided to support the bus, which was originally suggested by Forest Heights. He said no opinions are presented before Council unless they have first been talked over at a Board meeting. The sewer line was opposed not because it would bring people into the neighborhood but because of the destruction to the fish stream.

Commissioner Lindberg asked if the Association was unified in wanting to retain the higher density.

Mr. Zucker said when notice was given that there would be discussions about density, people were united against higher density. The only ones in favor of raising density are in Council today. The Association has no official position.

Mr. Grove said the official position is that the Association will support

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density where it is not harmful and particularly where it supports transit-oriented development.

Ms. O'Reilly said when she was president the neighborhood overwhelmingly said they supported the transit.

Commissioner Lindberg asked if they voted on this particular agenda item.

Mr. Grove said they have voted on this particular agenda item several times in the past and Ms. O'Reilly agreed.

Mr. Whitman addressed three issues -- fairness, flexibility and transit. He said Forest Heights is unique because it has dedicated 10 acres of some of its best development land for a public school/park site. That land was not factored in when the original density goal of 2,103 units was set. If they had that property they could put 150 units there. Over 36 percent of the site is in common open space, far greater than any other residential project. Another commitment Forest Heights made in 1981 was to work with Washington County to pay its fair share of improvements to roads used by Washington County residents. They will be paying half of the normal traffic impact fee that Washington County residents pay and that includes a lot of off-site improvements. Regarding density, they propose to come in between 90 and 100 percent of the 2,103 units, a level that no other project in the West Hills has come even close to. In terms of flexibility, Forest Heights itself is the developer of the single family areas while the medium density areas are being developed separately by separate developers. As a result there is a wide range of housing types, with the cost of those at between \$100,000 and \$190,000. They need flexibility if they are to continue to provide that range of housing and want to avoid repeated trips to Council. Finally, regarding transit, he noted that they are moving some units from Phase 7 to the central part of the development, increasing the number of units on Miller Road by 75 over what was included in the preliminary plan, about a 10 percent increase there. That brings the density in that area up to 10 units per acre; Tri-Met standard for suburban service is eight units per acre. He said they are planning a transit-oriented project, one unprecedented in the City. The fact that they have been able to do that and still provide open space and a school site is remarkable.

Commissioner Hales said he will recommend that Council discussion and motions take place at a later time, when the two absent Council members can participate.

Commissioner Lindberg said he thought there was a deferral of the high density parts of the project and that a few years ago Council had this

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same discussion and said, okay, the density can be deferred one last time. He asked staff to provide some information about the original goals, previous commitments and how the project has evolved over time.

Commissioner Hales closed the public hearing on this item.

**Disposition:** Continued to February 15, 1995 at 2:00 p.m.

94

Appeal of Forest Park Neighborhood Association against Hearings Officer's decision to approve modification to the street circulation plan for Phase 7 of the Forest Heights PUD (Hearing; 93-00902 PUD)

**Discussion:** Ruth Spetter, Deputy City Attorney, noted the public hearing requirements and the procedures to be followed.

Tom Bizeau, Planning Bureau, noted that the record will be carried over for each of these appeals. He cited the applicable approval criteria for the modification, adding that this particular modification was a request to eliminate a street connection, the Miller Road extension, between NW Thompson and NW Skyline, which was designated a neighborhood collector on the preliminary plan. The applicant would like to divert Miller at a certain point from a neighborhood collector into two local service streets connecting into Skyline.

Laurel Wentworth, Office of Transportation, said the Transportation Element of the Comprehensive Plan designates that particular segment between Thompson and Skyline as being for local service street only, not as a neighborhood collector. Also, Skyline north of Thompson Road is designated a local service street. The intent here is to have Skyline south of Thompson Road serve as a neighborhood collector; the same would be true for Miller Road between Thompson and Cornell. The purpose of designating both as collectors is to balance the activities and not disenfranchise one part of the neighborhood from the other. The reason not to move forward with the designation north of Thompson is to discourage residents north of the area to use this as a through road to Washington County or downtown. This redesignation would downgrade its accessibility. Through the conditions of approval they have provided bicycle and pedestrian access on both Skyline and Thompson. The basic reason for the designation is to provide for balance between Miller and Skyline and provide access to Cornell Road and, more importantly, West Burnside. The neighborhood did look at Policy No. 8 regarding Skyline which includes the statement that transportation projects which accommodate non-local trips will not be allowed. Skyline Boulevard should not be developed as a primary north/south route through the district and future improvements to Miller Road should accommodate non-local north/south traffic between West Burnside and NW Cornell. She said what is commonly misunderstood

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is that the intent is to shunt traffic to West Burnside and to the regional corridor on Sunset. Transportation's recommendation is support of the Hearings Officer's decision.

Commissioner Hales said he assumes one effect of this recommendation would be to increase the importance of Thompson Road as both a vehicle and pedestrian facility. If Miller is not continued to Skyline, will the need for improvements on Thompson be greater or less than if Miller connected?

Ms. Wentworth said the need would be just as great. To have a balanced neighborhood system, it requires that both Miller to Thompson and Thompson to Skyline be improved.

Earl Grove, 607 NW Skyline Crest, 97229, Transportation Committee Chair, Forest Park Neighborhood Association, said through 1988 and 1989 the developer assured the neighborhood association that the extension of Miller Road through the development to Thompson would occur and be aligned with Miller Road south of Thompson for school bus safety. This connection would also serve to help traffic through the commercial center. The reason originally given for having that connection was that local residential traffic on Skyline south of Cornelius Pass Road had little other choice to reach Portland or Beaverton. The Comprehensive Plan in this area also shows a high number of developable properties here. All of this was obvious to neighbors, who agreed that the Miller Road extension was a necessity. Finally, Miller and Skyline are the only two routes available to get traffic to the major routes, such as Burnside, Sunset and Canyon, directly.

Mr. Grove said Planning initially denied the request for removal of the extension but was told Transportation Planning's recommendation would prevail. He said because of the lack of roads for residents in the area, residents have little choice and should be able to use Miller Road. He asked why is more development being approved if people cannot make decent connections. Where else is the traffic to go? The Miller Road connection was the original plan and does not violate the Comprehensive Plan. It is not a trivial time saver but provides a savings of 1.1 mile for fire trucks and school buses.

Les Blaze, 9630 NW Skyline, 97231, said it seems to be all right to dump traffic onto Cornell, Skyline, etc. but not to go through the Forest Heights neighborhood. He questioned Forest Heights' motivation here, suggesting that they can get more money for lots on less travelled streets.

Arnold Rochlin supported Mr. Grove's statement, adding that the

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assertion made by Transportation and the applicant that this connection will increase traffic on Skyline is absurd.

Gary Katsion, Kittelson & Associates, said the applicant does not oppose elimination of the connection of Miller Road between Thompson and Skyline. There is a connection through the subdivision which comes out at two points onto Skyline. Also, the connection across Thompson and Miller Road will be aligned with each other so there will be no problem of connection for school buses or emergency vehicles. He said you can get all the way up to Skyline through the subdivision. In addition to the street connection there are also bicycle and pedestrian connections through Phase 7. The plan is consistent with the Transportation Element of the Comprehensive Plan. Miller Road remains a neighborhood collector through the entire subdivision up to Thompson Road, another neighborhood collector, which then goes to Skyline. He said if you look at how people are travelling you will see that the function of this transportation classification system is actually working. The density along Skyline and in Forest Heights is low density residential, generating the least amount of trips. The higher density is located more in the center of the development. As it comes down Miller Road, traffic increases as all the attractions are to the east and south and then to Washington County to the west. He said the system is working well with two collectors and there is no reason to change it.

Don Hansen, OTAK, said early on they proposed a system of uniform public streets on the site and their intent was to disperse traffic by providing two access points on Skyline and two on Thompson. He noted proposed pedestrian paths along Skyline and other linkage points. They have also proposed improvements to Thompson Road to widen it and add a sidewalk along the north edge. He said their design responds to directions from Transportation staff.

Mr. Whitman said one of the points raised was emergency vehicle access. He said under the preliminary PUD plan there was one single connection which ran due East. That is being replaced with three connections between Thompson and Skyline and this is a much better plan in terms of providing emergency access. The assertion that Forest Heights does not want to see a lot of traffic going through its neighborhood is untrue. He said they worked with the City to see if there was a way they could accommodate some traffic on Skyline coming down through the neighborhood onto Miller Road. They were willing to do that but Transportation was very firm in stating that their policies prevent that. He noted Transportation Plan maps adopted within the last several years which show why Forest Heights could not legally propose a collector road. He said they were not involved in hearings on the adoption of the Transportation Element, although the Neighborhood Association was, and did not try to slip something over on



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the City. However, they are now bound by those maps. If they came forward with a plan showing Miller going through they would be in violation and would have to amend the Plan.

Commissioner Hales asked about the viability of the still undeveloped commercial site and how it would be affected by the lack of an extension to Skyline.

Mr. Whitman said they are moving a minimum 75 units to the central portion, closer to the commercial site. They are replacing a connection that went due east with one that is superior in terms of getting to a commercial center.

Mr. Katsion said, regarding traffic numbers, currently on Skyline and Thompson there are about 1,300 cars per day. Phase 7 is for over 200 units, essentially the equivalent of 2,300 cars, so the commercial traffic coming off Skyline to the west of the site is about half of what will be coming from the development itself.

Denise Dodson, a resident of Forest Heights, supported the changes.

In rebuttal Mr. Grove said the alternate streets are too narrow, at 26 feet, and do not allow for the safe passage of emergency fire trucks. He questioned whether the system will work under future traffic loads. Traffic up there will not change; it is just a matter of how it is divided coming and going. Various studies bear this out. He said the new maps referred to by Transportation were never shown to the Neighborhood Association which saw only sketches after publication which they found very confusing and almost useless. He described the involvement of Forest Heights residents at Forest Park Neighborhood Association meetings and on the Board, noting that the Neighborhood Association seeks their agreement on anything concerning Forest Heights before they come to Council. Staff reports on land use are taken to the Development Committee and the Board for input and also brought to the general meetings.

Commissioner Lindberg asked how the Neighborhood Association voted on density.

Mr. Grove said people are asked to identify anything in the staff report they disagree about and then it is voted on. There was no disagreement about the density or else they would have voted on it. Any divided vote would be reported to the Hearings Officer.

Commissioner Lindberg said all he wanted to know is whether they voted for more density.

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Mr. Grove said as far as he could recall they never voted for more density than staff recommended.

**Disposition:** Continued to February 15, 1995 at 2:00 p.m.

98

Appeal of Nauru Phosphate Royalties, applicant, against Hearings Officer's decision to impose Condition I in approving application for Phase 5 of the Forest Park PUD (Hearing; 93-00899 PU SU IR)

**Discussion:** Tom Bizeau, Planning Bureau, said through negotiations with the applicant and the Fire Bureau, they came up with a condition related to fire prevention, including buffers and tree removal. This appeal arises because this same condition has not been applied to other developments in the area. However, a recent one, The Summit, went through with almost exactly the same condition imposed by the Hearings Officer in this case.

Jim Everitt, Senior Inspector, Fire Marshall's Office, said because of the forested area and steep slopes in Forest Heights, the danger from wildfire is great and that, even though this is a deciduous forest and fire breaks have been established between the forest and the first row of houses, the danger remains. He said to deal with the danger he first sought additional access roads but because of the steepness and impact on the green spaces, this was not appropriate. The Fire Bureau has the authority to negotiate other solutions, such as the use of fire-retardant shakes, to increase safety protection.

Commissioner Hales noted that Mr. Everitt said he had discussions with the applicant about the conditions and yet the one proposed and accepted by the Hearings Officer has been appealed. He asked why.

Mr. Everitt said the discussions concerned their opposition to doing away with untreated cedar shake roofs. He said he thought agreement had been reached but then learned it had not. He said appellants are concerned that this be applied equally. His response is that until recently the Bureau has not worked that closely with Planning but now that they are aware of the situation they hope to impose this across the board for all new applicants.

Commissioner Hales asked if he was involved in negotiating those conditions for the previous subdivision.

Mr. Everitt said yes.

Mr. Bizeau clarified that this does not call for the elimination of cedar shakes, only that they be treated.

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Mr. Whitman said they appealed this not because they disagree about the fire risk from cedar shake shingles. However, they oppose imposing the cedar shake conditions on a hit or miss basis. He urged Council to pass a Citywide ordinance that applies to all developments. Right now, the cost of providing houses with treated cedar shake roofs is about 50 percent higher than regular cedar shakes, putting them at a significant competitive disadvantage.

Commissioner Hales clarified that the appeal only pertains to the cedar shakes, not the vegetation requirements.

Mr. Bizeau stated the approval criteria for the record.

Les Blaze, Chair, Environmental Committee, Forest Park Neighborhood Association, said the Fire Bureau restrictions are long overdue and should have been applied to earlier phases and all new construction in the hills. The requirement for treated shakes is particularly significant and the Code should be changed so that untreated shakes are not allowed on replacements or new construction. He said the 50 percent higher cost is for material, not labor, and nothing unreasonable is being asked here.

Mr. Rochlin agreed with what Mr. Blaze said.

The public hearing was closed on this item.

**Disposition:** Continued to February 15, 1995 at 2:00 p.m.

- 95** Appeal of Forest Park Neighborhood Association against Hearings Officer's decision to approve Phase 4 of the Forest Heights PUD (Hearing; 93-00898 PU SU IR)

**Disposition:** Continued to February 15, 1995 at 2:00 p.m.

- 96** Appeal of Forest Park Neighborhood Association against Hearings Officer's decision to approve Phase 5 of the Forest Heights PUD (Hearing; 93-00899 PU SU IR)

**Disposition:** Continued to February 15, 1995 at 2:00 p.m.

- 97** Appeal of Forest Park Neighborhood Association against Hearings Officer's decision to approve Phase 7 of the Forest Heights PUD (Hearing; 93-00900 PU SU IR)

NOTE: A consolidated hearing was held on Items 95, 96 and 97.

**Discussion:** Tom Bizeau, Planning Bureau, read the approval criteria

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for these three appeals. He said the issues raised by the Neighborhood Association regarding Phase 4 concern the applicability of the regulations and when they apply. The dispute seems to be between the State statute (ORS 227.178) and the more specific Code section (33.269.400) regarding when preliminary plans are approved and what criteria apply to the final development plans. The Hearings Officer concluded that the local Code would apply, meaning that the final development plan resulting from PUDs approved prior to 1983 would be reviewed under the Code regulations in effect at the time application for the preliminary development plans were made. Mr. Bizeau said the Hearings Officer chose to use the 1979 Code as the approval basis for this Phase. There are some interpretive questions which the City Attorney will address, having to do with whether modifications have been made to the preliminary plan through this application.

Mr. Bizeau said the second issue is location of the allowable building areas. The applicant gave the City a map showing what the setbacks would be on the lots and where housing could go inside that basic building envelope. It had nothing to do with building coverages. The medium-density sites, unlike the low-density sites, were conceptual and were not presented as final development plans so in those areas the building area issue was not addressed. The next issue is street locations which will be covered later. The issue of lot coverage has to do with the actual building coverage, not the building area and the impervious surface created. The Hearings Officer reviewed whether or not a variance to the building coverage standards can be taken through a PUD process and her final interpretation was that since in the old Code PUDs were able to look at yard requirements (not building coverages), applicants could make adjustments through the PUD process for the buildings. One could look at whether building coverages should be increased or decreased based upon what kind of buildings would be placed there. He noted that many of the lots are smaller than they would be in the R10 zone and so building coverages have to be considered in that regard. The Hearings Officer then amended the base zone coverage of 30 percent, increasing it on the smaller lots. The Neighborhood Association believes she did not have authority to do that because the Code does not say outright that lot coverages could be amended through the PUD process. A fifth issue deals with the traffic impact fee which Forest Heights is paying to Washington County for road improvements. The condition states that after 200 building permits are issued, all further permits will cease unless agreement is reached. The agreement has not been signed with Washington County for disbursement of the funds for actual projects or how the County will use that money. However, Washington County indicated it would allow development to continue because negotiations are still in progress. Staff and the Hearings Officer said applicant must show that agreement has been reached before final plat approval.

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Regarding medium density, Mr. Bizeau noted that during Phase 3 approval a condition was applied to ensure the medium density developments. At that time the Hearings Officer wanted the applicants to apply for medium-density development at the same time they applied for single-family detached lots. However, Council decided the developers did not have to show their plans for medium density when they came in for low-density development but did have to ensure that the medium density would occur. The result has been a process where the applicant comes forward with final development plans, asks for approval and then either the applicant or another developer goes through a similar final development approval process on the medium density process. Thus, each phase is being approved in part, but through a public process related to the overall PUD as conditioned in the original approval. Rather than doing it in parts, the neighborhood would prefer that low and medium density be approved at the same time. Another issue (No. 7) concerns two lots in Phase 4 that are in an environmentally sensitive area. Planning staff thought they should be removed so the area could be maintained as open space. The Hearings Officer agreed and said those two lots could be placed elsewhere in the PUD; however, no condition stating where they would be located was added. He said he is proposing a condition (Condition H-H) calling for an approval process for those two lots prior to final platting approval of Phase 7.

Mr. Bizeau said he believes there is agreement on the issue (No. 8) concerning drainage measurement and a finding needs to be made stating that this condition will be rewritten. He concluded his comments regarding Phase 4 and addressed several additional items regarding the other two appeals.

Mr. Bizeau said the same issues apply to Agenda Item 96 with one additional matter related to the environmental impact of the sewer plans. Phase 5 is where the school and park are located and in Area Q sewers would come down from four lots. An issue was raised that bringing a sewer line into the area would impact the environment too much and should be eliminated. The Hearings Officer found it was not necessary to eliminate the line but that all the mitigation conditions related to landscaping around the sewer lines would apply. The neighborhood may have a different angle on that. The other issue in Phase 5 is related to a new condition regarding improvements to roads in Phase 5. This condition needs to be added to ensure that other transportation conditions are actually applied.

Commissioner Hales asked him if he was asking Council to add Exhibit D.1.b by reference.

Mr. Bizeau said it is actually condition N-N on page 9. The only

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additional item on Phase 7 is part of the same condition because it has specific requirements for phase-back.

Arnold Rochlin, representing Forest Park Neighborhood Association, first addressed the Neighborhood Association vote, noting that the Development Committee voted unanimously (on the stands taken) before the appeals were filed and on the Hearings Officer's recommendation. The bylaws require that Development Committee votes be reported to the Board of Directors.

Mr. Rochlin said a major issue is the burden of proof as an applicant must show that he does comply, not that he can comply with all the applicable criteria. He said errors in the original January 5th notice misstated this and, while a corrected notice was sent January 13, all evidence must be considered with the correct burden of proof. Referring to applicability of the old and new Code, he said the final plan must comply with the new regulations. He argued that final plans are in effect on the date of filing of final plan applications. He asked that this question be turned over to legal counsel. He said this is a phased PUD and neither allow a phase to be divided into sub-phases with final plats filed only for some of them. The Hearings Officer also does not have findings or conclusions of compliance with all final PUD plan standards, old or current. The plans are also incomplete, showing two tracts where there are no lots or streets. The Code expressly requires final plats and the final PUD to be filed together. Regarding building coverage, the Code does not grant anyone authority to modify the R-10 zone building coverage standard without a code adjustment procedure. Building coverage and yard requirements are not the same thing. The current Code uses the term setback but otherwise differs only in the front yard requirement, which is 20 feet instead of 30. That difference is not an issue. On a standard 100 by 100 foot R10 lot, the minimum yard area in the old Code would be 5,200 square feet leaving a building envelope of 4,800 square feet which would be 48 percent of the lot. Applicant's argument is that the old Code allows 4,800 feet for building coverage. The old Code 33.22.060 plainly says: the ground area covered by all buildings shall not exceed 30 percent of the lot area. Which old Code provision defines maximum building coverage -- the one that says building area should not exceed 30 percent or the one that defines minimum yard setbacks. The Hearings Officer went through contortions on this and concluded that she has no authority to vary lot coverage under the current Code but could do it under the old Code because it has always been done that way. He said that is not an approval standard nor a policy of this Council. Condition F-F (p. 57) concerns lot coverage and is identical in all of the decisions. Without authority or reasonable need by the developer, it allows 4,000 square feet of lot coverage on a standard 10,000 square foot lot. On a smaller lot that coverage needs to be boosted up. The Hearings Officer allowed

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more than 30 percent on lots that were 10,000 square feet or more and there is absolutely no justification for that as nothing makes them more difficult to develop. At the very least the lot coverage changes for standard size lots must be eliminated.

Regarding Condition L, the agreement with Washington County, Mr. Rochlin said one of the requirements is that there be no final plats after Phase 2 until that condition has been satisfied. Mr. Bizeau has indicated there has not yet been an agreement. Actually, staff found noncompliance with that condition but recommended approval because the applicant said negotiations were in progress. The Hearings Officer found non-compliance but overlooked it because the developer said the agreement would be completed by the end of September 1994. Applicant's written testimony, dated January 25, admits the condition has still not been met and tries to pawn off a unilateral offer as the equivalent of the required agreement.

Kurt Von Klobenstein, 2734 NW Mill Pine Rd. 97229, a Forest Heights homeowner, said he is concerned about the storm drainage in Phase 5, noting that he and a neighbor hired a geologist who recommended that the proposed sewer lot not approach the affected properties closer than 800 to 1000 feet at any points. Applicant has not provided a detailed map of the drainage system and they are very concerned about it.

Molly O'Reilly, 1414 NW 55th Dr., emphasized the importance of plats, noting that requests from Forest Heights residents for further reductions in medium density will continue unless it is platted.

Les Blaze, 9630 NW Skyline, 97231, said ever since 1985 Forest Heights has come in for more and more modifications to conditions, always motivated by increased profit and marketing. This should not take precedent over the neighborhood and the conditions already in place. He said the forest is gone from Forest Heights, citing prior developers who took the money and ran.

Commissioner Lindberg asked about the actual conditions agreed to earlier and what has happened historically in these three cases. He asked that this information be presented next time.

Don Hanson, developer for the applicant, addressed lot coverages for these final phases. They include two medium density sites adjacent to Miller Road and 132 lots on the ridges, with open space encompassing two drainages. He said initially they showed an additional 12 to 14 single family home sites in the center portion of the site; these were eliminated after they reviewed their plans with Planning staff. They also have a smaller lot subdivision, with 36 home sites, adjacent to the school site. Again they felt it was best to place the smaller lots close to

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the Miller corridor. He noted the two lots referenced earlier and said they have agreed with staff that they would be eliminated. Those two units will be placed in Area T, in no way modifying the street or utility systems. He said some utilities and road crossings do go through some of the common open space and they have negotiated with staff to come up with restoration plans.

Mr. Hanson said Phase 5, the area near Thompson Road, also includes two medium density sites. Again the lot sizes have been reduced close to Miller Road and the open space, about 40 acres, is configured specifically to protect drainage areas. Regarding the sewer on the site, he said they entered an exhibit with the Hearings Officer that takes the sewer out of the ravine and places it in a flat area, where they are convinced there will be no negative impacts. Phase 7, the area between Thompson and Skyline, has 227 lots and, because of the severe slopes, the lots are bigger, over 10,000 square feet on average. There are six smaller drainage ways through this with 25 acres of open space around them. The lot coverages being proposed reflect their past experience with building on steep slopes, which forces people to build differently, using the interior of their houses more intensely. He said they are looking for flexibility here and are not trying to overpower the site but it is critical that they have increased lot coverage on the smaller sites.

Mr. Whitman reviewed some of the legal issues raised. He said what they are applying for are two things for each phase: 1) final PUD plan approval; and 2) tentative subdivision plan approval. The applications do not cover the medium-density areas as they plan to come in with a PUD plan and subdivision plan for those areas through a Type 3 process with a public hearing. Regarding Ms. O'Reilly's concern about leaving holes in the development, the whole reason for the first application was to try to specify how many or how few units they could have on those holes, so there will be no surprises in the future. There is no dispute about the tentative subdivision parts of the application. The dispute arises over the final PUD plan applications. He noted Code Section 33.269.400 that says preliminary plans submitted prior to May 3, 1983, and final plans resulting from those plans are subject to the regulations in effect at the time the preliminary plan applications were submitted. In this case they were submitted in 1981. The legal issue for Council members is whether the plans for Phases 4, 5 and 7 are close enough to the preliminary plan submitted then. Applicant believes they are true to the spirit of the framework plan.

Regarding building coverage, Mr. Whitman said the old Code says in PUDs you can alter lot sizes, yard requirements, types of structures, etc. You see that in the plan, which has lots in Miller Hill that are 1,500 square feet lots for small townhouses. If you take Mr. Rochlin's argument that the 30 percent base zone coverage applies, that means



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that you have 450 square feet of building area. That is clearly contrary to the whole spirit of the PUD Code which is to allow those smaller lots. The interpretation Council needs to make is whether the old Code provision 33.12.605 with the standards of the base zone for yard requirements applies in the PUD and whether that gives the City the authority to set lot coverage through the PUD process. In connection with that Code interpretation, he asked Council to consider a change in the conditions that would state that if this is appealed and a court holds that the City did not have that authority to make that change, the 30 percent coverage requirement would then apply.

Regarding Condition L with Washington County, Mr. Whitman noted that the applicant has \$200,000 in an escrow account for the benefit of Washington County, adding that they have been in extensive negotiations with the County about this. They believe they are now very close to final agreement on the final details, adding that conceptual agreement was reached early last summer.

Ms. Spetter said Council will have to make at least two interpretations of the Code at the time it reconsiders this. One is related to the concept of whether or not a modified preliminary plan can be considered to result from the preliminary plan. The second issue is whether Council agrees that a modification of lot coverage is included within the concept of being able to modify yard requirements. That is apparently something that has been done historically but Council has to decide if that is appropriate. Other findings have been requested, including one regarding the 30 percent coverage; Mr. Bizeau has indicated that Council staff will be briefed about these.

Commissioner Hales asked if the money in escrow could be spent in any other way.

Mr. Whitman said no. What is being negotiated now is the mechanics of how Washington County will release the lien on Forest Heights property to clear title.

In rebuttal, Mr. Rochlin said, regarding lot coverage, that there is no proposed lot in any of the three phases that is less than 5,000 square feet and, further, the Neighborhood Association would probably support some sort of adjustment that would allow the smallest lots to have expanded lot coverage in order to be feasible. There is a Code provision that allows for this. However, one is not allowed to do it wholesale and say the whole PUD can have it just because they asked for it. He asked to leave the record open through Monday to add some of the items referred to in case there are further appeals. There is no new material, however.

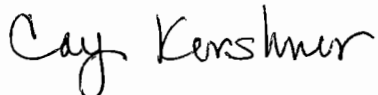
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Commissioner Hales announced that the appeals will be continued to February 15 for Council deliberation and action but not a reopening of the public hearing. He said the record will be open for seven days for submission of additional material.

**Disposition:** Continued to February 15, 1995 at 2:00 p.m.

At 5:30 p.m., Council adjourned.

**BARBARA CLARK**  
Auditor of the City of Portland

  
By Cay Kershner  
Clerk of the Council