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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 SEPTEMBER, 1996 AT 9:30 A.M.

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

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

Agenda Nos. 1508 and 1543 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

**1505** Vacate certain portions of unused street remnants surrounding the Rose Quarter, under certain conditions (Second Reading Agenda 1481; C-9898)

**Disposition:** Ordinance No. 170537. (Y-4)

**Mayor Vera Katz**

**1506** Adopt City of Portland Investment Policy (Resolution)

**Disposition:** Resolution No. 35549. (Y-4)

**1507** Approve issuance of Revenue Bonds, Series 1996 (Robison Jewish Home-Rose Schnitzer Living Center project) by the Hospital Facility Authority of Clackamas County, Oregon as approved by the Hospital Facilities Authority of the City of Portland, Oregon (Resolution)

**Disposition:** Resolution No. 35550. (Y-4)

**\*1509** Contract with Ball Janik LLP representation in Washington, D.C. on matters pertaining to the relationship between the City of Portland and the federal government (Ordinance)

**Disposition:** Ordinance No. 170538. (Y-4)

SEPTEMBER 25, 1996

- \*1510** Give final approval for the issuance of Multifamily Housing Tax Credit Revenue Bonds in an amount not to exceed \$7,000,000 (Ordinance)

**Disposition:** Ordinance No. 170539. (Y-4)

- \*1511** Authorize the Purchasing Agent to sign a contract with SAS Institute, Inc. for annual software maintenance in the amount of \$61,545 without advertising for bids (Ordinance)

**Disposition:** Ordinance No. 170540. (Y-4)

- \*1512** Authorize the Purchasing Agent to sign a purchase order to serve as a contract for the purchase of disk drives for the Bureau of Information Services IBM mainframe computer system (Ordinance)

**Disposition:** Ordinance No. 170541. (Y-4)

- \*1513** Authorize Agreement with First Trust National Association for paying agent and registrar services (Ordinance)

**Disposition:** Ordinance No. 170542. (Y-4)

**Commissioner Charlie Hales**

- \*1514** Contract with the lowest responsible bidder on an informal basis to repair landslides at Pittock Acres Park (Ordinance)

**Disposition:** Ordinance No. 170543. (Y-4)

- \*1515** Contract with the lowest responsible bidder on an informal basis to repair landslides at Hillside Community Center (Ordinance)

**Disposition:** Ordinance No. 170544. (Y-4)

- \*1516** Authorize Agreement with Hargreaves Associates for professional services for Phase I of the Steel Bridge to OMSI Eastbank Bike/Pedestrian Corridor project (Ordinance)

**Disposition:** Ordinance No. 170545. (Y-4)

- \*1517** Authorize application to Meyer Memorial Trust for a grant in the amount of \$23,551 for FY 96-97 for research to benefit older persons with developmental disabilities and their retirement options (Ordinance)

SEPTEMBER 25, 1996

**Disposition:** Ordinance No. 170546. (Y-4)

- \*1518 Authorize application to the Oregon Department of Transportation for a grant in the amount of \$71,200 to implement a European Bikeway Design and Safety Demonstration project (Ordinance)

**Disposition:** Ordinance No. 170547. (Y-4)

- \*1519 Contract with nine firms for flexible services contracts to perform graphic design, copy and technical writing, and multimedia and photography services (Ordinance)

**Disposition:** Ordinance No. 170548. (Y-4)

**Commissioner Gretchen Miller Kafoury**

- 1520 Accept contract with Carpet Resources Center as complete, authorize release of retainage and make final payment (Report; Contract No. 30487)

**Disposition:** Accepted.

- \*1521 Contract with the Portland Development Commission for implementation of the HOME Investment Partnership Program in the amount of \$1,915,000 and provide for payment (Ordinance)

**Disposition:** Ordinance No. 170549. (Y-4)

- \*1522 Contract with Low Income Housing for Native Americans of Portland for \$35,000 to support affordable housing development and provide for payment (Ordinance)

**Disposition:** Ordinance No. 170550. (Y-4)

- \*1523 Contract with Portland Housing Center, Inc. for \$134,698 and provide for payment (Ordinance)

**Disposition:** Ordinance No. 170551. (Y-4)

- \*1524 Authorize Intergovernmental Agreement between the City of Gresham and the City of Portland for the cooperation of units of local government for the development of the Consolidated Plan and provide for receipt of payment (Ordinance)

**Disposition:** Ordinance No. 170552. (Y-4)

SEPTEMBER 25, 1996

- \*1525** Contract to carry out activities associated with implementation of the Belmont Business District Plan, as designated under the Target Area Designation Program of the Bureau of Housing & Community Development, for \$35,000 and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170553. (Y-4)
- \*1526** Contract with the Bureau of Labor and Industry for \$25,000 for Civil Rights Enforcement Services and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170554. (Y-4)
- \*1527** Contract with Franciscan Enterprise of Oregon for \$50,000 to support affordable housing development and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170555. (Y-4)
- \*1528** Contract with Northeast Community Development Corporation to provide support for the Nehemiah Housing Opportunity Program in the amount of \$90,090 and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170556. (Y-4)
- \*1529** Agreement with The Private Industry Council, Inc. for \$550,025 for the Comprehensive Youth Employment Program and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170557. (Y-4)
- \*1530** Contract with Cascade AIDS Project for \$19,385 to acquire and maintain furniture for individuals with HIV/AIDS who are moving to transitional and independent living and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170558. (Y-4)
- \*1531** Contract with Multnomah County for \$107,152 to provide services for women leaving prostitution and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170559. (Y-4)
- \*1532** Contract with Multnomah County for \$35,418 to provide specialized probation supervision for domestic violence offenders and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170560. (Y-4)

SEPTEMBER 25, 1996

- \*1533** Contract with the YWCA to provide assistance to victims of domestic violence in the amount of \$77,126 and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170561. (Y-4)
- \*1534** Contract with Raphael House for \$76,905 to provide assistance to victims of domestic violence and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170562. (Y-4)
- \*1535** Contract with Unlimited Choices, Inc. for \$51,000 to support the Adapt-A-Home Program and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170563. (Y-4)
- \*1536** Authorize Intergovernmental Agreement between Multnomah County and the City to prepare and update the Consolidated Plan and provide for receipt of payment (Ordinance)
- Disposition:** Ordinance No. 170564. (Y-4)
- \*1537** Modify agreement with SERA Architects for City Hall renovation for an additional fee not to exceed \$20,260 for a total contract amount of \$2,532,225 (Ordinance; amend Contract No. 29088)
- Disposition:** Ordinance No. 170565. (Y-4)
- \*1538** Authorize exchange of property with Oregon College of Oriental Medicine (Ordinance)
- Disposition:** Ordinance No. 170566. (Y-4)
- \*1539** Contract with US West Communications, Inc. for Digital Centrex service at current and future digital leased line locations, without advertising for bids (Ordinance)
- Disposition:** Ordinance No. 170567. (Y-4)
- \*1540** Grant permit to provide Specially Attended Transportation services in the city (Ordinance)
- Disposition:** Ordinance No. 170568. (Y-4)

SEPTEMBER 25, 1996

**Commissioner Mike Lindberg**

**1541** Accept contract with Gulf Insurance Company, bonding company for John Arnold Company, for 12-inch, 8-inch and 6-inch water mains in SE Flavel District as complete and authorize final payment (Report; Contract No. 29804)

**Disposition:** Accepted.

**1542** Appoint Scott A. Fernandez and John Murray Nicholas to three-year terms on the Water Quality Advisory Committee (Report)

**Disposition:** Confirmed.

**\*1544** Authorize an Intergovernmental Agreement with Multnomah County regarding rat control (Ordinance)

**Disposition:** Ordinance No. 170569. (Y-4)

**\*1545** Amend contract with Black & Veatch for professional engineering services for Tryon Creek Wastewater Treatment Plant anaerobic digester repair project and provide for payment (Ordinance; amend Contract No. 30331)

**Disposition:** Ordinance No. 170570. (Y-4)

**\*1546** Issue a Purchase Order to the lowest responsible bidder to provide networking electronic equipment (Ordinance)

**Disposition:** Ordinance No. 170571. (Y-4)

**City Auditor Barbara Clark**

**\*1547** Cancel sidewalk repair lien (Ordinance; amend Ordinance No. 170284)

**Disposition:** Ordinance No. 170572. (Y-4)

**\*1548** Cancel sewer system development assessment (Ordinance; amend Ordinance No. 170469)

**Disposition:** Ordinance No. 170573. (Y-4)

SEPTEMBER 25, 1996

REGULAR AGENDA

**1503** **TIME CERTAIN: 9:30 AM** - Present Safety Recognition awards (Presentation introduced by Mayor Katz)

**Discussion:** Council members presented awards to safety committees in the Bureaus of Environmental Services, Police, Buildings, Water, Emergency Communications, Maintenance and Parking Patrol. Mayor Katz noted the enormous savings that are possible when safety measures are taken in the work environment. She added that Council members do read the Risk Management reports and know that the efforts of these employees are paying off.

**Disposition:** Placed on File.

**1504** **TIME CERTAIN: 10:00 AM** - Accept report on Enterprise Zone precertification for Helser Machine Works and Welded Tube of America projects of Australian National Industries (Report introduced by Mayor Katz)

**Discussion:** Bob Alexander, Portland Development Commission (PDC), said Australia National Industries (ANI) America has purchased a 34-acre site in Rivergate where it plans to expand two companies, making a \$48 million investment.

Christopher Juniper, PDC, said this is the first major project since passage of the Enterprise Zone strategy which, in this case, provided an important incentive for the retention of one existing company and the creation of a new one. He noted that the agreement includes a \$773,000 donation for the training of Northeast residents as well as child care and transit benefits. The company has also committed to employee retention efforts.

Jess McKinley, PDC, said this training program will leverage onto Oregon Steel's training program and provide employees market-rate skills in the metals industry.

Commissioner Hales said the strategy with Oregon Steel linking training and employment is a good one and he hopes PDC will build on that success.

Mayor Katz said the manufacturing industry is declining all over the country but the City is beginning to see growth here and the addition of good-paying jobs.

**Disposition:** Accepted (Y-4)

SEPTEMBER 25, 1996

\*1508 Pay claim of Julie and Rodney Hale (Ordinance)

**Discussion:** Commissioner Hales said he would like to take a second look at this claim before approving payment.

**Disposition:** Continued to October 2, 1996 at 9:30 a.m.

1549 Accept bid of 3D Manufacturing, Inc. for furnishing four triple combination pumpers for \$974,400 (Purchasing Report - Bid 3)

**Disposition:** Accepted.

1543 Authorize the City Attorney to intervene and participate in the Oregon Public Utility Commission review of the proposed merger between Portland General Electric and Enron Corp. (Resolution)

**Discussion:** Susan Anderson, Director, Energy Office, noting the Charter's authority regarding franchises and use of the right-of-way, said residents would expect the City to be a party to something that affects its economic health and livability. As an intervenor, the City will be able to obtain otherwise unavailable information on rates and services.

**Disposition:** Resolution No. 35551. (Y-4)

**Mayor Vera Katz**

\*1550 Authorize Bonds for fire and police pension and disability system (Ordinance)

**Discussion:** Tim Grewe, Director, Bureau of Financial Management, said the City has a pay-as-you-go system with a dedicated property tax and will be able to meet all the needs of the fire and police pension and disability system for the next 100 years. Right now the City is not taking action to issue debt but this begins the process needed before debt can be issued, if that is what is wanted.

Mayor Katz said the Task Force presently studying this issue will do a further analysis of the available options.

**Disposition:** Ordinance No. 170574. (Y-4)

**Commissioner Gretchen Miller Kafoury**

\*1551 Agreement with The Private Industry Council, Inc. for \$166,500 for the Summer Mini-Proposal Youth Employment and Enrichment Program and provide for payment (Ordinance)



SEPTEMBER 25, 1996

**Disposition:** Ordinance No. 170575. (Y-4)

**1552** Amend code to increase plumbing permit fees effective November 1, 1996  
(Second Reading Agenda 1489; amend Code Title 25)

**Disposition:** Ordinance No. 170576 as amended. (Y-4)

**1553** Amend code to increase electrical permit fees effective November 1, 1996  
(Second Reading Agenda 1490; amend Code Title 26)

**Disposition:** Ordinance No. 170577. (Y-4)

**Commissioner Mike Lindberg**

**\*1554** Accept a \$75,000 grant from the Urban Consortium Energy Task Force for FY  
1996-97 to implement the GreenPower Partnership Project (Ordinance)

**Discussion:** Commissioner Lindberg said this year the grant money was used to let staff review the electric utility restructuring issue. Next year's will focus on marketing green power, electricity generated from non-hydro or non-coal sources.

He said they have a partnership with Portland General Electric to work with industrial users and the City reached a ground-breaking agreement a year ago for experimental rate tariffs. Last year the City agreed to buy some wind power and is excited about getting involved in this area.

**Disposition:** Ordinance No. 170578. (Y-4)

**City Auditor Barbara Clark**

**\*1555** Create sidewalk, street lighting and traffic signal improvements in the NE  
Broadway, Weidler, Halsey and 9th Avenue Local Improvement District  
(Hearing; Ordinance; C-9921)

**Discussion:** Dan Vizzini, Auditor's Office, said this is primarily a pedestrian local improvement district. His office received two remonstrances on three tax lots, representing 1.2 percent of the total property in the district.

Ron Kleinschmidt, Office of Transportation, said in 1994, when the Lloyd District Transportation System was completed, Council commissioned the Broadway/Weidler Corridor study. At the same time the Lloyd Center began a redevelopment project and asked to participate in the corridor project. The improvements called for here will recover the streets for pedestrians and are supported by 92 percent of the project area.

SEPTEMBER 25, 1996

Commissioner Hales moved to overrule the remonstrances. Hearing no objection, the Mayor so ordered. (Y-4)

**Disposition:** Ordinance No. 170579. (Y-4)

- 1556** Cancel assessment liens on property sold by the Multnomah County Sheriff for collection of delinquent property taxes (Second Reading Agenda 1494)

**Disposition:** Ordinance No. 170580. (Y-4)

- 1557** Assess property for sewer connection contracts processed through the Private Plumbing Loan Program for the period ending September 10, 1996 (Second Reading Agenda 1495; P0019)

**Disposition:** Ordinance No. 170581. (Y-4)

- 1558** Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through August 16, 1996 (Second Reading Agenda 1496; Y1011)

**Disposition:** Ordinance No. 170582. (Y-4)

- 1559** Assess property for sewer system development contracts of the Mid-County sewer project for the period ending August 16, 1996 and non Mid-County for the period ending August 16, 1996 (Second Reading Agenda 1497; Z0637, Z0638)

**Disposition:** Ordinance No. 170583. (Y-4)

Commissioner Kafoury moved acceptance of the Four-Fifths Agenda.  
Commissioner Hales seconded.

**FOUR-FIFTHS AGENDA**

- \*1559-1** Transfer a temporary loan for the Local Improvement District Construction Fund from the General Fund Reserve Account to the Sewer Rate Stabilization Fund and increase the loan limit to \$7,000,000 through the fiscal year ending June 30, 1997 (Ordinance introduced by Auditor Clark.

**Discussion:** Dan Vizzini, Auditor's Office, said the LID Construction Fund borrows money on a short-term basis to fund construction projects and then repays it either from assessment collections or the sale of longterm bonds. Last year the City elected not to go outside the City to borrow money and in effect borrowed the money against the General Fund Reserve account, which is used primarily to fund operations from the end of June through November when tax receipts come in again. The Office of Finance and Administration thought this

**SEPTEMBER 25, 1996**

loan should not extend beyond September 30 and run the risk that the reserve would not be there. This loan extends to June 30, 1997 and after that, if the financing remains in house, they will look for other funds in the City treasury. After extensive discussions, the borrowing has been moved from the General Fund Reserve to the Sewer Rate Stabilization Fund. This is simply the swap of a loan from one source to another within the City. Continuing to borrow in-house saves transaction fees and avoids fairly substantial administrative costs involving complex IRS reports.

Commissioner Lindberg noted that while the City does not have to pay interest on these loans it is losing interest on Sewer Rate Stabilization Fund money that would otherwise be invested.

Mr. Vizzini said they have pledged to pay the Fund the exact same interest rate it would have earned anyway. This provides an opportunity to manage assets and liabilities together and this is one opportunity to do so.

Mayor Katz asked why this was an emergency.

Mr. Vizzini said they wanted to honor the September 30, 1996 deadline that was in the original ordinance. This was delayed because of a difference of opinion about tax law between two bond counsels.

Commissioner Lindberg said Four-Fifths Agenda filings should be avoided because of the need to meet public notice requirements and give Council members time to do research.

Mr. Vizzini said they probably could work out an arrangement to go another week if Council wants to carry this over. However, they felt that they were held to the September 30 deadline.

Mayor Katz said it is good to be hard-nosed about Four-Fifths items because they do circumvent public notice and prevent people from coming to testify.

**Disposition:** Ordinance No. 170584. (Y-4)

Mayor Katz introduced Gus Garcia, the Mayor of Austin, who commented on his visit to Portland.

At 11:20, Council recessed.

SEPTEMBER 25, 1996

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 25TH DAY OF SEPTEMBER, 1996 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; Pete Kasting, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

**Commissioner Gretchen Miller Kafoury**

- 1564** Liquor license application for David Schulber et al, dba Laundryland, 8233 N Syracuse Street, Restaurant liquor license (new outlet); Favorable recommendation (Report)

**Discussion:** Commissioner Kafoury noted a request from the St. Johns Neighborhood Association to hold this over one week.

**Disposition:** Continued to October 2, 1996 at 9:30 a.m.

**Commissioner Charlie Hales**

- 1563** Amend Multnomah County - City of Portland Urban Planning Area Agreement (Second Reading Agenda 1501)

**Disposition:** Ordinance No. 170585. (Y-4)

- \*1562** Amend Ordinance No. 158765, which granted a Comprehensive Plan Map Amendment and Zone Change at SE Powell Boulevard and 90th Place, from cHR-1 (Residential) to C2 and C2B (Commercial), to amend Condition 1 and add conditions (Findings on Ordinance; Previous Agenda 1463-1; LUR 96-00391 CP ZC)

**Disposition:** Findings Adopted; Ordinance No. 170586 as amended. (Y-4)

- 1560** Consider remand by the Land Use Board of Appeals of Council findings adopted August 16, 1995 approving a 20-lot subdivision known as "Starr Crest" located at 12281 SW Boones Ferry Road (Findings; LUR 94-00949 PUD SU EN AD)

**Discussion:** Pete Kasting, Senior Deputy City Attorney, said this was remanded by LUBA back to Council. While LUBA rejected most of the assignments of error, it found that the findings were inadequate on three points

SEPTEMBER 25, 1996

where they failed to adequately explain the basis for the Council's decision. At this on-the-record hearing the only issue before Council is whether the new findings are an accurate reflection of Council's analysis on those three issues and whether those findings are supported by substantial evidence in the record. Mr. Kasting outlined the procedures for how on-the-record reviews are conducted.

Mr. Kasting said three criteria may be addressed. First, will the adjustments equally or better meet the purpose of the regulations to be modified? Second, does the proposal significantly detract from the livability or appearance of the residential area? Third, are impacts resulting from the adjustments mitigated to the extent practical?

Mayor Katz asked that objections to the introduction of new evidence be held to the end of the testimony, at which time Council will make a determination as to whether they should be excluded from the record.

Jack Orchard, attorney for the applicant, said he has little to add to the materials already distributed. This is a one-issue housekeeping matter that requires some additional documentation. The evidence is in the very voluminous record and the findings that were submitted to Council for its review by the Bureau of Planning and the City Attorney's office are acceptable to the applicant. He urged Council adoption.

James Squires, appellant, asked if there were any changes in the findings since their submission September 11.

Staff indicated there had been none.

Mr. Squires asked for Council members to declare any ex parte contacts.

Council members indicated there were none. No one challenged.

Mr. Squires said the criterion he is talking about says granting the adjustment will equally or better meet the purpose of the regulation to be modified. That regulation is 33.110.225 and according to the Code the purpose is to have the building coverage standards, together with the height and setback standards, control the overall bulk of structures. They are intended to insure that taller buildings will not have such a large footprint that the total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site. They work in conjunction with the lot size standards to determine how built-up a neighborhood appears. So adjustments to this regulation have to enhance, not diminish the appearance of Starr Crest in relation to its R10 defined character and built-up appearance. The findings, however, state that the purposes of the

SEPTEMBER 25, 1996

R10 building standard coverages are to establish single-family housing locations within a subdivision and to control the overall bulk of structures in relation to open space to avoid detrimental impact to adjacent uses. None of that is correct. The regulation to be modified does not relate bulk to open space, talk about single-family residences or about impacts on adjacent uses. The applicant would like to persuade you that the R10 building coverage can be applied to the whole Planned Unit Development (PUD) and not to each individual lot. But, in fact, the regulation that controls PUDs does not say anything at all about building coverage. What Council has to look at this afternoon is the lot by lot coverage and arguments about total open space are not relevant.

Mr. Squires said the findings state that applicant has proposed building coverage for individual lots consistent with the City's R5 and R7 zones. That is the why Council cannot grant the adjustment. Building coverage determines how built-up a neighborhood appears and defines the character of the R10 zone. If R5 building coverage is allowed, it will make the neighborhood look like an R5 zone. This will not equally or better meet the purpose of the regulation to be modified and is, in fact, counter to the regulation. This is the same argument that failed at the Hearings Officer's level and again at LUBA. If it has to go back to LUBA it will fail again. The findings state that the sole reason the adjustment is necessary is because the PUD ordinance mandates creation of common open space. In fact, neither the findings nor the record show a necessity for increasing building coverage from 30 to 41 percent, or from 38,000 to 51,000 square feet. Based on the applicant's figures, this totals about 35 percent of the building coverage while the average coverage, according to the Code, should be about 1,900 square feet. Since the applicant has indicated plans to build two-story houses, that is a 3,800 square foot house, which is pretty good-sized. Applicant states he would like 51,000 square feet of building coverage and if you are talking about two-story houses that is 5,000 square feet of building space. Applicant has not demonstrated the need to have that kind of house in this neighborhood but that is explained in applicant's prior statement about the need for houses to be sized to match the value of the land. The adjustment being requested has to address the appearance and character of the neighborhood, not the financial considerations of the developer. The courts require findings that identify relevant approval standards, set out the facts to be relied on, and explain how those facts lead to the decision on compliance with the approval standards. Most of the facts in these findings are not correct. The one fact that is correct is that building coverage corresponds to lot sizes in other zones. That is the reason this decision is in non-compliance with the approval standard. The adjustment should be denied because it does not equally or better meet the purpose of the regulation to be modified, is not necessary and, while it may serve the financial interest of the developer, it does not serve the interest of the community in maintaining the R10 character and appearance.

SEPTEMBER 25, 1996

Rick Coates, Vice President and Land-Use Chair, Arnold Creek Neighborhood Association, said Council should not approve these findings. Because the City has allowed permits to be issued on this project while it is on remand, the tremendous negative impact of this development is not simply a future possibility but a clear and present reality. The findings are in error in several respects. Page 3 of the findings reference large stands of trees but only one remains. Also missing are many deciduous trees. On Page 4 the findings cite a note from the Hearings Officer after the initial decision that building coverage in a PUD is always higher than a subdivision due to the requirements for common open space. The Hearings Officer notes that the applicant has requested higher percentages of building coverage than usually called for in PUDs with no explanation of why this is appropriate. The findings also do not state why these higher coverages are appropriate. The Hearings Officer also stated in her decision that the resulting development will change the character of the neighborhood which now has a wooded, rural quality. Section C, Page 6 of the findings states that applicant will preserve the natural vegetation and provide buffering to satisfy the open space purposes of the R10 zone. Due to the requirements of these high building coverages, applicant has already destroyed nearly all the natural vegetation providing buffering on at least four of the adjoining properties.

Mr. Coates said it is clear, from both the testimony in the record and the actions already taken by the appellant, that the proposal does not produce a subdivision equal or better than an R10 subdivision as stated in the findings and clearly creates excessive building coverages starkly out of scale with the neighborhood. Concerns about the building coverage raised by the Hearings Officer in denying the proposal have not been ameliorated by changes to the plan since then.

Liz Callison, Friends of West Hills Streams, 6039 SW Knightsbridge Dr., 97219, said Criterion E requires that any impacts resulting from the adjustment are mitigated to the extent practical. She said the problem of inadequate water flow in the creeks during the dry season is only partly dealt with by the proposed stormwater plan. The higher amounts of impervious surface allowed by higher percentages of lot coverage can impact the ability of stormwater to infiltrate the soil as is needed to protect the drainage way. Thus there is a particular need to minimize the amount of impervious surfaces in this development. The Hearings Officer, although she found the stormwater plan feasible, recognized the problem of inadequate flow in her decision and noted that a number of resource values will be lost as a result of the development, including loss of vegetation coverage, particularly trees. Ms. Callison also criticized the fact while infiltration trenches are provided on the northern lots, there is no provision for them on the southern lots, where they should also be provided to mitigate stormwater impacts. To add to the resulting problem of poor infiltration, building coverage must be reduced as much as possible to preserve the natural infiltration of stormwater.

**SEPTEMBER 25, 1996**

Pat Burns Rattoza, 1952 SW Dickenson, said she is very concerned about what will happen now that 96 trees have been removed, not the 46 called for in the proposal. Other concerns are the heavy traffic on Boones Ferry Road and the impact of this development on the school. She said the developers should give money to the School Foundation.

Mayor Katz reminded her that she was not on point.

Ms. Rattoza said Council should consider some of the problems that occur when these developments go in.

Chris Duley, 1834 SW Dickenson Lane, expressed concern about the appearance this development will have in an R10 neighborhood because of its proposed lot coverage. Others have had to comply with the lot coverage in the Code for R10 which has made for the prevalent and very distinct look the neighborhood has for miles around. This development will severely blemish that look and the continuity of the neighborhood.

Mr. Duley began to speak about actions taken since the decision was made and Mr. Kasting told him that would be new evidence.

Mr. Duley said very detailed stormwater runoff plans which were presented earlier and approved by the Bureau of Environmental Services (BES) have now apparently been changed with no public notification.

Mr. Kasting told him such evidence would not be admissible.

Mr. Duley asked how capricious and arbitrary behavior by members of this government body, such as BES or Planning, can be addressed when they change the rules to suit a developer.

Mayor Katz said the Bureau may make some changes in the design as the project proceeds. She asked if that was a relevant issue that can be raised regarding stormwater.

Mr. Kasting said that issue can probably be raised in the context of building permit issuance but not as an issue for an on-the-record remand hearing. Events that have occurred after the original decision are not part of this record and cannot be considered.

Mr. Duley said that is unfortunate as he testified the last time that this would happen. And it has.



SEPTEMBER 25, 1996

Mayor Katz said he could write each Council member and share that information.

Commissioner Lindberg said he would be interested in following up on the actions taken by BES.

Mayor Katz asked if a member of the Council could ask a bureau to respond to this issue, even though it is after the fact.

Mr. Kasting said the Council noted this as an on-the-record hearing. If it were to solicit new evidence it would need to convert this into an open hearing and give other people an opportunity to bring in new evidence.

Mayor Katz said a lot of Council members have had concerns about seeing things change after the fact.

Commissioner Hales moved to adopt the findings. Commissioner Lindberg seconded.

Commissioner Hales said Council should decide land use cases once, not twice, and that is why they try to set up a procedure that does not result in a lot of LUBA remands. He said he finds these findings worthy of adoption. This was a Planned United Development and the findings state that, if each of the Starr Crest lots were allocated their respective share of the common open space found in the EP and EC zones on this site, the R10 coverage standard would have been met. In other words, the open space is there, it is just not on the lots. The coverage is no greater than what it would have been for an R10 subdivision. Again, in the second portion of the findings it states that the sole reason adjustments are necessary is because the PUD ordinance mandates creation of common open space. He also noted that the findings state that BES has confirmed that the proposed stormwater, drainage, erosion and watercourse maintenance plans meet or exceed relevant City requirements. He said Council cannot have it both ways, using the flexibility and site design a PUD gives and yet holding people to the lower standard of site coverage and other restrictions that would force applicant into a corner where they could not operate. This is a reasonable approach and the findings are worthy of adoption.

**Disposition:** Findings Adopted. (Y-4)

1561

Appeal of North Harbour Corporation, applicant, against Hearings Officer's decision to deny application for a seven-lot residential and commercial development on property facing north to the Portland North Harbor of the Columbia River, south of Hayden Island, east of Interstate 5 and north of Marine Drive (Hearing; 96-00374 SU DZ)

SEPTEMBER 25, 1996

**Discussion:** Pete Kasting, Senior Deputy City Attorney, reviewed the procedures to be followed.

Mayor Katz asked for conflicts of interest and ex parte contacts.

Commissioner Hales disclosed an ex parte contact resulting from a meeting with staff and property owners in the area, including the applicant, regarding the CM zoning designation for the Bridgeton neighborhood.

Mr. Kasting read a statement describing the evidence allowed during an on-the-record hearing. He said objections by any persons to testimony they believe to be new evidence or issues will be considered after all have been heard.

Duncan Brown, Bureau of Planning, described the proposed subdivision development with public streets on about 13 acres, three quarters of which will be residential. He noted requests by the applicant for a major land division and public streets and also for Design Review under the Albina Community Plan Design Review guidelines. The Design Review would delineate footprints on individual parcels, location of streets and sidewalks, the creation of open spaces between the dike and internal streets and the location of parking. Building height modifications above the maximum heights allowed have been requested for Lots 2, 3 and 4. Setback modifications are sought for Lots 2 and 5. He listed the approval criteria that must be met.

Mr. Brown said staff recommended approval with conditions dealing with offsite transportation improvements, pedestrian access to the levy, connectivity through the site, and Design Review. The Hearings Officer denied the proposal based primarily on transportation issues. She stated the need for a second access for emergency vehicles and concluded that the off-site traffic impacts may be greater than the applicant believes. She cited an Oregon Department of Transportation (ODOT) statement regarding flaws in the Kittelson traffic report. She was also concerned about the lack of assurances for full connectivity and for unnecessary use of a half street on the southeast corner of the property. Her decision was appealed by the applicant.

Mr. Kasting reviewed four letters submitted that may or may not contain new evidence. These include: 1) September 25, 1996 letter from ODOT; 2) September 19, 1996 letter from Matt Whitney, Bridgeton Neighborhood Association; 3) September 23, 1996 letter from Sharon Cole; and 4) September 25, 1996 letter from Larry Derr. He said these may or may not contain new evidence and asked Council and interested parties to review them to see if they wished to make objections.

**SEPTEMBER 25, 1996**

Jeff Joslin, Bureau of Planning, testified that Design Review was limited to consideration of the site organization. The height of the buildings and the adjustments requested were treated as modifications through Design Review. None were bones of contention in the denial.

Commissioner Hales asked if a second level of Design Review would be required for the buildings themselves if the appeal were granted.

Mr. Joslin said yes, for any specific development on the site.

Mr. Brown noted that the staff recommended approval with conditions. If Council overturns the Hearings Officer's decision, the Bureau recommends incorporating those original staff conditions back into Council's decision and adding one new condition which would require a one-foot-wide reserve strip along public right-of-ways which abut the property created by applicant.

Mr. Kasting noted that Council will have to act today as this is day 119 on the 120-day clock.

Mr. Brown showed slides of the area, noting particularly the intersection of Marina Way, Vancouver Way and Marine Drive as well as the on-ramp to the I-5 freeway. At the access point to the applicant's property there would be a 50-foot wide road forming a T section and extending both to the east and west property lines. It would temporarily dead-end at those points but would eventually provide access to the east and west, eventually connecting those properties to the Bridgeton neighborhood to the east and under I-5 to the west, intersecting with Marine Drive close to the Expo Center. He noted that the levy is not on the applicant's property and pointed out those properties owned by Milt Brown, including Pier 99, and Dick Kathrens. The concept is eventually to connect this site to Bridgeton Road to allow local access. He said presently a reciprocal easement exists across both Milt Brown's and Mr. Chiu's site which allows access across the site by both users. A second access would be provided by easement over Mr. Brown's property for emergency access to satisfy the Fire Bureau's concern about the intense development proposed by Mr. Chiu.

Michael Chiu, North Harbor applicant/appellant, said this application is the culmination of nine months of intensive work. He pointed out that some of the guidelines in the Albina Community Plan (ACP) conflict and his company has made major adjustments to the original design. They now agree with the staff's recommended conditions. One critical ingredient is unrestricted access through the Kathrens and Brown properties, which is key to the success of this commercial development. He said some of the regionwide traffic issues raised are clearly beyond the reach of any single property owner or developer. They expect this development to create at least 150 permanent jobs and generate \$1.6

SEPTEMBER 25, 1996

million in property taxes, plus \$360,000 in annual hotel taxes for the City.

Greg Winterowd, 700 N. Hayden Island Drive, land-use planner representing the applicant/appellant, contended that the evidence in the record shows that the applicable approval criteria have been met. He said a two-phase Design Review is planned as allowed by the Code. In Phase 2, they will return with a Type II design review application for each and every building. That will give the City and the neighborhood two opportunities to make sure this project works. He said the applicant has come to agree, after lengthy negotiations, with each of the staff recommended conditions. That ensures compliance with all the ACP guidelines. They object, however, to imposition of new standards by the Hearings Officer, particularly to a condition which limits each building link to 200 feet. He said they prefer the staff's condition which says that the buildings will be articulated and there will be a break to avoid a monolithic appearance.

Mr. Winterowd said the primary reason the Hearings Officer denied this application was based on Code 34.50.020 regarding future extension of streets. He said the applicant has extended public streets to the east, west and south and they believe there is no ambiguity in their meeting the standard which requires only that the streets be extended to a direct property line. The Hearings Officer went further and raised areawide traffic issues. She also found that the cul-de-sacs were too long. However, they are not providing cul-de-sacs, only temporary turnarounds for emergency vehicle access. Both streets go to the property line and will eventually be extended. Finally, the Hearings Officer found that areawide traffic issues were not properly mitigated. However, the applicant has a detailed traffic study prepared by Kittelson and Associates which proposes mitigation for each and every traffic issue. There is no other traffic study in the record, only the opinion of ODOT, which has now offered conditions the applicant can live with. He reviewed some of the concerns ODOT raised and the applicant's response. First, the traffic signal at Marina Way and Vancouver Way, will be signaled to moderate the flow of traffic. The Hearings Officer was confused by ODOT's concern about timing at that signal and now the applicant has reached agreement with ODOT and the Office of Transportation about when the signal will be installed. The critical issue here is the left turn stacking at N. Marine Drive onto the site but they believe at full build-up of North Harbor there will be more than adequate room for turning onto the site. Because it has not been demonstrated that this left turn signal street can handle all development at the Brown and Kathrens properties, the applicant is recommending two conditions. First, they will consider limiting access to these streets until Mr. Kathrens or Brown does a traffic study to show that either this or some future street can handle the additional traffic. They also would be willing to dedicate as a future street land in the south portion of the property to the east of North Marine Drive to allow a connection through the Kathrens property. If that occurs, then the reserve strips will not be as necessary because there would be a

SEPTEMBER 25, 1996

workable, alternative route that could handle all development. Regarding the western access, there is no question but that the applicant has unobstructed public access. The Hearings Officer misunderstood that. In doing the street design they were very careful to make sure that everything they do complements and encourages alternative solutions for the future.

Wayne Kittelson, Kittelson and Associates, traffic consultant, said the mixed-use character of this proposal is the key to minimizing the pressures on the Urban Growth Boundary and to offering alternative life styles and other modes of travel. He said some infill developments may require compromises regarding spacing and road design but this proposal required no trade-offs either for safety or operational adequacies. He said promising alternatives remain for enhancing the continuity and connectivity of the surrounding street system. This project enhances regional transportation efficiencies without creating local infrastructure deficiencies. With the mitigation offered by the applicant, the North Harbor project will result in acceptable levels of safety and operations while still retaining the vision developed by the community. He said he is confident in the objective and comprehensive nature of his traffic analysis and would be happy to provide any technical details.

Larry Epstein, 722 SW 4th Ave., attorney representing adjacent property owner Dick Kathrens, said his client supports the proposal, subject to appropriate conditions. Regarding access to the site, the proposed access street described by Mr. Winterowd is a planned public street to be known as North Harbor Way. Because its intersection with N. Marine Drive is near the I-5 Vancouver intersection there is a capacity issue. This can be fixed by limiting access but that destroys the value of the site for development. He said everyone agrees the best solution would be to relocate the road 300 feet further east which would provide more than enough stacking room to accommodate traffic. That would solve the access issue that ODOT has raised. Mr. Kathrens is anxious to negotiate with the applicant for a land swap or other arrangement under which the applicant can provide the right-of-way for the alternative access road to the east. He said they believe such an agreement can be reached and urge approval by Council, subject to a condition requiring the applicant to dedicate right-of-way for the alternative access if he obtains that right-of-way. They also ask that Council authorize changes in the preliminary plan of the tentative plat to allow the final plat to reflect this alternate access point so that another review can be avoided. He argued that imposing the access strip is neither necessary nor required and is inconsistent with the City Code. It denies access to the Kathrens property while allowing access to the applicant's property, seemingly putting a burden on one property which ought to be shared among all.

Matt Whitney, Vice-Chair, Bridgeton Neighborhood Association, said the Neighborhood Association supports the application with conditions. They like

SEPTEMBER 25, 1996

the high-value use of the area and believe the proposal fits well with the Neighborhood Plan now currently being put together. They particularly want to see this development stress pedestrian/bicycle access through the property to the proposed Expo Center light rail transit station, as well as stores on the Island side of the I-5 bridge. Their conditions concern the traffic plan and building heights. They would like the City to add conditions lowering the overall height and put together a better traffic plan than the one proposed. One suggestion is for dedicated access off the I-5/West Marine-bound exit.

Milton Brown, 301 NW Murray Blvd., adjacent property owner and principal opponent, said they support the Hearings Officer's denial as the plan does not properly consider the traffic problems or what they do to his property, which is zoned commercial. He said no one has considered how he will get access, either to utilities or automobile traffic, from the Chiu property. The connectivity at Bridgeton Road going west currently ends in a dead end and, instead of extending that, they bring in a new road from the entranceway at Marine Drive going east right through the middle of his property. That is not right as it does not address the fact that there is also no access to the dike from their property. It makes more sense to extend Bridgeton Road along the dike all the way across to Pier 99 East. That makes more sense. City staff say the dike land, which is zoned commercial, is supposed to be a park and have pedestrian access at five places on his property. However, they do not want to give him access for vehicles or utilities. The Kittelson report stated that his Pier 99 customers would not be using this access with a left turn lane. But his access from the west side of the property through Pier 99 extends all the way under and across the I-5 bridge and three blocks beyond where it accesses Marine Drive. Right now traffic stacks up there so much one cannot make a lefthand turn at all. It is impossible now and he is concerned about what will happen with this development. Kittelson does not address this issue nor what happens to the traffic at the extreme western end of his access, beyond the I-5 bridge. That will cause a tremendous impact. He said they believe a more complete traffic study is needed to protect the interests of all property owners. For now, the appeal should be denied.

Larry Derr, 53 SW Yamhill, attorney representing Milt Brown, said the applicant chose not to waive the 120-day rule and is now asking Council to make a decision in one day on an extremely complex project with huge impacts and either accept the Hearings Officer's denial or keep the project alive, deferring almost all the planning to some future date with unknown effects. This deferring of all the important decisions has concerned them all along, and even more so today. He said if Council approves this today he guarantees it will be remanded by LUBA. The way to solve the problem is to do what Mr. Brown and the Neighborhood Association have suggested and either ask the applicant to waive the rule so this can be sent back to staff to come up with a workable program or deny it. The applicant will not go away as they need to find a way to

SEPTEMBER 25, 1996

make this work. Mr. Derr said the record does not support the Code standards with respect to traffic and he will object to the last minute fixes proposed here because they constitute new evidence. He said Design Review is another example of the cart being put before the horse on this project. There is no design for the project and he does not believe the City can have a master plan approval and then return for later phases. However, the Code says that for a phased project, if sufficient information is supplied to allow all phases to be reviewed, then Design Review can occur and be granted for the whole project. That makes sense because Council is being asked to look at footprint and building heights, the things with the most impact on the surrounding neighborhood. However, here you are being asked for approval without any idea of what those buildings are going to look like. They have not yet been designed and only a sketch has been submitted. Another procedural issue is whether height adjustments can be granted in Design Review. The applicant contended that could be done, and the Hearings Officer accepted that. Design Review allows certain minor variances but not things like size of the project. What is height if it is not size? The irony is that when one does an adjustment in Design Review there are only two criteria. This makes sense because it only allows very limited variances whereas the full adjustment process has a fairly extensive list of approval criteria. The problem is determining whether the design of this project mitigates and meets the requirements of the Design Guidelines. But the applicant is saying trust us regarding the height variances. This does not work and the Code is not intended to work that way. The underlying problem Mr. Brown has is that staff and the Hearings Officer have turned their backs on the fact that his property on the dike is private and developable. To view this property as nothing more than a pedestrian/bikeway is unrealistic. This project and the development of the neighborhood can work together. The concept and uses are good but the plan does not meet the requirements for serving the neighborhood or surrounding properties.

Ann Neuenschwander, 204 NE Bridgeton Road, opposed the development based on the proposed traffic plan. She noted the traffic backup on Marine Drive right now at 5 p.m. She said even without this project, there will three times as much traffic because of other development already underway.

Pamela Ake, 112 NE Bridgeton Road, said her neighborhood is dead set against the connectivity proposed by the applicant to the east or west of the Bridgeton neighborhood. Their neighborhood plan calls for this connection to be for bicycle/pedestrian access only and also talks about placing higher buildings back away from the River. She said the plan needs more work as it will change the neighborhood tremendously.

John Weigant, 429 N. Bridgeton Rd., Houseboat B, said he is confused because while the Neighborhood Association supports this, the critical issues are the

SEPTEMBER 25, 1996

heights and transportation circulation. Regarding height, the Hearings Officer in her denial notes that it is unclear whether the design submitted to Planning shows the lowest level of 60 feet, or 74 feet. She says the mid-rise condominiums are 94 feet and 90 feet above the top of the dike. That implies the dike is only four feet high. The height is of substantial concern, particularly if the spine of Bridgeton Road, the dike itself, ever becomes part of the 40-mile loop trail. He is also concerned that solar requirements are not being met and that the height of a 10-story building will shade a pedestrian/bike walkway the neighborhood hopes to use to access the proposed light rail transit center. He said the density achieved by height is of serious concern, as is traffic circulation, and this is not the time to impose such major conditions on height or the transportation plan.

Mayor Katz asked if he was part of the Neighborhood Association process and how much time was given to working through these issues.

Mr. Weigant said they had one full presentation by the developer and were assured that all the issues, such as transportation, were adequately taken care of. No one paid much attention to the solar requirements, partly because the dike is not yet developed. Essentially, the Hearings Officer's recommendation is that the property owners need to cooperate more. The developer did spend time with the Neighborhood Association and that is why it is generally supportive of this proposal, which in most neighborhoods would be a NIMBY. Bridgeton is working hard to achieve the City's higher density goals and thinks this is the right kind of development but has some major concerns that do not seem to be met at this late hour.

Don Hanson, 10917 NE First Place, said he is concerned, as a member of the Neighborhood Association involved in the neighborhood plan, about tripling density in the area even before the proposed North Harbor development with its 390 new units. That will increase density to more than five times the current level. Traffic is already a problem at one-fifth the proposed density and with only one access road, right by Marine Drive and Vancouver Way, this development will hurt the situation, adding another light and an in-road to an already terrible intersection. He said on September 17, the Neighborhood Association voted unanimously, with two abstentions, against the proposal based primarily on traffic concerns. He said in reading the Hearings Officer's decision, he pulled out seven traffic and safety-related reasons for denial. They include the fire vehicle access, connecting Bridgeton Road to this development and the creation of a cul-de-sac. He said calling a cul-de-sac a turnaround is a transparent attempt to evade cul-de-sac requirements.

Walter Valenta, 11919 N. Jantzen Avenue, No. 114, 97217, displayed a sketch indicating the major property owners in the area, noting that this proposal involves 13 acres in a 40-acre site of developable land. He said this development



SEPTEMBER 25, 1996

has only one access from property they own and another is needed, not just to this development but to the whole 40 acres. He said he would like to have some assurance, in advance, that this is the best traffic plan to handle the entire redevelopment and there needs to be an entrance that works from the beginning.

Lew Gress, 4049 N. Bridgeton Road, joint owner of property directly east of Milton Brown's property, said he keeps hearing about linking to Bridgeton Road, which is now a dead end. He does not see ever making Bridgeton Road a thoroughfare as it is already a busy area and there is no convenient way to drive up and connect to the bank. He said other alternatives should be explored. Another area of concern, with the higher density, is the infrastructure, including parks and schools, needed to support development which could bring 1,000 people into the area.

Rex Gilley, Jubitz Truck Stop, 33 NE Middlefield Road, and Columbia Corridor Association (CCA) Transportation Committee member, said he and other businesses in the area are very concerned about the traffic patterns that would develop in a very complicated intersection. He is somewhat confused because of talk about possible relocation of the entrance 300 feet further east, which the business community supports. The way it is proposed now, however, the distance from the entrance to the intersection is 225 feet around a corner and it will be very hard for a truck to stay in a single lane tight up against the curb. The project's traffic should be kept out of this intersection.

In rebuttal, Andrew Jordan, 1600 SW Cedar Hills Blvd., attorney representing the applicants, said they were surprised to hear neighbors testify against this as they have been working with Walt Valenta and others for the last six months and thought that an agreement had been reached. There were three separate votes on this application. The first supported the overall development concept and there were no negative votes. The second vote supported the height modifications and the third, which occurred at the end of the meeting after many people had gone (but still about 20 people voted) supported the access because they recognized that this was the property owner's only access. For that reason, the applicant feels a bit betrayed by those testifying today, especially those who did not testify at the original hearings. He said Mr. Brown commented that he was left out of the transportation issues when in fact Mr. Chiu has been negotiating with him for months but has been unable to get any answers as to what Mr. Brown intends to do with his property. That gives Mr. Chiu the choice of either sitting around waiting to see what Mr. Brown wants to do with it or trying to solve the problems for all the potential developers. The latter is essentially what has been done. He said there is only one complete traffic analysis in the record. It supports the proposal and no evidence has been submitted that any of it is wrong. There has been an alternative suggestion about moving the road and while some claim this is new evidence, it is merely a

**SEPTEMBER 25, 1996**

suggestion for an additional condition of approval. They are not offering it as evidence in support of the project. The evidence says the proposed access is adequate and the assumption is that moving the road to the east will make it more adequate. If that is an attractive alternative to the Council, they would support it.

Mr. Winterowd said the height modifications were addressed at length and both the Hearings Officer and staff felt the modifications were justified for two reasons. First, the developer is allowed to cover 100 percent of the site with buildings but is covering only 52 percent, allowing them to build up and create open space. Second, there is no landscaping requirement but they plan to landscape 35 percent of the site. There is no solar access required for the dike but they have created three areas where light can shine through the buildings.

Mr. Jordan also noted that Mr. Gilley may have given the impression that the CCA opposes this project. They do not.

Council reviewed objections to the evidence submitted.

Mr. Derr objected to the Kittelson analysis that was attached to the notice of appeal.

Mr. Jordan said it is simply responsive to issues raised by ODOT and the Hearings Officer. All the information in the Kittelson letter is in the record and is not new evidence.

Mr. Kasting said since this was submitted by an expert it could be interpreted as new evidence and if it just summarizes factual material in the original Kittelson report then it would not really matter if it was taken out.

Mr. Kasting recommended rejection of the August 30, 1996 Kittelson letter. Commissioner Lindberg so moved and Commissioner Hales seconded. Hearing no objection, the Mayor so ordered.

Commissioner Hales said the key question for him is whether or not Council believes the proposed new conditions from ODOT and Planning grow out of the Hearings Officer's report and are therefore clarifications or whether they should be regarded as new evidence.

Mr. Jordan said they do not constitute new evidence.

Mr. Derr disagreed. He objected to ODOT's condition and to Mr. Epstein's testimony about ongoing negotiations. That is not in the record and in effect it is saying that even though the record is perfected it is okay to approve this because

SEPTEMBER 25, 1996

it will be made right later.

Mr. Jordan said the ODOT letter is just a suggestion for conditions and does not constitute new evidence. Regarding the ongoing negotiations, he agrees that evidence of ongoing negotiations is probably new evidence but the issue is whether Council sees a condition of approval that makes sense. Council can require that without getting into the new evidence issue.

Commissioner Kafoury asked Mr. Derr if Council has the right to add new conditions.

Mr. Derr said yes it does but when Council gets testimony from someone from ODOT it views that as expert opinion more than simply a condition Council might impose.

Mr. Jordan said he is not fighting for the ODOT letter.

Mr. Kasting said this is a grey area. The ODOT letter proposes several conditions and Council does have authority to craft conditions. He said, however, on the first page, ODOT clarifies prior testimony and that part could be considered new evidence.

Mayor Katz said then Council will reject the clarifying evidence and the proposed conditions with the understanding that it could propose conditions to this project if it so chooses. She also asked if Council wanted to reject the reference to ongoing negotiations. Hearing no objections, she so ordered.

Mr. Jordan said several opponents spoke regarding traffic increases, the connection to the east, building setbacks, heights, circulation and solar requirements, density increases and neighborhood association votes on proposals. These should be rejected except for the testimony of Mr. Gilley from Jubitz as they were not in the record. He noted that most of the people testifying today did not testify earlier.

Mr. Kasting said it is permissible for people to testify today who did not testify before, in terms of making legal argument. He said Planning staff would have to state whether those particular facts are new as he did not attend the hearing before the Hearings Officer.

Duncan Brown said his recollection is that testimony about solar access and setbacks is not in the record. There was some testimony about connecting Bridgeton Road before the Hearings Officer.

Mayor Katz ruled that the testimony on solar access and setbacks be rejected but

SEPTEMBER 25, 1996

that testimony on the connection to Bridgeton Road be accepted.

Mr. Hanson said solar access was addressed on Page 19 of the Hearings Officer's report.

Duncan Brown said then he was mistaken.

Mayor Katz ruled to accept the testimony about solar access.

Commissioner Hales moved to overturn the Hearings Officer's denial and approve the project with modified conditions as recommended by the Planning Bureau and with the addition of ODOT's recommendations.

Commissioner Kafoury asked if that included moving the entrance down.

Commissioner Hales said no.

Mayor Katz asked for a quick review of the conditions.

Duncan Brown said the conditions, with several exceptions, are identical to those made by Planning staff. He read the conditions listed in that report. He also recommended adding, as a new condition, that a one-foot-wide reserve strip along all portions of the rights-of-way which border property abutting the site be dedicated as part of this approval and deeded to the City at no cost. The purpose of the strip is to monitor and control development and its anticipated transportation impact on the local and collector street system. He also proposed the removal of several conditions that referred to a private street, which was the original proposal, rather than a public street.

Commissioner Hales suggested a recess so Council can try to make some sense of those conditions and those proposed in the ODOT letter.

Commissioner Kafoury said basically the only thing deleted is the private street references (Conditions 4, 5 and 8).

Mr. Jordan authorized extension of the 120-day rule on behalf of his client.

Council recessed briefly to review the ODOT letter.

Commissioner Hales asked staff if it is necessary to include the one-foot reserve if the ODOT conditions are adopted.

Laurel Wentworth, Office of Transportation, said the reserve strip is needed in addition to those proposed by ODOT to protect the integrity of the transportation

SEPTEMBER 25, 1996

system while future development is being determined.

Regarding Item B in the handout from the Planning Bureau about Design Review, Commissioner Kafoury asked if the proponents had requested that it not be a maximum of 200 feet.

Commissioner Hales said he thinks it says "apparent wall length" and they can do that through articulation.

Duncan Brown said yes, that will be reviewed during a further Design Review.

Commissioner Kafoury said she thought they had requested that 200 feet be taken out.

Mr. Brown said the Hearings Officer had suggested that the buildings be physically separated, instead of having that articulation that the buildings be physically separated.

Mayor Katz noted that Commissioner Hales wished to address the road access and traffic/infrastructure needs for the area beyond this application.

Commissioner Hales said some big-picture policy issues are involved here. He reminded Council that the Bridgeton Neighborhood Association took a risk and designated a big portion of its neighborhood as Neighborhood Commercial (CN) in order to foster intelligent mixed-use development here. However, a strange pattern of land ownership exists here and while ideally it would be nice to have all the property owners come forward with a consolidated development scheme, that is not required in this neighborhood or any other. Each property owner has the opportunity to develop to the CN designation and try to meet City standards. The Council cannot require them to aggregate their property. The question then becomes whether the applicant has met City standards. Commissioner Hales said this applicant has tried very hard to get to yes with the neighborhood and has met or exceeded both the spirit and the specifics of the requirements in every case. When a neighborhood has an opportunity for good development, he feels strongly the City should try to help make it happen and not scare away a good project. The transportation system in the area has been shown to be adequate to serve this property, particularly with the new conditions. That is the test to be met. Both ODOT and City transportation staff have stated that the traffic study is correct and valid and their requirements can be met. Adopting this plan also keeps future options so the adjacent properties can develop to the CN designation and still have transportation capacity left. Another set of options will be available once the one-foot reserve strips are removed and this applicant is compensated for building the neighborhood street system by other property owners who want to access it and/or once some agreement is reached with Mr.

SEPTEMBER 25, 1996

Kathrens to extend the street. So the City is making sure that connectivity can happen in a variety of ways. He said he disagrees with the Bridgeton Neighborhood's contention that Bridgeton Road should not be connected to this site because he thinks neighborhood street networks need to connect. Later they can deal with the size and design of those streets to make sure they do not become neighborhood freeways. But this design ensures transportation access in both directions. The Hearings Officer erred in stating that the western access would not work and Council has heard from staff that this is a reciprocal easement that can be relied on to preserve access to the west. With clarification from ODOT about what it needs to assure that Marine Drive works, there is the assurance that traffic can be adequately handled. While this proposal is not the complete and ideal solution for the development of the whole neighborhood, it does not have to be. It is, however, sufficient for the high quality development of this parcel and deserves to be approved.

Mr. Kasting said if a condition is added to dedicate a one-foot strip along the right-of-way to the City in fee simple, the applicant will then have to come back through a Type III application to get rid of that strip in the future. To avoid that Council could state in that condition that all or a portion of the strip may be released upon authorization of the City Engineer if it is determined to no longer be necessary for traffic control purposes.

Mayor Katz asked if there were any objections to that.

There were none.

Commissioner Lindberg seconded Commissioner Hales' motion to overturn the Hearings Officer's decision and tentatively approve the application with conditions.

Commissioner Kafoury said she is still somewhat uncomfortable about the western access as she sees this as a problem area she hopes can be moved up on the list of needed transportation projects. She said the neighborhood is experiencing an incredible increase in the numbers of people and cars. However, this is a very exciting project.

Commissioner Lindberg said this meets many City and ACP goals. The developer made an extraordinary effort to work with the neighborhood and Planning Bureau to meet the requirements. He agreed with Commissioner Hales about the infrastructure requirements on individual developments.

Mayor Katz congratulated the Bridgeton community for its support of a unique development on a scale much larger than most would be willing to accept. This will probably be a very positive addition to the neighborhood and she hopes it

SEPTEMBER 25, 1996

will done in an aesthetically enhancing manner. She too is concerned about the traffic and the City may want to move more resources here a little earlier to deal with these issues. She is sorry that all the property owners were not able to come up with a joint development plan as it is somewhat unfair to the neighborhood to have these properties developed in very different ways. It would have been nice to see a collective design from all three owners which then might have allowed Council to treat some of the transportation elements in a different manner. But that is very difficult if you do not know what people are planning to do.

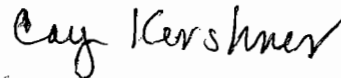
Commissioner Kafoury noted for the record that Mr. Kathrens supported the project. It is not as if the whole area is going in different directions.

Mayor Katz asked the Planning Bureau to look at incentives for adjacent property owners on major developments.

**Disposition:** Overturn Hearings Officer's decision and tentatively approve application with conditions: applicant prepare findings for October 9, 1996 at 2:00 p.m.

At 4:45 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland



By Cay Kershner  
Clerk of the Council