



CITY OF
**PORTLAND,
OREGON**

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 16TH DAY OF OCTOBER, 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; Ben Walters, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Agenda Nos. 1626, 1627, 1630, 1643, 1645, and 1656 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

1623 Accept bid of M. Stearns Construction Co., Inc. for Wilson Pool water slide and facilities building for \$372,260 (Purchasing Report - Bid 15)

Disposition: Accepted; prepare contract.

1624 Accept bid of EMC Corporation for replacement of twenty-two IBM 3380 disk drives with 225 gigabytes and associated equipment for \$384,402 (Purchasing Report - Bid 22)

Disposition: Accepted; prepare contract.

1625 Reject all bids for Wheeler Basin Phase 2 Unit 3 (Purchasing Report - Bid 27)

Disposition: Accepted.

Mayor Vera Katz

1628 Confirm appointment of Dan Volkmer to the Historical Landmarks Commission (Report)

Disposition: Confirmed.

***1629** Authorize Mayor to sign agreements with Portland, Reynolds, Parkrose, David Douglas and Centennial school districts conveying City funding grants (Ordinance)

Disposition: Ordinance No. 170615. (Y-4)

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- *1631 Intergovernmental Agreement with Multnomah County Sheriff's Office, Multnomah County, The Multnomah County Department of Community and Family Services and the Housing Authority of Portland for comprehensive, community-based approach toward law enforcement and drug prevention services for Columbia Villa/Tamarack (Ordinance)
- Disposition:** Ordinance No. 170616. (Y-4)
- *1632 Donation of a vehicle from the Progressive Insurance Company to the Portland Police Bureau (Ordinance)
- Disposition:** Ordinance No. 170617. (Y-4)
- *1633 Pay claim of George Sampson (Ordinance)
- Disposition:** Ordinance No. 170618. (Y-4)
- *1634 Pay claim of Shirley Gehrke (Ordinance)
- Disposition:** Ordinance No. 170619. (Y-4)
- *1635 Authorize a Letter of Agreement with the City of Portland Professional Employees Association (COPPEA) to allow appointment of Neal Robinson at the top rate of Senior Engineering Associate salary scale, placement at the five-year vacation accrual rate and eligibility for participation in the City's Cafeteria Benefit Plan (Ordinance)
- Disposition:** Ordinance No. 170620. (Y-4)

Commissioner Charlie Hales

- 1636 Set hearing date, 9:30 a.m., Wednesday, November 13, 1996, to vacate portions of N Sumner Street and N Missouri Avenue (Report)
- Disposition:** Accepted.
- 1637 Accept completion of Brooklyn Park renovation by G.R. Morgan Construction, make final payment and release retainage (Report; Contract No. 30470)
- Disposition:** Accepted.
- *1638 Authorize a contract and provide for payment for the SW Humphrey Boulevard slide repair project (Ordinance)
- Disposition:** Ordinance No. 170621. (Y-4)

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*1639 Authorize a contract and provide for payment for the NW Skyline Boulevard slide repair south project (Ordinance)

Disposition: Ordinance No. 170622. (Y-4)

*1640 Authorize a contract and provide for payment for the SW Patton Road/Broadway Drive slide repair project (Ordinance)

Disposition: Ordinance No. 170623. (Y-4)

*1641 Amend contract with Henderson Young and Co. for professional services for Systems Development Charge programs for the City of Portland (Ordinance; amend Contract No. 30336)

Disposition: Ordinance No. 170624. (Y-4)

*1642 Agreement with Shannon R. Kelley and Wesley G. Kelley for caretaker services at Powell Butte Nature Park (Ordinance)

Disposition: Ordinance No. 170625. (Y-4)

Commissioner Gretchen Miller Kafoury

*1644 Amend contract with Carlson Testing, Inc. for increased services to East Portland Community Policing Facility (Ordinance; amend Contract No. 30695)

Disposition: Ordinance No. 170626. (Y-4)

*1646 Contract with Payne Construction Co., Inc. for \$66,075 for remodel at Station 13 (Ordinance)

Disposition: Ordinance No. 170627. (Y-4)

*1647 Amend agreement with AGI Technologies for soil remediation at the former Linnton Oil Fire Training Grounds for the Fire Bureau to extend the scope of work, increase the amount by \$90,204 and extend the completion date (Ordinance; amend Contract No. 30461)

Disposition: Ordinance No. 170628. (Y-4)

1648 Amend Pay and Park regulations (Ordinance; amend Code Chapter 14.36)

Disposition: Passed to Second Reading October 23, 1996 at 9:30 a.m.

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*1649 Grant permit to provide Specially Attended Transportation services in the City (Ordinance)

Disposition: Ordinance No. 170629. (Y-4)

*1650 Contract with Multnomah County for \$1,843,893 to administer homeless, housing, youth and public safety programs and provide for payment (Ordinance)

Discussion: Ordinance No. 170630. (Y-4)

*1651 Contract with Central City Concern for \$274,314 for the CHIERS Inebriate Pick-up, Transportation and Assessment Service and provide for payment (Ordinance)

Disposition: Ordinance No. 170631. (Y-4)

*1652 Agreement with the Wetlands Conservancy for \$97,175 for the Corps Restoring the Urban Environment program and provide for payment (Ordinance)

Disposition: Ordinance No. 170632. (Y-4)

Commissioner Mike Lindberg

1653 Accept completion of the Stark Basin CSO sump project, Unit 4 and authorize final payment to S-2 Contractors, Inc. (Report; Contract No. 30582; Project 5424)

Disposition: Accepted.

1654 Accept completion of the SW Dolph Street Local Improvement District and authorize final payment to Berning Construction, Inc. (Report; Contract No. 30589; Project 5582)

Disposition: Accepted.

1655 Accept completion of the Tryon Creek interceptor sewer reconstruction project and authorize final payment to GELCO Services, Inc. (Report; Contract No. 30629; Project 5724)

Disposition: Accepted.

*1657 Authorize a contract with the lowest responsible bidder for the Riverview Wastewater Pump Station for the Bureau of Environmental Services and provide for payment (Ordinance)

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Disposition: Ordinance No. 170633. (Y-4)

- *1658 Authorize a contract with the lowest responsible bidder for the Portland International Raceway Wastewater Pump Station for the Bureau of Environmental Services and provide for payment (Ordinance)

Disposition: Ordinance No. 170634. (Y-4)

- *1659 Authorize a contact with the lowest responsible bidder for Mallory Pump Station renovation for the Bureau of Environmental Services and provide for payment (Ordinance)

Disposition: Ordinance No. 170635. (Y-4)

- *1660 Contract with Black & Veatch for conservation planning services for the BIG Program ICI Conservation Opportunity Assessment project (Ordinance)

Disposition: Ordinance No. 170636. (Y-4)

- *1661 Authorize and accept an agreement to purchase property from Thomas L. Tucker for the Water Bureau's "Interstate Avenue" facilities, provide for payment and authorize acceptance of a deed (Ordinance)

Disposition: Ordinance No. 170637. (Y-4)

City Auditor Barbara Clark

- 1662 Approve Council Minutes for April 3 through June 26, 1996 (Report)

Disposition: Approved.

REGULAR AGENDA

- 1626 Accept bid of 2KG Contractors for Emergency Communications Center addition for \$443,500 (Purchasing Report - Bid 29)

Discussion: Commissioner Hales said this needs to be held over along with 1646.

Disposition: Continued to October 23, 1996 at 9:30 a.m.

- 1627 Accept bid of CEMS, Inc. for landslide repairs at Pittock Acres Park for \$105,240 (Purchasing Report - Bid 1106-C)

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Discussion: Cay Kershner, Clerk of the Council, said the Purchasing Agent had requested a one-week continuance.

Disposition: Continued to October 23, 1996 at 9:30 a.m.

***1630** Contract with CSL International to assess the Oregon Arena Corporation's compliance with standards established in the Memorial Coliseum operating agreement (Ordinance)

Discussion: Ms. Kershner said she had a request to file this for no further consideration.

Disposition: Filed for no further consideration.

***1643** Accept bid of 2KG Contractors, authorize a contract and provide payment for the Emergency Communications Center addition (Ordinance)

Disposition: Continued to October 23, 1996 at 9:30 a.m.

***1645** Modify agreement with SERA Architects for City Hall to reallocate fees and extend the completion date (Ordinance; amend Contract No. 29088)

Discussion: Commissioner Kafoury said the budget office wanted this continued one week.

Disposition: Referred to Commissioner of Public Affairs.

1656 Recognize the Tryon Creek Watershed Council as a watershed council that meets the State of Oregon Governor's Watershed Enhancement Board guidelines (Resolution)

Discussion: Commissioner Lindberg said this should be referred back to his office to allow time to discuss it further with some citizens who oppose it.

Disposition: Referred to Commissioner of Public Utilities.

Mayor Vera Katz

1663 File annexation case for West Hayden Island with the Portland Metropolitan Area Local Government Boundary Commission (Resolution; Case #A-1-96)

Discussion: Mayor Katz asked that this be referred back to her office as it was filed in error.

Disposition: Referred to Commissioner of Finance and Administration.

1664 Authorize submission of FY 1996-97 Fall Supplemental Budget to the Multnomah County Tax Supervising and Conservation Commission (Resolution)

Disposition: Resolution No. 35554. (Y-4)

***1665** Authorize the Mayor and Auditor to execute a labor agreement between the City of Portland and the Portland Police Commanding Officers Association (PPCOA) relating to terms and conditions of employment of represented personnel (Ordinance)

Discussion: Gail Johnson, Bureau of Personnel, said the Commanding Officers took their last contract to arbitration, which was completed in January, 1996, and the City then began negotiations for this contract in May.

Disposition: Ordinance No. 170638. (Y-4)

Commissioner Charlie Hales

1666 Consider vacating a portion of SE Cora Street and SE 84th Avenue at the request of Eastport Plaza (Hearing; Report; C-9910)

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

1667 Consider vacating a portion of N Taft Avenue north of N Junction Street at the request of Columbia Steel Casting, Inc. (Hearing; Report; C-9914)

Discussion: Commissioner Hales said he believes this is a piece of unbuilt street inside an industrial site that would not go anywhere because it abuts the Columbia Slough on the north side. There is no reason the City would need the street.

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

***1668** Accept a grant from the State Historic Preservation office in the amount of \$17,000 to augment funding of a program to prepare National Register nominations for buildings and districts in the Albina and Northwest Districts of Portland (Ordinance)

Disposition: Ordinance No. 170639. (Y-4)

Commissioner Gretchen Miller Kafoury

1669 Update City Code Title 31 and adopt most recent edition of the Uniform Fire Code and Oregon Amendments (Second Reading Agenda 1614; amend Chapters 31.10 and 31.40)

Disposition: Ordinance No. 170640. (Y-4)

1670 Increase fees for possession of hazardous substances (Second Reading Agenda 1615; amend Code Chapter 31.40 and 31.80)

Disposition: Ordinance No. 170641. (Y-4)

Commissioner Mike Lindberg

***1671** Contract with Global Action Plan for the Earth (GAP) for \$60,000 to provide a sustainable lifestyle campaign for Portland residents (Ordinance)

Discussion: Commissioner Lindberg said this is the culmination of City efforts to develop partnerships with some of the enterprise bureaus and other agencies in the City. The campaign has been quite successful to date in reducing vehicle miles travelled and promoting alternative forms of transportation. Tri-Met has indicated its desire to either participate financially or offer discounted bus passes as an incentive to blocks that organize. Plans are to organize "eco" teams in 10 different neighborhoods and benchmarks have been established to measure the results. To date, every GAP team formed has then gone on to form two more, successfully spreading the program on its own. He said he will stay involved after he leaves office as he has agreed to serve on the national board.

Commissioner Kafoury said phew, she was afraid he would not be traveling anymore.

Disposition: Ordinance No. 170642. (Y-4)

Communications

1672 Request of Pavel Goberman to address Council regarding health and fitness issues (Communication)

Discussion: Pavel Goberman, PO Box 1664, Beaverton 97075, described his fitness and exercise program to Council members.

Disposition: Placed on File.

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1673 Request of Jeffrey J. Liddicoat, New Clear Vision, to have Council schedule public hearings on the topic of the common law versus civil/statutory law (Communication)

Discussion: Mayor Katz noted that Mr. Liddicoat was not present.

Disposition: Placed on File.

1621 **TIME CERTAIN: 10:00 AM** - Present an Environmental Protection award to the Bureau of Environmental Services Stormwater Group (Presentation by Commissioner Lindberg)

Discussion: Ken Brooks, Director, Environmental Protection Agency, said Portland earned this first place award for municipalities following a rigorous selection process.

Dean Marriott, Bureau of Environmental Services, recognized Dave Kliever for his exceptional efforts in dealing with stormwater concerns.

Disposition: Placed on File.

1622 **TIME CERTAIN: 10:15 AM** - Accept the Report: The City's Role in a Changing Utility Environment (Report introduced by Commissioner Lindberg)

Discussion: Commissioner Lindberg said this report defines the risks, challenges and opportunities associated with electric utility restructuring. He said the work done so far has resulted in dozens of calls from other cities wanting to establish a national network to share information and plan for the future. The report presents many opportunities for the City to protect the public interest in terms of lower cost power and environmental protection. The next step will be a further sorting of the options and more technical analyses from others, including the utility companies, the business community and environmental and consumer groups.

Susan Anderson, Director, Energy Office, reviewed the major issues the report describes, categorizing them into those facing the City as a corporate entity and those that involve citywide issues. She said the good news for the City as a corporate entity is that it will have access to lower-cost power. However, the bad news could be a dramatic reduction in utility franchise fees, which currently account for \$19 million in annual revenues. Citywide, industry and large consumers of power will be able to lower their costs. However, residents may not have such easy access to lower-priced power. Shared costs and the funding of energy conservation efforts and use of renewable resources also need to be considered. In addition, the City should follow the Public Utility Commission hearings and decide if the purchase of Portland General Corp. by

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Enron is in the City's best interest. She noted the wide variety of roles the City might choose, ranging from the passive to the very aggressive -- as educator, implementor, financier, regulator, aggregator and taxing authority. The principles contained in the report are those agreed to by the Steering Committee. Ms. Anderson said the Steering Committee plans to refine the principles contained in the report further and return to Council with recommendations. This will also involve formalizing internal City bureau participation.

The following individuals commented on the report and addressed issues of special concern:

Fred Miller, Portland General Electric
Rachel Shimshak, Renewables Northwest Project
Carl Talton, PacifiCorp
Charlie Grist, Northwest Power Planning Council, Oregon Department
of Energy
Jock Mills, Bonneville Power Administration
Kathleen Dotten, Oregon Metals Industry Council
Jane Cummins, League of Oregon Cities
George Richardson, Northwest Natural Gas
Noam Stampfer, Northwest Power Group, 7135 SW 34th, 97219
Robert Liddell, Illinova Energy Partner, 7180 SW Fir Loop, #200,
Tigard, OR 97223

Those testifying described the expected impacts on their organizations and suggested areas for City attention. Issues included the need for review of the City's current franchise fee policy with an eye to replacing them with another kind of fee, perhaps at the meter. The need to link cost accountability to such fees was also cited. Other concerns included: appropriate management of rights-of-way as requests for their use proliferate; citizen education efforts; preservation of energy efficiency; increased renewable efforts; and the need for the City to speak with a single voice in responding to these changes. Several also mentioned their confidence in the Public Utilities Commission and its ability to deal with some of the issues raised in the report.

Mayor Katz said this identifies an area where the City has to be more active in order to protect its assets and the interests of its citizens. She said the City will work with the League of Oregon Cities and the Legislature to achieve these goals and will formalize both internal and external working groups and assigned them to one commissioner so the City can speak with a unified voice.

Disposition: Accepted.

At 11:15 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 16TH DAY OF OCTOBER, 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; Rick Faus, City of Gresham, Acting Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Commissioner Charlie Hales

1675 Tentatively grant appeal of Karen Kenny, applicant, against Hearings Officer's decision to deny a 16-unit subdivision and PUD, and accept withdrawal of Crestwood Neighborhood Association appeal of zone change from R10 to R7 at SW 53rd Avenue south of SW Alfred Street (Findings; 95-00285 PU SU ZC EN)

Discussion: Cay Kershner, Council Clerk said the applicant has requested a continuance in order to finalize the findings.

Disposition: Continued to October 23, 1996 at 2:00 p.m.

1676 Tentatively grant appeal, with conditions, of North Harbour Corporation, applicant, against Hearings Officer's denial of 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 (Findings; 96-00374 SU DZ)

Discussion: Duncan Brown, Planning Bureau staff, said a site plan needs to be included with the findings.

Commissioner Hales moved to adopt the findings with the site plan.

Disposition: Findings Adopted. (Y-4)

1674 **TIME CERTAIN: 3:00 PM** - Appeal of Mill Park Neighborhood Association against Hearings Officer's decision to approve application of City of Portland Bureau of Parks and David Douglas School District for a conditional use to develop a community center adjacent to Floyd Light Middle School at SE 106th Avenue, between SE Washington and Salmon (Hearing introduced by Commissioner Hales; Previous Agenda 1602; 96-00430 CU AD)

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Discussion: Rick Faus, City Attorney, City of Gresham, outlined procedures and guidelines for testifying at an on-the-record hearing.

Rosemary Opp, speaking on behalf of the Mill Park Neighborhood Association and herself, questioned Commissioner Hales about his ex parte contacts and asked Commissioner Kafoury about a comment she made (regarding a housing project proposal adjacent to the new East Precinct facility). Ms. Opp said Jane Baker filed and then withdrew her appeal after being assured by Commissioner Kafoury that the City was committed to finding the parking spaces required in the conditions. She contended that they were found only after the community center, with ample parking, was proposed across the street.

Commissioner Hales noted he had filed a statement regarding his ex parte contacts.

Commissioner Kafoury said her promise to the neighborhood was that the City would find the additional parking spaces one way or another, either renting them from Floyd Light or including them as part of a new proposal. The tradeoff was either nine parking spots or nine housing units.

Ms. Opp said the Hearings Officer's decision violates the Open Space approval criteria. The Mill Park Neighborhood Association does not want the community center located here as the site does not comply with the Mill Park Neighborhood Plan which calls for maintaining Floyd Light Park. So does the Outer Southeast Plan. Ms. Opp said it seems as if these plans do not mean much. She objected to the loss of park land once again and said allowing the Center to be built here will result in a critical loss of open space to be replaced with a built environment and parking. She said the Park is losing 5.7 out of its 7.90 acres, a loss which cannot be mitigated.

Ms. Opp said the whole proposal is based on the fact that the Floyd Light School open space area will remain open space but there is no guarantee that the School District will honor that commitment in the future. Turning this property into school grounds restricts public use. She said the Hearings Officer ignored the legal arguments of Attorney Peggy Hennessey which object to this use. Ms. Opp said if a Center is built the neighborhood will be destroyed as this open space serves as a buffer against the commercial development west of 106th. She protested the loss of valuable trees and the open meadow. Even if the wooded hillside is saved, the views will be destroyed. There will also be noise and traffic impacts, decreasing neighborhood livability by bringing people to a regional facility via a local street. She said when the public voted \$58 million for the parks it was for parks, not buildings or recreation centers. She said there must be another more suitable location. She said neighbors were told there was no money for site acquisition but now there are estimates of costs to move the field, add lights and provide Bureau of Environmental Services

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(BES) improvements that could bring the cost close to \$1 million.

Arnold Rochlin, PO Box 83645, 97232, said he opposes violating the Code even to obtain a meritorious result. The Code requires the proposed use to be consistent with the specific Open Space (OS) zoned area. The Hearings Officer stated that the City agreed to abide by the findings and policies of the Multnomah County Parks Master Plan and the adopted concept plan for Floyd Light Park. She also notes that the City did not submit a copy of either, although opponents submitted undated, disjointed portions. The Hearings Officer acknowledges that the applicant failed to document compliance by conclusive evidence of the intended character of the site but faults opponents, who carry no burden of proof, for submitting only undated fragments. She finds the evidence inadequate to firmly determine the policies which the City must apply but still finds them satisfied by using unlawful devices. She refers to 33.800.060 which states the burden of proof is on the applicant to show that the approval criteria are met. The burden is not on the other parties. She alters the standard, starting with an accurate quote: "the proposed use is consistent with the intended character of the specific OS zoned area" but later transforms it into "not inconsistent" thus completing the reversal of the burden of proof. Intended character, which is objectively verifiable is transformed to a subjective "desired" character, allowing approval of anything, which the Hearings Officer does. Findings of actual fact require a conclusion that the approval standard is not met. He said the Hearings Officer finds compliance with livability standards concerning noise, glare, litter, and disturbance from night operations by saying there will be no field lights or night operations and there will be no litter patrol. But there are no implementing conditions except for one about quiet hours after nine p.m. which has no enforceable meaning. Concerning compatibility with a residential area, the Hearings Officer finds mitigation and availability of facilities for public use when they are not in school use but there is no implementing condition. Without effecting conditions, these findings are no better than palm reading.

Commissioner Hales asked Mr. Rochlin if, in discussing the language used regarding the OS zone and in the availability of the facility, he believes Council could adopt adequate findings in support. Is this just a findings issue or is he opposed to location of a recreation facility in an OS zone.

Mr. Rochlin said he does not know if the evidence in the record would support such findings. The noise and glare issues could be remedied with conditions but whether the City is complying with its agreement with the County Parks and Floyd Light Park plans depends on the terms of those agreements. The Hearings Officer said the record was incomplete and it cannot be supplemented at this time.

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Commissioner Hales asked if the Mid-Multnomah County Parks Master Plan was part of the record.

Mr. Gerber said it was submitted after the hearing conducted by the Hearings Officer was closed. He said he has been told it is not new evidence.

Mayor Katz said it was not part of the record she received.

Mr. Gerber said it is not a part of the record but is adopted by ordinance.

Individuals speaking in support of the appeal included:

Matthew Williams, 546 SE 113th, 97216
Dennis Keepes, Chair, St. Johns Neighborhood Association
Al Clark, Chair, Powellhurst Neighborhood Association
Tom Cropper, PO Box 18025, 97218
Mavis Holt, 1235 SE 115th, 97216
Larry Hudetz, 11135 SE Yamhill, 97216
David Schwabe, 2115 SW Edgewood Rd.
Chuck Duffy, 1529 NW 29th, 97210
Art Lewellan, 2820 SE Steele
Cherie Holenstein, 6141 SE Steele, 97206
Greg Rands, 20130 SW Council Drive, Aloha
Anthony Boutard, 1640 SW Davenport St., 97201
Sam Oakland, 3446 NW Thurman, 97209
Liz Callison, 6039 SW Knightsbridge Dr., 97219
Brad Thibeau, 825 SE 114th Place, 97216
Howard Holt, 1235 SE 115th, 97216

Opponents of the proposal said that while they support having a community center, it is bad public policy to sell off public park space, losing trees and natural resources, in order to accommodate a center at this site. They called for it to be built at another location. The open space should not be lost or built on, if a track field is placed on it, it should no longer be considered open space. They expressed concern about the impacts on neighborhood livability. Mr. Boutard said the Comprehensive Plan, although it is not in the Code, requires the City to maintain master plans which show how the City balances various user needs. Mr. Lewellan said the site does not fully implement important City transportation policies with regard to the use of transit. Opponents of the proposal also criticized selling the property through private negotiations rather than through an open bid process and called for a Citywide policy regarding the disposition of public park lands.

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Commissioner Hales asked Mr. Duffy where he thought the proposal does not meet the criteria, noting that the center would be built on land zoned R5 while the track would be placed in the Open Space.

Mr. Duffy said the swap results in a loss of open space.

Commissioner Hales said there is no redesignation of open space land. This is a conditional use but the zoning is still open space.

Mr. Duffy said that may be technically correct but the City pays a price in the loss of true citizen participation and a belief that it matters when one gives testimony.

Tim Barnes, Planning Bureau staff liaison to the Parks Bureau, said the Multnomah County Recreation Master Plan is not part of the record but he distributed copies of it to the Council members on September 27 and it was adopted by ordinance by Multnomah County (Ordinance No. 450) so it can be referred to. He said Council should take official notice of the adopting ordinance (No. 450).

Mayor Katz said another ordinance authorizes the transfer of ownership of Floyd Light Park and it does have conditions.

Mr. Barnes said that is in the record.

Commissioner Hales said portions of the Multnomah County Park Plan were submitted by the opponents and the relevant portions, dealing with Floyd Light Park, appear to be in the record.

Mr. Barnes said there may be other relevant portions but the most specific to Floyd Light Park were included.

Mayor Katz asked if Floyd Light is shown as a neighborhood park in that Plan.

Mr. Barnes said yes, it is designated as a neighborhood park in two places -- the County Plan and the Park Futures Systemwide Master Plan. However, to qualify as an approval criteria, it must be specifically referred to as such in the Code. The Master Plan does not include any approval criteria for this conditional use but some statements within it were used by the Hearings Officer as guidance regarding the "intended character" of the OS zone. In that way it is relevant and the Parks Bureau believes that is reasonable. He submitted a letter of support for the proposal from the a list of senior citizens. He clarified, for the record, that the combined footprint of the Center building and parking lot will be 2.25 acres and the amount of open, green space in the reconfigured Floyd Light Park will equal about 5.5 acres. He described plans

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for the park, noting that the center and the parking lot are in the R5 zone, not the Open Space area. The wooded area belongs to the school but the City hopes to eventually add its approximately 1.4 acres to the C (conservation) zone portion of the site. It is currently zoned R5 with a C overlay.

Commissioner Lindberg asked if the public would have restricted access to school property.

Mr. Barnes said Dr. Russell, Superintendent, David Douglas School District, has written a letter of understanding that states their intent to allow public access unless a game is being played on some portion of the property.

Commissioner Lindberg asked about the net loss of park and open space.

Mr. Barnes said if the whole area is considered open space, there would be 2.25 acres of what is now either lawn or forest on the site. However, 17.6 acres of contiguous open green space will remain on the two properties. The future parking lot, which may or may happen, has not been included as remaining OS and is currently zoned R5.

Mr. Barnes said the Parks Bureau is satisfied with the conditions imposed by the Hearings Officer, including her denial of the landscaping adjustment. The Bureau now plans to landscape to the full level required by the Code. Trees will be added and a second path across the site, as requested by the Office of Transportation, will be provided. The Bureau will also comply with all the conditions relevant to Bureau of Environmental Services requirements. He noted that Comprehensive Plan issues may be addressed but may not apply to the relevant approval criteria upon which the decision must be based. One of those is a concern with the public process. He said the Parks Bureau had a voluntary public process regarding siting and design but it is not relevant to the approval criteria as it is not required by law. The Comprehensive Plan calls for master plans for parks but is not clear whether this means a separate plan for every park. While there is a Master Plan for the whole parks system, the Comprehensive Plan policy is not an approval criteria. He said Floyd Light Park is being reconfigured, not lost. There will still be 5.5 acres of open space.

John Sewell, Parks Bureau, described Parks Bureau plans to add park space to its inventory over the next few years.

Mr. Barnes said the purpose statement for the Open Space allows a number of uses. He said a total of 20 trees, including five Douglas firs, will be displaced by the track field. He contended that those using the field will not be that close to the homes of residents and noted that the football and track fields currently are there today. He said a conditional use is about context and the Parks Bureau sees the park and recreation center as providing a buffer between the

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residential zone and the gateway area planned west of 106th.

Janet Bebb, project manager, Bureau of Parks and Recreation, said the siting Task Force held 25 meetings, which were open to the public.

Mayor Katz asked if the park was classified as a neighborhood or a regional park.

Mr. Barnes said it was identified in the Parks Future Plan and the Multnomah County Master Plan as a neighborhood park. He said there is no reason to believe that drawing other people to the neighborhood will result in intense use of the Open Space portions.

Commissioner Lindberg asked if neighborhood parks are defined by the amount of acres or by the number of people using it who come from outside the neighborhood.

Mr. Barnes said the classifications are guidance and are not meant to eliminate other possibilities. He noted too that these are parks, not zoning classifications.

Mr. Faus said Council needs to take official notice of the existence of the Multnomah County Parks Master Plan.

Supporters of Floyd Light Park as the preferred site for the community center included:

Carol Williams, 10304 NE Morris, 97220
Mae LeFebvre, 13045 SE Stark, Space 103
Rick Meyer, Floyd Light Middle School student
Judy Bruneau, Mill Park Neighborhood Association member, no address stated
Ron Russell, Superintendent, David Douglas School District
Barbara Bellont, 735 NE 120th Avenue

Supporters said a community center will be a great asset here, both for kids and seniors. They said many other sites had been considered and this was selected as the best one. Mr. Russell noted that the David Douglas School District board voted unanimously in favor of this location and many other people would like to have the center located on the Floyd Light site. He said the District Office is not a possible site, as opponents have suggested, and the Russellville School site has already been sold. Mr. Russell said any expansion of the school would not lap over into the open space area and the District has no plans to develop the wooded area. Rather they hope they can come to some agreement to give that area to the Parks Bureau, as they do not want students to hang out there.

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In rebuttal, Ms. Opp objected to the premise that there are 17 acres of open space because proponents are counting what is R zoned. She said some of the open space is basically parking lot, building and track field with just a tiny lawn between the tennis courts. She asked what will be left after Phase 2. She said what was a park will become school grounds and asked for a guarantee that the School District will never sell it for development. She asked why the District would be trading land when the Multnomah County Parks Master Plan states it is not suitable for recreation. She said more, not less, open space is needed in this park-deficient area as a buffer against the high-density development coming to the area. She said at least 10 acres of land are needed for a community center and there is not that much land here. She said this land, bought at yesterday's prices, belongs to the public and should not be given away. Replacing it later will cost millions of dollars. She decried the loss of trees and said planting puny new trees does not equate with losing mature Douglas firs. She said another site for the center should be found that does not harm a neighborhood.

Mayor Katz said she would like a clear indication of the size of the trees to be cut and their location. Commissioner Hales said the site plan is in the record. Commissioner Lindberg asked about a tree preservation plan.

Mr. Gerber said the site plan specifically identifies the trees to be cut down.

Council and staff discussed the location of the displaced trees and the reasons for removal.

Mayor Katz said if Council approves this, there needs to be some conditions regarding public access and livability issues.

Mr. Faus noted that if the applicant provides additional argument, but not new information, on the location of trees, the appellant should be allowed to comment.

Ms. Opp said Multnomah County respected this park and trees, citing Peggy Hennessey's legal argument in the record.

Mr. Rochlin objected to acceptance of the Multnomah County Master Plan or the Floyd Park concept plan in their entirety or any related documents the applicant has belatedly offered, including an adopting resolution. He said only those parts submitted to the Hearings Officer can be part of the record here. He also objected to taking legal notice of these documents outside the record because none of them constitute dispositive law in this case. Their only relevance here is to decide the issue of fact as to what was "the intended character" of this open space. He asked Council to reject all these documents.

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Mayor Katz said the ordinance is on the record.

Ms. Beaumont, Senior Deputy City Attorney appearing on behalf of the Parks Bureau, said they have asked Council to take official notice of the ordinance adopting the Multnomah County Master Plan and the Parks Futures Plan. These were cited by the appellants as guiding what the Council can do and should consider. Only disjointed portions are part of the record and the Parks Bureau believes Council can and should take official notice of them.

Mr. Faus said a local government can take official notice of adopted laws and administrative rules, including local comprehensive plans, land-use regulations and other plans adopted by ordinance.

Mayor Katz asked if that would apply also to the Floyd Light concept plan.

Mr. Gerber said the Floyd Light Park concept plan was not adopted by ordinance.

Commissioner Kafoury asked why Council had to have the entire document in order to make its decision.

Commissioner Hales said the appellant entered portions of an adopted public document and Council is now being asked to take notice of the entire document, not just those parts introduced by the appellant. Legal counsel says Council has the authority, and should, do that. He asked Council to accept that recommendation in the course of assembling a legally defensible record. It is Council's job to interpret the Code in and decide whether the proposed use is consistent with the intended character of the specific Open Space area and the purpose of that zone. Council needs to decide it if agrees with the Hearings Officer and if her record has legal integrity.

Ms. Beaumont said disjointed portions of the Multnomah County Parks Master Plan and Parks Futures Plan are in the record. The plans do not constitute any approval criteria for Council but in considering the intended character of this Open Space, they would like the Council to be able to consider the portions in the record in context.

Commissioner Hales moved to include the entire plans in the record.

Commissioner Lindberg agreed with Commissioner Hales that it would be better to err in favor of including the whole thing. Commissioner Kafoury and Mayor Katz agreed reluctantly (Y-4).

Ms. Beaumont noted that they are not requesting that Council take official notice of the Floyd Light Park concept plan. She objected to the inclusion of

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testimony concerning other park issues around the City and a requirement that Council dispose of park land by a public bidding process. She said that testimony refers to evidence not in the record and raises new issues, not raised before the Hearings Officer.

Ms. Opp said Council cannot make a decision. Only the Multnomah County commissioners, not Commissioner Hales, can determine the fate of the park.

Commissioner Lindberg said he would rather not go through everyone's testimony and sort out everything they said that had to do with parks as a whole. Commissioner Kafoury agreed.

Commissioner Hales said he would rather err on the side of including everything and not get into having everyone question everyone else's evidence, although he realizes this is on the record.

Mayor Katz said she would like to throw out that testimony but it appears she has been outvoted.

Ms. Opp raised an objection. She said if Council looks at Peggy Hennessy's legal document, which the Hearings Officer did not address, Commissioner Hales does not have the authority to even use this site.

Ms. Beaumont asked Council to overrule Ms. Opp's objection. She said the agreement with the County (about sale of the land) is not a binding approval criteria.

Mr. Faus said he has reviewed the Multnomah County documents and concurs that they are not approval criteria in considering this application, although they may provide a basis for legal action in some other forum.

Commissioner Hales moved to disregard the agreement cited. Commissioner Lindberg agreed and Mayor Katz ordered that the objection be ignored.

Mayor Katz asked if there were any deed restrictions.

Ms. Opp said yes, on the bargain and sale deed.

Mayor Katz said Ms. Opp can make those legal arguments sometime in the future.

Commissioner Lindberg said he intended to move to tentatively uphold the Hearings Officer's decision and asked if Council members wished to add any conditions.

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Mayor Katz moved to close the hearing. Commissioner Lindberg seconded and, hearing no objections, the Mayor so ordered. She cited page 23 of the Hearings Officer's decision, regarding livability issues, where she notes conditions prohibiting late night use and noise impact mitigation. Mayor Katz asked if Council wanted to add any mitigating conditions to those livability issues, such as ensuring that the park grounds are patrolled, and asked about enforcement.

Commissioner Hales said the Hearings Officer seems to find that the noise impacts are mitigated by the location of the facility, not by some specific management things that are supposed to be done. He said he assumes the same operating regulations would apply here as they do at the Bureau's 11 other centers.

Commissioner Kafoury said Council could clarify in a condition that the area would be patrolled the same as the facility, which will be open to 11 p.m. The responsibility for enforcement falls upon the staff that will be there until then.

Mayor Katz noted that the Hearings Officer states the area would not be used for loud functions after the hour of 9:00 p.m.

Commissioner Kafoury and Mayor Katz said the conditions should be expanded to reflect what the Hearings Officer understands as a given.

Commissioner Lindberg moved to tentatively uphold the recommendation of the Hearings Officer and deny the appeal, approving the application with two additional conditions. First, add to the findings conditions that correlate with the livability section on Page 23 of the Hearings Officer's decision, stating that the responsibility for enforcement lies with the Parks Bureau staff. Second, ask Parks Bureau staff to reevaluate the site plan and make every effort possible to preserve all trees.

Commissioner Hales seconded.

Commissioner Kafoury said it is unfortunate that some believe the City is engaged in a large conspiracy to give up precious park lands for other uses. She said Council is not anti-parks. She said she was troubled by the notification process and advised the Planning Bureau to be more careful about details. She is surprised that people would not want this kind of facility as she believes it will invigorate the area.

Commissioner Lindberg said valid concerns have been expressed by the opponents about parks and open space and the City needs to be cautious about making changes to the parks system. The appeal also identifies the need for more planning for future parks as the City becomes more dense. However, fact needs to be separated from emotion. This is a very good location and the site

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selection process was good. He said it is a good idea to site a community center next to a school and an existing park. Also, the City is not losing acres of park and should clarify that its mission is both parks and recreation. Parks are not just for open space but also for indoor and outdoor activities, including those for both youth and seniors. There are some tradeoffs in these decisions but in this case he believes very little is being lost.

Mayor Katz said it was difficult for her to find any criteria in the Hearings Officer's decision upon which to base a no vote, although she finds some of the discussion tortured. Regarding charges that a deal was made, Mayor Katz said she has not seen the kind of deals people are talking about in the 3-1/2 years she has been Mayor. She said "deals", or partnerships, are made with private parties that protect the City's interest, for instance a land swap that adds green space. The Council also cares about trees as much as anyone. She said, however, the City needs to revisit the citizen involvement process and respond more sensitively to the perception that the bureaucracy is imposing things from above.

Ms. Beaumont asked that this return to Council in three weeks for the adoption of findings.

Disposition: Tentatively deny appeal and uphold hearings officer's decision with conditions; applicant prepare findings for November 6, 1996 at 2:00 p.m.

At 5:55 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council