



CITY OF

**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 26TH DAY OF APRIL, 1995 AT 9:30 A.M.

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

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

Mayor Katz noted that the legislative team from the Office of Government Relations had been delayed and would report later in the morning.

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

**CONSENT AGENDA - NO DISCUSSION**

**579** Accept bid of Portland Habilitation Center for city landscape maintenance program for \$222,000 per year (Purchasing Report)

**Disposition:** Accepted; prepare contract.

**580** Accept bid of All Concrete Specialties for street improvements at NE 15th Avenue and other locations for \$88,739 (Purchasing Report - Bid 116)

**Disposition:** Accepted; prepare contract.

**581** Accept bid of Portland Freightliner, Inc. for furnishing one 18,000 crew cab and chassis w/14 ft. flatbed for \$51,128 (Purchasing Report - Bid 126)

**Disposition:** Accepted; prepare contract.

**Mayor Vera Katz**

**\*582** Authorize Oregon Arena Project Revenue Bonds (Ordinance)

**Disposition:** Ordinance No. 168729. (Y-4)

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**\*583** Add City Code Section to create right of appeal from designation as a gang affiliate (Ordinance; Adopt Section 14.08.270)

**Disposition:** Ordinance No. 168730. (Y-4)

**\*584** Amend Ordinance No. 163299 regarding fees for background investigations for sale and transfer of handguns (Ordinance; amend Ordinance No. 163299)

**Disposition:** Ordinance No. 168731. (Y-4)

**Commissioner Earl Blumenauer**

**585** Set hearing date, 9:30 a.m., Wednesday, May 24, 1995, to vacate a portion of SW 57th Place north of SW Taylor Court (Report; Petition; C-9882)

**Disposition:** Adopted.

**\*586** Increase contract with Tri-Met for electrifying bus shelters by \$9,786 (Ordinance; amend Contract No. 50455)

**Disposition:** Ordinance No. 168732. (Y-4)

**\*587** Execute first amendment to Upper Level Block 130 Subsurface Lease Agreement with Metropolitan Life Insurance Company (Ordinance; Contract No. 19685)

**Disposition:** Ordinance No. 168733. (Y-4)

**\*588** Contract with All Concrete Specialties, Inc. for the NE 15th Avenue, NW Cornell Road and SW Virginia Avenue Traffic Calming Project for \$88,740 and provide for payment (Ordinance)

**Disposition:** Ordinance No. 168734. (Y-4)

**\*589** Authorize a contract and provide for payment for the School Signal project at SE 50th Avenue and Belmont Street (Ordinance)

**Disposition:** Ordinance No. 168735. (Y-4)

**Commissioner Charlie Hales**

**590** Amend contract with Silco Construction for work on maintenance building at Eastmoreland Golf Course, authorize final payment and release of retainage (Report; amend Contract No. 29365)

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**Disposition:** Accepted.

- 591** Accept completion of gymnasium floor at Montavilla Community Center by Stanley B. Woods, make final payment and authorize project manager to release retainage (Report; Contract No. 29513)

**Disposition:** Accepted.

- 592** Approve the annual review of the Basic Emergency Services Plan (Resolution)

**Disposition:** Resolution No. 35387. (Y-4)

- \*593** Authorize Intergovernmental Agreement with St. Helens Rural Fire District to provide technical rescue assistance (Ordinance)

**Disposition:** Ordinance No. 168736. (Y-4)

- \*594** Amend Ordinance No. 162191 to extend a Revocable Permit for an office at 5015 SW 59th Avenue until August 10, 1997 (Ordinance; ~~LUR-94-00969-CP-ZC-AD~~; RP)

**Disposition:** Ordinance No. 168737. (Y-4)

- \*595** Contract with nine professional, technical and expert service firms for topographic survey services as required in support of the Bureau of Parks and Recreation General Obligation Bond Initiative projects (Ordinance)

**Disposition:** Ordinance No. 168738. (Y-4)

**Commissioner Gretchen Kafoury**

- 596** Confirm appointment of Clyde A. Earl and Judith L. Rice to the Taxicab Board of Review (Report)

**Disposition:** Confirmed.

- \*597** Amend Ordinance No. 168460 and sale agreement to convey property at SE 64th Avenue east of Division Street (Ordinance; amend Ordinance No. 168460)

**Disposition:** Ordinance No. 168739. (Y-4)

- \*598** Authorize a contract and provide for payment for Kerby Building energy retrofit (Ordinance)

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**Disposition:** Ordinance No. 168740. (Y-4)

- \*599** Authorize application for a YouthBuild Implementation grant from the Office of Economic Development, U.S. Department of Housing and Urban Development in the amount of \$1,000,000 (Ordinance)

**Disposition:** Ordinance No. 168741. (Y-4)

- \*600** Establish fee for pre-permit site inspection required for property in environmental zones; increase zoning inspection fee (Ordinance; amend Code Chapter 24.10)

**Disposition:** Ordinance No. 168742. (Y-4)

**Commissioner Mike Lindberg**

- 601** Accept completion of the automation improvements at Tryon Creek Wastewater Treatment Plant construction project and authorize final payment to A.C. Schommer & Sons, Inc. (Report; Contract No. 28040)

**Disposition:** Accepted.

- \*602** Amend contract with SERA Architects for additional architectural and engineering services related to the Water Pollution Control Laboratory (Ordinance; amend Contract No. 28954)

**Disposition:** Ordinance No. 168743. (Y-4)

- \*603** Amend contract with Turner Construction Company for additional construction management services related to the Water Pollution Control Laboratory (Ordinance; amend Contract No. 29084)

**Disposition:** Ordinance No. 168744. (Y-4)

- \*604** Authorize a contract and provide for payment for the Sellwood Basin CSO sump project - Unit 1 (Ordinance)

**Disposition:** Ordinance No. 168745. (Y-4)

**REGULAR AGENDA**

**Mayor Vera Katz**

- 605** Confirm appointment of Bertha Ferran to the Civil Service Board (Previous Agenda 544)

**Discussion:** Mayor Katz introduced Bertha Ferran as a new Board

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appointee, representing management, and thanked her for taking on this very difficult task.

Bertha Ferran, a Cuban refugee who came to Portland 30 years ago, said she is senior real estate loan officer at Commonwealth United Mortgage. She said it is an honor to serve on the Board.

Commissioner Blumenauer said he is impressed with the commitment of the citizen volunteers on this Board, although he has some concerns regarding process. It is appropriate for Council to solicit feedback, particularly from a new appointee.

Commissioner Hales said if Ms. Ferran sees opportunities to change the way things are done, Council will provide an attentive audience.

**Disposition:** Confirmed.

**Commissioner Earl Blumenauer**

**606** Consider vacating a portion of NE 76th Avenue north of NE Killingsworth Street at the request of Wayne Easley (Hearing; Report; C-9873)

**Disposition:** Approved. City Engineer prepare ordinance. (Y-4)

**607** Consider vacating a portion of NE Jarrett Street east of NE 138th Avenue at the request of Larry Gros Jacques (Hearing; Report; C-9870)

**Disposition:** Approved. City Engineer prepare ordinance. (Y-4)

**Commissioner Charlie Hales**

**\*608** Accept dedication of Cherry Blossom Park in SE Portland and assign responsibility to Portland Parks and Recreation (Ordinance)

**Discussion:** Commissioner Hales said both this item and the following one add new parks to the system. He expressed thanks to the volunteers for their work.

**Disposition:** Ordinance No. 168746. (Y-4)

**\*609** Accept dedication of West Portland Park in SW Portland and assign responsibility to Portland Parks and Recreation (Ordinance)

**Discussion:** David Gens, 10644 SW 42nd, President, West Portland Park Neighborhood Association, said they are pleased to see Block 49 designated as a natural area under City ownership and maintenance.

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He noted that three blocks to the south a development has been proposed which is currently going through the land-use approval process. After denial of a development proposal on this site last year, City staff, the neighborhood association and the developer spent four months in mediation. Unfortunately, no consensus was reached.

**Disposition:** Ordinance No. 168747. (Y-4)

**City Auditor Barbara Clark**

**610**

Assess benefitted property for the costs of street, storm sewer and sanitary sewer lateral improvements within the SW Caraway Court LID (Second Reading Agenda 569; C-9835)

**Disposition:** Ordinance No. 168748. (Y-4)

Commissioner Blumenauer stressed the critical importance of obtaining approval from the legislature of a relatively modest amount of money for high speed rail. He discussed its potential for taking a huge amount of traffic off I-5 and to tying the entire Willamette Valley together. He said the action by the Ways and Means Committee to remove \$11 million from the budget for this is very short-sighted and asked Council to help lobby for its inclusion.

Council members indicated their support and agreed to contact legislators.

**578**

**TIME CERTAIN: 10:00 AM** - Accept the Peninsula Crossing Trail Feasibility Study (Resolution introduced by Commissioner Hales)

**Discussion:** Commissioner Hales noted Metro's recent forecast that growth in the metropolitan area will reach 700,000 not 500,000. He said that means recreational opportunities and the preservation of open spaces need to be accelerated. He said funding for this study came from diverse sources and was a team effort from the beginning, with strong community participation. The trail will link five Portland neighborhoods and connects major natural resource areas and employment centers to residential areas. It has the potential for both commuting and recreation uses, serving multiple objectives. The City's responsibility is to follow-up on completion of the project and to assume ongoing management. This is a feasibility study, not an action plan, until the voters approve the Metro green spaces measure.

Bob Akers, President, 40-Mile Loop Land Trust, 1038 SE 224th Ave., Gresham, OR, said they got involved in this when people asked how the North Portland Bicycle Plan would be tied in the 40-mile loop land trust. Out of that grew the Peninsula Crossing Trail. He cited the

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importance of developing transportation right-of-ways and linking the neighborhoods.

Pam Arden, Kenton Neighborhood Association and 40-Mile Loop Land Trust member, said the Columbia Boulevard Wastewater treatment plant agreed to build a trail through its property and the big question then became how to jump the Slough and connect to the 40-mile loop trail on the other side. The North Portland Road Bridge was too dangerous and a separate bridge for pedestrians was needed. They then identified an undeveloped right-of-way, extending from Willamette Boulevard to Columbia, which they felt could be used as a pedestrian and bicycle way. Eventually this proposal became part of the regional plan and is included on the upcoming green spaces measure. If it passes, they will have an opportunity to build the trail within three years.

Mr. Akers said they felt if the 40-Mile Loop Land Trust could take on the feasibility study, they could cut through some red tape and get the process started. They hired David Evans and Associates to do the feasibility study, which also resulted in a master plan.

Mel Stout, David Evans & Associates, said the purpose of the feasibility study was to see if there were any constraints which would preclude developing the trail. He showed slides to indicate the route, including the bridge crossings. Metro will build the project if the bond measure passes and there is an opportunity for connecting the neighborhoods to the Smith/Bybee Lake areas. They are also proposing that the Parks Bureau maintain the trail after it is built.

Ed Washington, Metro Council, acknowledged the hard work of citizens on this project and his special interest in this part of the City. He said the trails will be used for both recreation and commuting and Metro is committed to establishing green spaces in the area, including the inner-City neighborhoods. He asked for Council support of passage of the green spaces ballot measure.

Commissioner Blumenauer said the City needs Mr. Washington's help in making sure that the City's transportation projects are given fair consideration.

Dorothea Lensch, former Parks Bureau Director, noted the popularity of this trail area during World War II. It will mean a great deal to break the barrier between St. Johns and Portsmouth and will be very healthy for the entire development of the City.

Mary Vogel, 3700 NE Columbia Blvd., 97229, Portland Chapter, Oregon Native Plant Society, said she was very disappointed to learn that the

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trail being planned is a 12-foot wide asphalt road. The Society questions the appropriateness of including a 12-foot lighted road in a green spaces bond measure. She said while they are concerned about access for the disabled, they found that the American Disability Act defines a 36-inch width trail as acceptable for a semi-primitive trail in an urban area, with passing spaces every 300 feet and a resting area every 900 feet. This would be a very acceptable trail width to the Society. She said trees are as important to the pedestrian/bicycle traveler as pavement, if not more so. She said they are not suggesting a dirt pathway but the 12-foot width is simply too wide for an attractive pedestrian or commuter experience. They feel strongly that simply having more asphalt or concrete walkways will not get people out of their cars. She urged that a large portion of the ballot measure money allocated for this project go to the restoration of native trees and shrubs rather than to pavement. The Society feels that ballot measure money should not be used to pave a roadway to neighboring property owners' back yards and while it wholeheartedly supports the crossing trail concept along the Kerry Boulevard right-of-way, they feel the design needs to go back to the drawing board.

Mayor Katz asked what the response was when these recommendations were proposed. She read from the report which calls for a number of surfacing options to be explored prior to final design.

Ms. Vogel said their problem is with the trail width, even if it is not asphalt.

Commissioner Hales said it has been their experience, for instance with the Terwilliger Trail, that where pedestrians and bicyclists share the same trail, the conflict between the two gets pretty severe when you get down to eight or ten feet. He said they had this same debate about the Springwater Corridor. This is a combined facility and safety factors must be taken into account.

Mr. Akers said he worked on the Springwater Corridor Master Plan in Gresham where the same concerns were raised about black top and trail widths. He said he found that when six-foot trails were developed they had to be widened later to 12 feet for safety. He emphasized the safety factors that Commissioner Hales cited and suggested looking at the Gresham trail.

Ms. Arden said they had two neighborhood meetings on this and have tried to ask everyone to be part of the process. She said a lot of different concerns have to be answered. For instance, the Burlington Northern railway is very concerned about access to their tracks and neighbors whose property backs up to the trail worry about what will happen in their backyards. She said they understand the desire to have



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as much vegetation as possible.

Ms. Vogel said she had less than a day's notice about this and was unable to research trail widths but is sure she can find examples where narrower trail widths have worked. She said she is disturbed about neighbors who feel a road should be paved to their backyards.

Mr. Washington noted that this is a feasibility study and no final decisions have been made.

Mayor Katz said she is sure Metro will consider any information about trail widths.

Ernie Drapella, 1294 SE Laura, Gresham, Vice Chair, Oregon Recreation Trails Advisory Council, commended the City for its action in transforming a concept into the reality that Portland has become, a model of successful trail planning. The City is looked upon as a role model.

Commissioner Blumenauer said the point Commissioner Hales made about conflict between bicyclists and pedestrians was brought home to him when he travelled through Rock Creek in Washington, D.C. He said he is amazed at the variety of users, from senior citizens with carts to roller bladers. He said the emphasis should be on safety and allowing people to explore this treasure.

Commissioner Hales said this is a very exciting project and fills in the gaps in this area. He noted that it was the citizens themselves who took the idea of a 40-mile loop and expanded it to 140 miles. He said the City is short on facilities where families can ride together safely and this trail network is going to be a huge asset.

Commissioner Kafoury said as an avid walker she appreciates the availability of places to walk in Portland.

Mayor Katz said the ballot measure will allow this and other projects to go forward. Planning for open and green spaces must be done as growth continues.

**Disposition:** Resolution No. 35388. (Y-4)

**577**

**TIME CERTAIN: 9:30 AM** - Update on current State legislative session (Report introduced by Mayor Katz)

**Discussion:** Marge Kafoury, Director, Government Relations Office, shared her impressions of the current legislative session and discussed the status of proposed measures which will affect the City, including

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\$30 million in cuts proposed for the Economic Development funds and the "ecotaking" bill, which the Governor has indicated he will veto. Another bill would freeze state and local fees and not allow increases without a vote of the people. There is also a proposal to remove personal property taxes.

Jackie Bloom, Government Relations lobbyist, reviewed the status of the bills the City had indicated a high interest in seeing passed, including clarification of seismic rehabilitation standards for existing buildings, the mixed-income housing bill.

Susan Schneider, Government Relations lobbyist, reviewed transportation-related measures, including the gas tax and the registration fee increase.

Commissioner Blumenauer discussed the efforts of staff and local elected officials to obtain affirmative votes for transportation and light rail measures.

Ms. Bloom returned to a discussion of other priority issues, including exemption issues and obtaining money for the Housing Trust Fund. She also discussed proposed changes to the PERS system, building inspection changes, collective bargaining (which has been tied to wage increases for state employees), workers compensation, changes in 9-1-1 system funding, reform of the juvenile justice system and the reconfiguration of community corrections.

Mayor Katz said it essential that the City be represented on juvenile justice and corrections issues even though the County bears the largest burden, because of the enormous impact on the City's public safety budget.

Ms. Bloom described proposed bills which would limit the ability of local communities to pass firearms control measures. Civil forfeiture and graffiti, requiring community service and parental responsibility, are other measures in the works.

Ms. Schneider discussed other bills they are working on, including plastics recycling, water rights and public contracting issues, fueled by the ambulance contracts and the Clackamas swim center bond measure.

Mayor Katz asked them to address adult business zoning restrictions, a priority for Council members.

Ms. Kafoury described the status of several proposed bills, some of which the City opposes either because they are too prescriptive or because of land-use and legal concerns.

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Mayor Katz said both she and Commissioner Kafoury keep looking for constitutional ways to place some limitations on certain types of businesses. She said she is at her wits' end on this.

Commissioner Kafoury said this is one place where the City parts company with the civil liberties community. This is an area where the City has to be very creative, whether through zoning or whatever, and open to trying all kinds of approaches. She said until the constitution can be changed, she is willing to take on some additional prescriptive burdens in order to get a handle on these disgusting adult businesses.

Ms. Kafoury said the City Attorney, Madelyn Wessel, did not express concerns about the civil rights questions but did express concern about the potential liability to the City.

Mayor Katz said it may be too late to do anything at this session, but she would like to take the language proposed in House Bill 3323 and enact something like that for the City. She said she also parts company with the ACLU on this.

Regarding high speed rail, both Commissioner Hales and Kafoury indicated their willingness to lobby for this.

Ms. Kafoury wrapped up her testimony by commenting on a proposal to allow additional conditions to be placed on five-year, not just three-year, tax abatement allowances for businesses locating within Enterprise Zones. In a related bill, local governments could develop a menu of additional conditions that businesses could select from. This is seen as a way to resolve the constitutional issues that have been raised.

**Disposition:** Placed on File.

At 11:45 a.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 APRIL, 1995 AT 2:00 P.M.

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

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

### **REGULAR AGENDA**

#### **Commissioner Charlie Hales**

- 613** Accept withdrawal of Hosford Abernethy Neighborhood Association appeal; tentatively deny appeal of Lone Star Northwest and uphold Hearings Officer's decision, as amended, to approve the application of Portland General Electric for a zone map amendment, subdivision greenway review and adjustments on property at SE Caruthers Street and SE 4th Avenue (Findings; Previous Agenda 537; 94-00896 ZC SU GW AD)

**Disposition:** Findings Adopted.

- 611** **TIME CERTAIN: 2:00 PM** - Appeal of Children's Oncology Services of Oregon, applicant, against Hearings Officer's decision to deny a conditional use and adjustment to construct a Ronald McDonald House on the southwest corner of the Emanuel Hospital campus, at the intersection of N Commercial and N Knott Streets (Hearing; 94-00859 CU AD)

**Discussion:** Michael Holstun, Senior Deputy City Attorney outlined certain procedures to be followed during the hearing and in order to make an appeal.

Commissioner Blumenauer questioned whether Council had to go through the full drill and open it up to full public testimony.

Mayor Katz said the legal advice she received was that everyone who wished to testify had to be given that opportunity. She said she would prefer to go with the usual procedure.

Susan McKinney, Planning staff, said staff recommended approval of this conditional use to site a Ronald McDonald House on the Southwest corner of Emanuel Hospital but the Hearings Officer denied it. She

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cited the applicable approval criteria. This proposal is for a 15,500 square-foot facility to provide short-term housing for families of seriously ill children receiving care at Emanuel. It will house a maximum of 18 families for stays varying widely in length. In the worse case scenario, the facility will generate 100 total trips per day to the site but the Bureau of Traffic Management believes the site will generate far less than that. Emanuel Hospital has a very long and complicated land use history and the issue here today is process. Council needs to determine if this proposal can be reviewed separately from the Impact Mitigation Plan (IMP) or whether it needs to be part of it. The Hearings Officer determined that it could not be reviewed prior to the IMP approval while Planning staff believed it could. The appellant argues that the proposal can be reviewed outside the IMP. Subsequent to the Hearings Officer's decision, a number of things have happened relating to prior conditions of approval, including construction of a diverter at the intersection of NE Grand, Williams and Vancouver and removal, through the IMP, of a condition requiring that the south campus be reserved for housing. In addition, the IMP was approved on April 20 and the appeal period expires next week. Staff recommends that if Council decides the request can be reviewed outside the IMP and approves it, that it add a condition requiring a temporary parking area on the south campus which is proposed to be used as a staging area during construction. The condition also calls for it return to its original state within one month of occupancy.

Commissioner Hales asked what the original state was.

Ms. McKinney said its original state was sod. Right now it has gravel and is being used for temporary parking. She showed slides of the site.

Mike Robinson, attorney representing Ronald McDonald House, corrected an error in the material submitted, indicating that the facility will have 14 guest rooms, not eight. He said process is the key issue, as the Hearings Officer found that Ronald McDonald should have waited until the IMP was completed. It has now been approved. Nevertheless, one of the conditions of approval allows an application to go forward prior to IMP completion if there is an adequate showing of why that project cannot be delayed. He argued that, despite the Hearings Officer's opinion, an adequate showing has been made. He said nothing requires that "a sudden need" be shown, only an adequate showing why the project cannot be delayed. He cited letters (Exhibit 4) stating the need and a report (Exhibit 2) which shows the number of people being turned away from the existing house. As an average, three to five families a night are being turned away from the existing house and on some nights as many as eight families have been turned away. He said demand is also increasing because Emanuel has increased its pediatrics services. Lastly, donated funds are at risk because of the competition

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for charitable funds. If Ronald McDonald is not developed on a timely basis, contributions may be lost.

Leo Huff, board member, Ronald McDonald House, said by 1987 they realized that they had seriously underestimated the need for rooms. They conducted a feasibility study as instructed by the charity's international organization in order to ensure that local groups not overreach in determining need. The study concluded that 14 to 18 rooms were needed in the Emanuel Hospital area.

Bill Swindells, Board President, Ronald McDonald House, said staff is naive in stating that there is no reason to believe that adequate funds will not be available if construction is delayed. Fundraising is done in a very competitive environment and if someone feels there has been a misrepresentation about delivery, pledges may not be honored.

Bob Weiler, Ronald McDonald Board member, described his family's need for a facility like the Ronald McDonald house.

Jim May, President, Legacy Emanuel Hospital, said there are compelling reasons why this house should have been built three years ago. There is a critical need and time is of the essence.

Steve Janik, attorney and Ronald McDonald house contributor, said he believes the Hearings Officer decision is wrong and will cause needless hurt for families. It is a reprimand to Emanuel Hospital and is unfair to the Ronald McDonald House. If the Hearings Officer had properly focused on the conditions, she would have approved it. She wrongly interpreted, in Condition A, the words "adequate showing" which designates a low level of need. The Hearings Officer said there is no urgent need, a very callous statement, and went out of her way to incorrectly interpret the adequacy standard. The second error was to weigh the potential harm to the land-use process against the need. The Hearings Officer did not articulate any of the evidence that harm would occur to the neighborhood. The only analysis was that it would violate the integrity of the land-use process. He asked that the Hearings Officer decision be overturned.

Peter Fry, speaking on behalf of the North/Northeast Business Association land-use committee, said they strongly support this appeal. Uses around Emanuel cannot be frozen in time because their services are desperately needed. Second, the IMP has not been adopted yet and, in theory, might not be adopted for years if, for instance, it is appealed.

Clark Worth, 1211 SW 5th, 97204, Emanuel Hospital Board member, provided information about the temporary parking lot. He said in 1992, Planning approved two temporary parking lots to facilitate construction

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of the medical office building. Emanuel posted a bond and said they would remove them upon completion. One lot was converted to permanent parking, approved by the Hearings Officer in 1993. The other lot was closed but not removed. In January, 1995, the Planning Bureau and Legacy signed an agreement allowing the hospital to use the temporary parking lot as a construction staging area and remove it following completion. Legacy again posted a bond and no further action is needed by Council.

Steve Rogers, 533 NE Brazee, 97212, Chair, Eliot Neighborhood Association Land Use Committee, said the Neighborhood Association never opposed this project but wanted to see it reviewed as part of the IMP. It is very closely linked with the Emanuel campus and within the campus boundary as well. Second, the neighborhood will have to live with an IMP for the next 30 years that has a tacked-on project that did not go through the Type II process called for in the IMP. Because the timing of this project is so closely tied to the IMP process and because it is about the future of the campus, it should be reviewed under the IMP as it is located in an area where there is a 50-foot pedestrian design zone. The project is cited at least twice as a future project in the now approved IMP. He disagreed that "adequate showing" is a low burden of proof as, taken in the context of the full text of Condition A, it is very clear that there was a long delay with the IMP process, starting back in 1993. Emanuel had difficulty getting started and the deadlines imposed on the Hospital were intended to get something going. He quoted from page 5 of the Hearings Officer's decision, stating that the time pressure of the building season is nothing new to Emanuel which has known that further development was dependent upon completion of an IMP and should have submitted a completed IMP in time to allow for earlier approval. The Hearings Officer further stated that there is no evidence of any real urgency, at least not more than could be claimed for any new development or expansion proposed by the hospital. As a side issue, he said they are pleased to have a no left turn signal placed on Graham Street but cars seem to be ignoring it and driving into the neighborhood from the campus. He said they have not heard from Transportation when the diverter is going to be built. Mr. Rogers said approving this could set a bad precedent for other institutions preparing IMPs. He said he does not believe anyone will appeal the IMP which will be effective within 14 days. He called for an expedited Type II review process under the IMP.

Commissioner Hales asked if he would expect substantive locational or design changes to be required under the IMP if this were re-reviewed.

Mr. Rogers said probably only in terms of the 50-foot pedestrian design standards. It might change the configuration of the sidewalks and landscaping to make them pedestrian friendly.

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Lee Perlman, former chair Eliot Neighborhood Land Use Committee, said the IMP takes effect May 5 and then the expedited review can begin. He said he is concerned with the precedent this will set as institutions are often not very respectful of the neighborhoods around them or of City procedures and requirements. He said he fears overturning the Hearings Officer would invalidate huge sections of the Code and send a message that one can circumvent it simply by assigning the development responsibility to outside organizations.

Mr. Robinson said process should not drive the system. Mr. Rogers and Mr. Perlman want Ronald McDonald to wait but the process allows it to go forward if there is an adequate showing of need. He said they have provided some new facts regarding the unmet need of families and the Ronald McDonald House is consistent with the existing Master Plan which, despite the Hearings Officer's opinion, continues to be a valid document until the IMP is approved. The Master Plan shows short-term housing in the area Ronald McDonald House proposes to build. He said the IMP has been a slow process because it is the first of its kind and part of the delay was due to Legacy Emanuel's desire to address the neighborhood concerns. Regarding the traffic diverter, he said it has been installed and Transportation staff has indicated that it is substantially satisfied. In response to charges that approval will set a bad precedent, he said there is no such thing as local precedent; each case must be reviewed individually. If the IMP is so close to being approved, this could not happen again. The condition of approval that governs this is in place and gives Council the ability to approve this conditional use.

Commissioner Blumenauer said Transportation got caught in the web of the diverter and a conflict between what people agreed would be the best solution and the technical requirements of something that had been proposed earlier. Cases like this can inspire a backlash in Salem against the land use planning process.

Commissioner Hales agreed. He moved to overturn the Hearings Officer's decision and make a tentative decision to approve the application. He asked staff to return with modified conditions regarding use of the temporary parking lot. Commissioner Kafoury seconded.

Commissioner Hales said in de novo cases, Council should not be bound by local precedent. There are some context issues here but the fundamental question is has the standard in the Code been met. The applicant has shown a compelling public need and there does not appear to be any substantive differences in the result that would be obtained if the applicant was sent back through the process.

Commissioner Blumenauer noted that any person could appeal the IMP



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and trigger a delay. He said Emanuel has been very responsible in trying to build a base of support and there are plenty of tools to protect the public from any negative impacts. He said in the future he hopes Council can find other ways to expedite appeals of this nature.

Commissioner Hales agreed but said he hoped there would not be many more such appeals as the reason why the institutional zone was created in the first place was so there would be a bankable master plan all parties can live with for a long time. He said it is better to resolve such things at the neighborhood level rather than here.

Commissioner Kafoury there is a lot of rhetoric about the importance of children and here is a program that should be permitted to be sited with almost no public process at all. The applicants should not be subjected to a lot of delay.

Mayor Katz said she will vote aye but neighborhood associations that watch the process need to be appreciated. Council needs to follow the process but also be flexible and not look as narrowly as the Hearings Officer did. She said there is no question about the need nor about the importance of keeping commitments made to financial contributions, particularly when governments set up barriers. She said no one objects to the mission of the house, only the process.

**Disposition:** Tentatively grant appeal and overrule Hearing Officer's decision; applicant prepare findings for May 17, 1995 at 2 p.m.

**612**

**TIME CERTAIN: 3:00 PM** - Appeal of Trails at Mt. Scott, Inc., applicant, against Hearings Officer's decision to deny a request for change of conditions of approval for a planned unit development, subdivision and planned unit development review with a variance, environmental review, adjustment to Johnson Creek Plan District, and excavation/fill review, located west of SE 112th Avenue, north of Flavel Street (Hearing; 94-00739 SU PU EN AD EF)

**Discussion:** Mr. Holstun described the procedures to be followed regarding this hearing and any appeal.

Duncan Brown, Planning staff, said this is a proposal for a Planned Unit Development on a 31-1/2 acre site on the north slope of Mt. Scott. It includes 109 detached residential lots, street connections to the east, south and west, a 2-1/2 acre public park dedication and 1/2 acre stormwater detention treatment facility and 6-1/4 acres of common open space. This is the last phase of the development and applicant is requesting four changes in the prior approval: 1) preliminary subdivision review for 109 lots; 2) environmental review; 3) adjustments to the Johnson Creek Plan District regulations to allow removal of trees

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over six inches in diameter with mitigation; and 4) excavation and fill review to allow regrading of the site. He stated the applicable approval criteria. The Hearings Officer denied the application because there was no provision for common open space, the development was park-deficient and mitigation for tree removal was lacking. The applicant had argued for a reduction to zero open space because over 24 percent of the total developable area would be controlled by a conservation easement along the north border of the property, made up of the backyards of lots, and a 1.4 acre park, which the Parks Bureau said was insufficient in size. Applicant has modified that request and agreed to place the environmentally owned land in a commonly owned tract and to expand the park to 2.45 acres. The Parks Bureau believes that is adequate. Planning staff originally recommended denial because the proposal did not meet approval criteria, particularly regarding stormwater disposal. However, staff noted it could recommend approval with conditions if the applicant provided information prior to the hearing before the Hearings Officer. Some was produced but the Hearings Officer denied the application on the basis of the above issues. The applicant has modified the proposal to address the deficiencies identified by the Hearings Officer and staff recommends approval with the conditions contained in an April 25 Planning Bureau memo which is before Council. Mr. Brown showed slides of the site.

Mike Robinson, attorney representing the applicant, said they agree with Mr. Brown's analysis and agree with the conditions of approval noted in his memo of April 25.

James Stormo, 625 SW 6th Court, 97219 summarized the changes they have made in the proposal since the Hearings Officer's decision, noting enlargement of the park, modification of the turnaround at the end of the private street to a cul-de-sac configuration, preparation of a detailed tree mitigation plan, submission of a more detailed phasing plan to the City and a revision in the hours of operation for the fill activities. The applicant proposes to construct a stormwater detention facility that meets the 110 percent rule for the Johnson Creek basin set up by the Bureau of Environmental Services. Instead of allowing the water to spread out at the northern portion of the site, they intend to collect it and route it in a pipe system down 110th to an existing outfall that discharges into Johnson Creek.

Merrie Miller, 6558 SE 108th, 97266, representing Lents Neighborhood Association, said trickle down theory is alive and well in Portland, taking the form of unchecked development in and around the Johnson Creek flood plain. She said she and her longtime neighbors have seen no indication that the City is willing to solve the problem of flooding in their area before development makes the situation worse. The application for development in excess of 100 houses in the affluent Mt.

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Scott area lies in the middle in the largest breadth of flood plain in the entire Johnson Creek basin. This is an application to build a new public utility that would funnel 10 percent of this development's stormwater on top of her and her neighbors, on an already overtaxed channel. She said people who live in the most flood-prone part of Johnson Creek basin are not willing to accept more stormwater in order to add more houses and provide more tax revenues to City coffers. She said they do not mean to single out this applicant but they need solutions to the flooding problem, which they have been unable to obtain from BES, which then tells developers it is okay to put ten percent of their water down upon them. She said the water from 110th street should go in a westerly direction, adding that other stormwater facilities are available at the Mt. Scott Church of God and should pond at the Smurfit site. She said it has been recognized both in the protection plan and resource management plan that continued development is the primary cause of the increased flooding problems. She said she is currently negotiating with the City for purchase of her property because of her fear that someday the floods may imperil her children. She said anyone who can proceed with siting plans and regulations without taking a look at the living conditions of those impacted should be ashamed. She said the neighborhood will appeal.

Fred Elsasser, 4210 NE Shaver, Apt. 3, 97213, said last fall he told the applicant that there was a storm sewer on the north end of the Mt. Scott Church of God. He said he was told by Spencer Vail that there was a waiver of remonstrance on this property which would ensure that future development would not negatively impact those living downstream. He said he is here to dispute the access on SE Henderson and SE Flavel. (He was unable to continue his testimony and submitted his written comments for the record.)

In response to a query from Mr. Elsasser, Mr. Holstun said he must state for the record any issues he may wish to raise in an appeal to LUBA.

Mr. Elsasser said he raised those in the packet he submitted earlier. He said he has been at this for 14 years and finds there is no respect for property rights. He said he told the applicant there was a better way to divert the stormwater than what he was proposing.

Kevin Helean, 6905 SE 108th, 97266, addressed stormwater and tree mitigation issues. He said he recently went through the tree mitigation process on property at the foot of the hill where he removed several trees which had to be replaced at a ratio of three or four trees for every one removed. He asked if the same form of mitigation would be required on this development. He also asked if any of the trees in the conservation zone on the north slope are to be removed as that slope

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has been found to be a potential slide area. Second, he is concerned about stormwater runoff through the existing swale, which also is in the same zone on the north slope. He said the swale was created naturally but considerably increased in size when trees were clear-cut some years ago. He questioned who will maintain the swale over the long run when more stormwater is directed into it and who will keep it going into the pipe as proposed. He said nearby residents can see where it goes now and know the areas where it floods.

C.W. Amos, 7707 SE 110th, 97266, asked who will develop the park -- the City or the developer -- and who will maintain it later. He said they do not want to see it remain as a brush park.

Mayor Katz asked BES staff to discuss the adequacy of the stormwater disposal system, noting that the Hearings Officer identified what she thinks needs to be done to prevent additional flooding in Johnson Creek. She asked them what they had seen that could guarantee the solution described on Page 8.

Bill Baechler, BES, said they placed many requirements on this development to ensure that the rate of runoff will not increase over the predevelopment level. Detention systems are built into the proposal so that water which cannot go into the ground will be collected into a detention pond, allowing a reduction in the runoff rate to reflect the predevelopment condition. The water would be collected in a pipe system and discharge into Johnson Creek at 110th Avenue. To ensure that any adverse impact is minimized, the Bureau will feed technical information from the applicant's design into the hydraulic model already established for Johnson Creek. That way they can actually simulate and predict the impact of this development on the flooding problem. If they see any increase in the flow, they will ask for adjustments to the design. He said he believes they have taken measures to ensure that the water draining from this site will not increase at all, not even to the 110 percent. They will be shooting for the predevelopment condition, with no additional increase.

Mayor Katz said she (Hearings Officer) said that no more stormwater would leave the site after development than is leaving the site now and, in addition, peak flows will be regulated so that the rate of discharge will not have adverse impacts.

Mr. Baechler said that is right. They would ensure that adverse impacts would be mitigated.

Mayor Katz asked about the water being drained in another direction.

Mr. Baechler said when the drainage leaves the site now it is hard to

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define where the water is dispersed because it is not well-channelled. This proposal will collect that water before it leaves the site and take it through a pipe directly to Johnson Creek. He said dispersement of the water will not continue after this project is built.

Mayor Katz said no, the issue is that there is another basin that could be used.

Mr. Baechler said their basic policy is that they do not take water from one basin and pipe it into another.

Mayor Katz asked him if he had done the modeling yet.

Mr. Baechler said not specifically for this site. If it does not meet the requirements, the applicant's engineering proposal would have to be redesigned. Redesign could mean reconfiguration of the detention, or the control structure that allows water to flow out might have to be made smaller. It would be mechanical changes.

Mr. Stormo said they are mitigating trees at a 2:1 ratio and described the specified size and location. Tree removal is primarily on the interior of the site.

Mr. Brown said none of the trees in the environmentally zoned area will be removed.

Mr. Stormo said where they discharge from their stormwater detention facility, the stormwater will go into the existing swale. The detention facility, the swale and the pipe system will all become a public system, owned and maintained by the City. Stormwater runoff will not be increased and, in fact, any flooding problems should be alleviated because the water will not be dissipated onto private property. There is an existing outfall system right next to the bridge that crosses Johnson Creek and they will connect to that. He said they investigated using the pipe system discussed by Mr. Elsasser but found it was inadequate both as to size and depth. Also, it is City policy not to direct stormwater from one basin to another. That is why they chose to direct it down 110th.

Regarding the park, Mr. Robinson said they are complying fully with Parks Bureau instructions but have no information about plans for its development.

Commissioner Hales said when Parks receives dedicated property it is put in the capital improvements system. They try to tie improvements to subdivision development and, although they cannot promise that it will be developed in a particular year, the Bureau does assume the

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maintenance responsibility right away, making sure it is secured and not being used inappropriately.

Mayor Katz asked if Council was satisfied with the responses to the issues raised.

Commissioner Kafoury said before she can support this she must have the strongest language possible in the findings about the drainage. She said, based on her inspection of other development sites, only a fool would believe that development does not impact drainage and waterflow in creeks. She said she wants to make sure approval is based on absolutely sound engineering techniques.

Mayor Katz agreed. She said she feels uncomfortable about this because they have had assurances in the past from the Bureau and developers that there would be no negative effect. Then when you visit the site, you have to be pretty dumb not to make the connection that the discharge was impacted by the development and things did not go the way they were supposed to go. Here there is a major basin that floods and she is very nervous about whether these detention plans will work. She said she knows the developer has done everything to meet the Bureau requirements but what happens if the Bureau is wrong.

Commissioner Kafoury said she is putting the burden on the City, not the developer. She said she does not think the developer is proposing something he does not think will work but there needs to be a check.

Commissioner Blumenauer asked Commissioner Kafoury and Mayor Katz if they were talking about current projects where the standards have fallen down.

Mayor Katz said they have heard from people in Southwest over and over again about projects that did not work.

Commissioner Kafoury cited a current project in Southwest Portland where there is still flooding.

Commissioner Blumenauer said he does not think the burden should be on the City, opening up the City to liability when there are drainage problems.

Commissioner Kafoury read a condition submitted by Mr. Brown stating that post development stormwater flows cannot exceed predevelopment levels.

Commissioner Blumenauer said at a time when the City is already wrestling with drainage issues and inadequate resources, he does not

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think the City should be opened up to paying damages when there are problems. He said if the City does not have confidence that it can enforce these conditions, this proposal should be turned down.

Commissioner Hales asked if the new condition includes the customary language that states that stormwater detention facilities will be designed to meet the approval of BES. He said he does not see that in the modification and assumes it is there already.

Mr. Brown said yes. The Johnson Creek Basin Plan District has regulations which require that postdevelopment stormwater flows cannot exceed 110 percent of the predevelopment level. The proposed condition would make it 100 percent.

Commissioner Kafoury moved the amendment adopting the 100 percent standard.

Mr. Holstun read the amended condition: "Postdevelopment stormwater flows shall not exceed 100 percent of predevelopment level."  
Commissioner Blumenauer seconded.

In response to a question from Commissioner Hales, Mr. Baechler said this will work but added that while they can measure the flow rate of water leaving the site, it is difficult to measure volume.

Commissioner Kafoury suggested this be a tentative decision to allow staff time to figure out the details. She moved that the amendment be conceptual. Commissioner Hales seconded.

Roll was called on amendments (Y-4).

Commissioner Blumenauer said he does not feel comfortable approving this if the City is not delivering on things it is doing already.

Commissioner Hales said because of concerns raised that drainage from this project makes a bad situation downstream worse, the Council has held this project to a higher standard than usual in the Johnson Creek District. If the standard has not been good enough lately, the requirements can be ratcheted up. It is not technically unfeasible to make it 100 percent. He said he is comfortable with a condition that says that. Then the engineers can argue over exactly how to do it.

Commissioner Kafoury said a work group is studying the whole drainage issue now. She said this proposal raises a bigger issue regarding enforcement by BES and Buildings as she believes the City may not be doing a very good job. She said she is much more comfortable about the 100 percent standard, which was not used on the

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projects in Southwest.

Mayor Katz said if the standards have to be raised, especially on these kinds of slopes, then they will do it.

Commissioner Hales moved to tentatively grant the appeal and overturn the Hearings Officer's decision subject to the modification of the conditions provided by Mr. Brown in his April 25 memorandum (and the conceptual amendment).

Mayor Katz said when this comes back she would like to know what can be done technically to meet this standard.

Mr. Holstun asked if Council understood the sense of the conceptual condition that the runoff postdevelopment would not exceed the predevelopment runoff. He said Council also wants further assurance from staff as to the technical feasibility.

Mayor Katz said people want to feel comfortable that it can be achieved since it is a technical issue.

Commissioner Kafoury seconded.

Commissioner Blumenauer said he would tentatively approve this but before final approval he wants to be assured there is adequate enforcement and that a clear signal is sent that this is the responsibility of the developer, not of the City.

Mr. Holstun clarified that since staff will coming back with additional information, the record should be left open to receive that information, allowing parties to the appeal an opportunity to rebut.

Commissioner Hales said aside from the drainage issue, the primary reason for taking this action is that the problems have been addressed and significant improvements have been negotiated since the Hearings Officer's denial.

Mayor Katz said she thinks the conditions have been met. Council is saying to BES that it may have to raise this standard a little higher in some cases. This does not blame anyone, it tries to resolve an issue that has been hard on the community.

Mr. Robinson said they do not want the record left open unless the Bureau proposes something Council does not think will work. In that case, the record could be reopened and they could respond.



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Commissioner Kafoury said she promises to reopen the record if agreement is not reached.

**Disposition:** Tentatively grant appeal and overrule Hearing Officer's decision, as amended; applicant prepare findings for May 17, 1995 at 2 p.m.

At 4:23 p.m., Council recessed.

BARBARA CLARK  
Auditor of the City of Portland

*Cay Kershner*  
By Cay Kershner  
Clerk of the Council

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**THURSDAY, 1:30 PM, APRIL 27, 1995**

No regular session was held. Council convened as the Budget Committee from 1:30 to 5 pm in Council Chambers for a budget work session.