



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 4TH DAY OF DECEMBER, 1996 AT 9:30 A.M.

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

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

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

CONSENT AGENDA - NO DISCUSSION

1880 Cash investment balances October 17 through November 13, 1996 (Report; Treasurer)

Disposition: Placed on File.

1881 Accept bid of Coffman Excavation for Wheeler Basin Phase 2 Unit 3 for \$2,406,541 (Purchasing Report - Rebid 27)

Disposition: Accepted; prepare contract.

1882 Accept bid of Anixter, Inc. for network communications equipment for the Bureau of Environmental Services for \$132,824 (Purchasing Report - Bid 52)

Disposition: Accepted; prepare contract.

1883 Accept bid of Eastman Kodak Company to furnish one Kodak 92P printer for \$183,253 and three years' maintenance for \$87,084 (Purchasing Report - Bid 55)

Disposition: Accepted; prepare contract.

1884 Vacate certain portions of N Sumner Street and N Missouri Avenue, under certain conditions (Ordinance; C-9903)

Disposition: Passed to Second Reading December 11, 1996 at 9:30 a.m.

1885 Vacate a certain portion of N Taft Avenue north of N Junction Street, under certain conditions (Ordinance; C-9914)

Disposition: Passed to Second Reading December 11, 1996 at 9:30 a.m.

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1886 Vacate portions of SE Alder Street and SE Yamhill Street west of SE 111th Avenue, under certain conditions (Ordinance; C-9924)

Disposition: Passed to Second Reading December 11, 1996 at 9:30 a.m.

Mayor Vera Katz

1887 Give preliminary approval for Multifamily Housing Revenue Bonds in an amount not to exceed \$6,433,000 (Resolution)

Disposition: Resolution No. 35570. (Y-5)

***1888** Authorize Purchasing Agent to sign a Purchase Order as a contract with Software SG for annual software maintenance (Ordinance)

Disposition: Ordinance No. 170742. (Y-5)

***1889** Pay claim of McGuire Bearing Company (Ordinance)

Disposition: Ordinance No. 170743. (Y-5)

***1890** Create Fire & Police Disability and Retirement Supplement Fund (Ordinance)

Disposition: Ordinance No. 170744. (Y-5)

Commissioner Charlie Hales

***1891** Amend contract with David Evans and Associates, Inc. to include additional design services in the amount of \$7,952 for Pier Park improvements (Ordinance; amend Contract No. 30026)

Disposition: Ordinance No. 170745. (Y-5)

***1892** Contract with K-2 Construction Company to construct soldier piles at 1440 SW Broadway Drive for the Bureau of Transportation Engineering and Development for \$117,880 and provide for payment (Ordinance)

Disposition: Ordinance No. 170746. (Y-5)

***1893** Amend agreement with Otak, Inc. to provide professional services for the pedestrian facilities for transit access project (Ordinance; amend Contract No. 30422)

Disposition: Ordinance No. 170747. (Y-5)

Commissioner Gretchen Miller Kafoury

***1894** Contract with Oregon Health Sciences University for occupational health nurse services, lab testing and other medical services for \$57,953 (Ordinance; waive Code Chapter 5.68)

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Disposition: Ordinance No. 170748. (Y-5)

- *1895** Contract with Williamsen & Bleid, Inc. for painting the interior of the Kerby Garage and provide for payment (Ordinance)

Disposition: Ordinance No. 170749. (Y-5)

- *1896** Grant easement to Pacificorp for Broadway/Weidler/Halsey/NE 9th Local Improvement District (Ordinance)

Disposition: Ordinance No. 170750. (Y-5)

Commissioner Mike Lindberg

- 1897** Accept project by Pioneer Waterproofing Company, Inc. as substantially complete for Ira Keller Fountain rehabilitation and authorize final payment (Report; Contract No. 30511)

Disposition: Accepted.

- 1898** Accept completion of the SW 35th and Vesta culvert construction, release retainage and authorize final payment to DEBCO Construction, LLC (Report; Contract No. 30848; Project 5674)

Disposition: Accepted.

- *1899** Consent to transfer of solid waste and recycling franchises held by Sanifill, Inc. to Metropolitan Disposal and Recycling Corporation, a subsidiary of USA Waste Services, Inc. (Ordinance)

Disposition: Ordinance No. 170751. (Y-5)

- *1900** Authorize the continuance of negotiations for the purchase of property and easements required for the Columbia Slough consolidation conduit; authorize the City Attorney to commence condemnation proceedings to obtain early possession (Ordinance)

Disposition: Ordinance No. 170752. (Y-5)

REGULAR AGENDA

- *1901** Authorize an Intergovernmental Agreement, including financial participation, with the Port of Portland for a non-potable water system pilot project for the Rivergate Industrial Area (Ordinance)

Discussion: Commissioner Sten said one of the most promising ways to reserve Bull Run water for drinking water is to explore other sources for non-potable uses.

Mike Rosenberger, Director, Bureau of Water Works, outlined the terms of the agreement.

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Council discussed the use of Willamette River water and Mayor Katz asked why the wells would be used for fires right by the river.

Bob Willis, Water Bureau, said the wells do not require treatment and filtration.

Disposition: Ordinance No. 170753. (Y-5)

Commissioner Erik Sten

1879

TIME CERTAIN: 9:30 AM - Approve the 1996 Powell Butte Master Plan (Resolution introduced by Commissioner Sten)

Discussion: Commissioner Sten said both the Water and Parks Bureaus worked on this Master Plan with stakeholders in the area. The Water Bureau will use the work it must undertake here to also make park improvements, especially to the pathways, and to solve some of the problems resulting from the mix of park users.

Commissioner Hales said Commissioner Lindberg's good work led to having this Park in the City's inventory. He said this is a good collaborative effort by the two bureaus.

Mr. Rosenberger said Powell Butte, along with Mt. Tabor and Washington, are the three parks in which the Water Bureau is heavily involved.

David Judd, Parks Bureau, said the public process reaffirmed the neighborhood's desire to preserve the natural areas. The Plan provides for improved trails and additional acreage connecting to the Johnson Creek and Springwater corridors. Other identified needs included better security and additional protection for the resource.

Commissioner Lindberg said citizens put hundreds of hours into this plan.

Commissioner Sten said this is a good example of using infrastructure construction that is needed anyway to improve the park without adding any more to the cost.

Disposition: Resolution No. 35571. (Y-5)

REGULAR AGENDA

Mayor Vera Katz

1902

Hear appeal from William Thompson to the Police Internal Investigations Auditing Committee (PIIAC #96-21 (Report)

Discussion: As the appellant was not present and staff was not available this was referred back to the Mayor's office.

Disposition: Referred to Commissioner of Finance and Administration.

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1903 Authorize filing of lawsuit to determine the validity and requirements of Ballot Measure 47 changes to the Oregon Constitution (Resolution)

Discussion: Mayor Katz asked that this be continued to the afternoon, following the Executive Session at 11:00 a.m. She noted that this suit is reluctantly brought but was clearly identified as a possible City action some time ago.

Disposition: Continued to December 4, 1996 at 2 p.m.

***1904** Authorize delay in reduction in utility license fee charged to water and sewer utilities (Ordinance)

Discussion: Commissioner Sten said this allows a delay in the reduction, not a return to the eight percent.

Mayor Katz said reducing the fee may be a high priority but it needs to be included as part of the overall budget discussion.

Chris Thomas, Public Utilities Review Board (PURB), said the Board unanimously voted to recommend that Council go ahead with the initial reduction in the license fee as originally scheduled. PURB strongly believes a tax by the City on the City is not appropriate as it believes that utility fees must be tied directly to services. Second, it questions accessing an eight percent fee. Mr. Thomas noted that private utilities pay five percent, a lower fee that has been justified because the companies also pay property taxes. However, using this logic, when the Board reviewed this they found that the appropriate level would be six percent. PURB believes this two percent difference means utility rate payers are charged a disproportionate amount and that is why it supports the reduction from eight to six percent. The PURB is continuing to review the possibility of setting up a special lifeline rate for low-income users to avoid a utility rate backlash. Mr. Thomas described the genesis of the fee and said it was poor tax policy then and is poor tax policy now. He noted that proposed reduction is only .4 percent and PURB believes it should be implemented this year.

Commissioner Kafoury asked if PURB discussed rate impacts on lower-income families. She suggested putting this on hold in order to find a different method to protect them.

Mr. Thomas said PURB found that, at the moment, most of their information about the crisis for lower-income rate payers was anecdotal. He said if fixed lifeline rates are paid for by the other rate payers, a vicious cycle can result as rates are pushed higher.

Commissioner Sten said he supports the PURB position. He said property taxes are too high and regressive, as is the franchise fee. He noted that 65 percent of the property tax is now paid by residential customers, as opposed to commercial and industrial land owners. He said the only way out is a progressive tax.

Paulette Rossi, PURB member, said this reduction makes sense. The rationale for not granting it is that the general fund needs the money. But delaying this will destroy the citizens' faith. She said Council should lower the contribution from the utilities to the

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general fund and use the money saved to provide a fund to help low-income ratepayers.

David Agassi, Director, Bureau of Financial Planning, described the impact on the general fund over the next few years. It would mean over a \$1 million reduction next year, rising to between \$3 and \$4 million after five years.

Mayor Katz said this issue should be included in the forthcoming citizen survey to find out how the public feels.

Commissioner Lindberg said the issues raised by PURB are valuable and should be included in the overall discussion. The inequities of the tax system are at the root of the problem. He said the fees were raised from five to eight percent in response to the imposition of what Council believed was an irresponsible federal tax policy during the Reagan administration, when revenue sharing to cities was ended. This recommendation reacts in a small way to the inequitable split between residential and commercial property taxes.

Commissioner Sten said PURB is right on this. Rates need to be addressed and he will support this view during the budget review.

Disposition: Ordinance No. 170754. (Y-5)

Commissioner Charlie Hales

1905 Continue the regulation of tree cutting on private properties (Ordinance; amend Code Chapter 20.42)

Discussion: Commissioner Hales said this continues the tree cutting regulations currently in place.

Disposition: Passed to Second Reading December 11, 1996 at 9:30 a.m.

***1906** Authorize payment to the Portland Rose Festival Association for the amount of \$18,850 for turf restoration in Tom McCall Waterfront Park (Ordinance)

Disposition: Ordinance No. 170755. (Y-5)

Commissioner Mike Lindberg

***1907** Amend contract with Sverdrup Civil, Inc. to provide construction management services to the CSO Columbia Slough projects (Ordinance; amend Contract No. 29404)

Discussion: Commissioner Lindberg said the value of this multi-million dollar construction management contract has been shown but deserves close scrutiny and discussion by Council.

Dean Marriott, Director, Bureau of Environmental Services, said this amendment would extend the contract to June, 2001 and add \$6,925,000 to the cost. He described the five

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major construction projects which will be managed, for a total cost of \$150 million, and reviewed the reasons why the Bureau felt a blend of City and private sector staff would work best in managing them. He noted that normally construction management costs are expected to be 10 percent of the total. In this case, they are expected to be \$13.6 million, less than the \$15 million that would be the usual rule-of-thumb. He said the blended approach has a very good track record, with savings to the City of \$53 million to date. He said this approach also takes advantage of Sverdrup's special skills in construction management.

Commissioner Kafoury asked about the length of the contract.

Mr. Marriott said they want the construction management program to run in conjunction with the five projects. He said there is an easy escape hatch as the contract can be severed any year.

John Lang, CSO Project Manager, said it does not make sense to award a bid for a five-year project but then authorize a major contract for only one year. It would be easier to sever the contract with the Sverdrup team if the City is dissatisfied.

Commissioner Hales questioned adding six new full time field people for each construction site at an average cost of \$151,000 per person.

Mr. Lang said 20 different prime contracts are involved and 15 to 20 of the people will be inspectors, who are needed because the work is so complex. He said the cost does not cover just labor but vehicles, computers, scheduling facilities, etc.

Commissioner Hales asked how many people will be added to the workforce.

Commissioner Sten noted that of the 30 positions, more than half will be filled by existing City staff.

Mr. Lang said four additional City staff people are planned, probably 10 to 20 Sverdrup people, plus subcontractors.

Paul Durban, consultant on the CSO Project, said 32 people will be hired at the peak.

Commissioner Hales asked if there had been any outside review of the construction management plan. He said it seems arcane to have this many sub contractors involved in construction management. He asked if BES had talked to the Parks Bureau or General Services about the management of similar large projects.

Mr. Lang said they conferred with San Diego and Sacramento which had similar projects of this scope. They also have several advisory committees whose members are experienced in construction and this was their recommendation. BES likes to use local people as subcontractors and as a way to include more minority and female participation. He said the Bureau did not confer with other City bureaus, however. In this case they are talking about bring in firms with skills in complex sewage and wastewater treatment facilities.

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Commissioner Kafoury asked why this was an emergency ordinance.

Mr. Marriott said because they would like to go to bid in January in order to get started.

Commissioner Hales asked why this was sole source.

Mr. Marriott said to save time and because of BES' positive experience with the existing company. He and Mr. Lang discussed with Council the need to go forward quickly in order to stay on schedule.

Mayor Katz asked what Council preferred.

Commissioner Lindberg said during the CSO update a month ago, he felt that Council believed the contract had been managed correctly. He said this is a huge, complex contract. This company has a good track record and its selection was reviewed by an outside review group. He said while sole source is bothersome, on balance he supports this approach but is willing to delay its adoption to see if there is a way to increase Council's comfort level.

Commissioner Hales said he would like more peer review to see if this is being over managed. He suggested conferring with other City bureau and agency staff.

Commissioner Lindberg noted the expertise of the review committee.

Commissioner Kafoury said she is comfortable supporting this.

Commissioner Sten said he is bothered by the emergency clause. He believes the cost is reasonable overall but that Commissioner Hales raises reasonable questions. He leans toward support.

Commissioner Kafoury moved to remove the emergency clause. Commissioner Lindberg seconded and, hearing no objections, the Mayor so ordered.

Commissioner Sten said he would like to meet with Commissioner Hales and other people with experience in this area and talk through the issues raised.

Mayor Katz said Council never wants to see an overrun on the construction contracts. She said top quality managers should be able to manage this well enough to find some significant savings.

Commissioner Lindberg called for continuing the Second Reading on this two weeks.

Disposition: Passed to Second Reading as amended December 18, 1996 at 9:30 a.m.

Council recessed at 11:15 a.m. in order to hold an Executive Session to discuss filing litigation to test the constitutionality of Measure 47. At 11:30 a.m., Council resumed.

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***1908** Authorize supplemental agreements with KBL of Portland Cablesystems, L.P. regarding cable franchise (Ordinance)

Discussion: David Olson, Office of Cable Communications and Franchise Management, described this and the following two agreements.

Commissioner Lindberg asked if the City keeps track of complaints and does surveys of customer satisfaction.

Mr. Olson said the Mount Hood Cable Commission does a survey at least every two years. Customer satisfaction has gone up since the early 1990s although the majority still believes the cost is slightly higher than it needs to be. His office is pleased with the response of both Paragon and TCI to significant service concerns.

Commissioner Lindberg asked how rates here compare with other cities.

Mr. Olson said Portland's are consistent with other urban areas. They tend to be slightly lower because the Cable Commission is very vigorous about rate regulation. He noted that the Commission can control programming in very general categories but cannot specify that certain programs or channels be carried.

Disposition: Ordinance No. 170756. (Y-5)

***1909** Amend agreement with Portland Cable Access to extend time for performance (Ordinance; amend Contract No. 50072)

Disposition: Ordinance No. 170757. (Y-5)

1910 Grant a franchise to KBL-Portland Cablesystems, L.P. to operate a Cable System (Second Reading Agenda 1719)

Disposition: Ordinance No. 170758. (Y-5)

City Auditor Barbara Clark

1911 Assess property for sewer connection contracts processed through the Private Plumbing Loan Program for the period ending November 26, 1996 (Hearing; Ordinance; P0021)

Disposition: Passed to Second Reading December 11, 1996 at 9:30 a.m.

1912 Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through October 29, 1996 (Hearing; Ordinance; Y1012)

Discussion: Dan Vizzini, Auditor's Office, asked that this be continued one week in order to respond to a concern raised today by a property owner.

Disposition: Continued to December 11, 1996 at 9:30 a.m.

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1913

Assess property for sewer system development contracts of the mid-County sewer project for the period ending October 29, 1996 and non mid-County for the period ending October 29, 1996 (Hearing; Ordinance; Z0641, Z0642)

Disposition: Passed to Second Reading December 11, 1996 at 9:30 a.m.

At 11:50 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 4TH DAY OF DECEMBER, 1996 AT 2:00 P.M.

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

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

1903

Authorize filing of lawsuit to determine the validity and requirements of Ballot Measure 47 changes to the Oregon Constitution (Resolution)

Discussion: Mayor Katz noted that an Executive Session had been held on this matter to discuss the legal issues. She asked the City Attorney to review the reasons why the City is doing this.

Jeff Rogers, City Attorney, said if Council approves filing this lawsuit, the City will ask the courts to determine the constitutionality of Measure 47. Other jurisdictions are planning to file suit too and eventually all will probably be consolidated. He said while Council agrees that property tax relief is needed it challenges the inclusion of so many things not logically connected to that relief. In effect, the measure reduces voting rights in certain situations, constricts local control, sets spending priorities for local governments, creates inequities between renters and property owners and locks in the current property tax ratios which favor commercial interests. It is important for the City to learn early on whether these unrelated things comply with the Constitution so that unnecessary disruption can be avoided.

Commissioner Lindberg asked if the courts could declare the whole measure unconstitutional or just portions of it.

Mr. Rogers said finding one part unconstitutional is a possible result.

Mayor Katz noted that if the courts declare that too many issues have been included, then the whole thing would be void. She added, however, that Council is not interested in violating the property tax relief provisions.

Becky Miller, 6043 SW Pendleton Court, chastised Council for this affront to voters and taxpayers. She said citizens want less money spent on government and criticized the City for building up an \$18 million surplus last year and then giving \$9 million to the School District because it did not know what to do with it. She asked why the City did not put that into infrastructure improvements.

Liz Callison, 6037 SW Knightsbridge Dr. 97219, said the City should pursue other methods to add revenue, including rescision of the 10-year property tax abatement ordinances.

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Paul Richmond, PO Box 454, 97207, said one reason for these budget troubles is due to questionable actions by Council, such as the illegal annexations in Multnomah County which could cost the City \$30 million.

Rosemary Seminara, 8433 N. Olympia, 97203, said she worries about what this says about the democratic process. While she agrees that some portions of the measure are confusing, the recent bond measures proposed and passed Portland School District and the Parks Bureau were also confusing and contained fine print the voters did not know about.

Melissa Wilde, no address stated, questioned why the City is bringing legal action to declare a citizens referendum to be unconstitutional when many of its own actions have been found unconstitutional by the courts, costing City residents many millions of dollars. She requested that the City allot funds to citizens to allow them to challenge unconstitutional activity by their government.

Tom Cropper, PO Box 18025, 97213, said the Council members and some staff members are too entwined with other organizations to act in the public interest.

Commissioner Hales said the City is not challenging the fundamental nature of the measure but, because of its grab bag nature, serious questions are raised about its constitutionality. He said he also objects to freezing these provisions in the State Constitution, rather than as statutes.

Commissioner Kafoury said it is Council's responsibility to ask for a legal interpretation when there is confusion about a measure's meaning. She said she is troubled about putting so much in the Constitution and does not believe most voters meant to freeze the current imbalance between residential and commercial property owners.

Commissioner Lindberg said the shift of local authority to the State legislature is troubling as is locking in the inequities, referred to by Commissioner Kafoury, between businesses and residents.

Commissioner Sten said he supports the law suit but will battle to get a more equitable tax structure so that 65 percent of the property taxes do not continue to be paid for by owners and renters.

Mayor Katz said everyone must comply with the Constitution but the courts did not decide on the constitutionality of a measure until after the measure is passed. She guaranteed that the Council will make reductions in response to the voters' desire for lower taxes.

Disposition: Resolution No. 35572. (Y-5)

*1914

TIME CERTAIN: 2:00 PM - Amend the Comprehensive Plan Map and change the zone of property between N Columbia Boulevard and Bank Street, Barr Street and Oswego Avenue from OS (Open Space) and R5 (Residential) to R2 (Residential). (Previous Agenda 1601; LUR 96-00234 CP ZC SU)

Discussion: Kathryn Beaumont, Senior Deputy City Attorney, said Council previously heard the Zone Change and Comprehensive Plan amendment and what is before it now is the Subdivision request, particularly the design. She outlined the procedures to be followed, noting that at the last Council hearing the applicant and neighborhood association were asked to confer and return with a redesigned proposal. A modified design will be presented today. This is new information and the record will be open for the purpose of admitting testimony on the new design. Since it is an evidentiary hearing on the new design, new evidence may be presented. Once all testimony has been taken, Council will close the hearing and deliberate. Once it has concluded its deliberations, Council will take a tentative vote on the application and set a future date for the adoption of findings and final vote.

Commissioner Kafoury said although her former Executive Assistant, new Commissioner Eric Sten, was a board member of HOST at the time, she had no involvement in the development or design of this project. For that reason, she believes there is no conflict of interest or reason to recuse herself.

Commissioner Sten said he would abstain from voting in this matter as he was not present at the prior hearings and also was a HOST board member, although he has since resigned.

David Knowles, Planning Bureau Director, said on October 2, Council tentatively approved the Comprehensive Plan Amendment and Zone change on this site but withheld a decision on the subdivision because it wanted the developer and neighborhood to talk further. Council specifically expressed interest in saving more fir trees, increasing the amount of open space, obtaining more information about how Lot 104 would be developed and allowing more attached housing. At Council's request he arranged three meetings between HOST and the St. Johns Neighborhood Association (SJNA), which were mediated by the Neighborhood Mediation office. As a result HOST is now presenting a modified plan which does contain open space in one corner of the site that would preserve most of the fir trees. It also provides for some attached housing. He said the neighborhood's input resulted in changes to the plan but its basic opposition has not changed.

Mayor Katz announced that the record will be kept open for another seven days.

Ms. Beaumont outlined the guidelines to be followed in presenting testimony today.

Duncan Brown, Bureau of Planning, noted a correction on Page 23 of the tentative staff recommendation, changing the first sentence in Condition A-6 to read that the portion of N. Ziegler, shown as part of Lot 77, not 78, must be vacated prior to final plat submission. He acknowledged submission into the record of a memo from Bob Weaver of the Fire Bureau and a fax from Lee Shannon of the Native American Program recommending that

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two conditions dealing with the discovery of Native American archeological resources be added. He noted at the last hearing Council requested that HOST redesign the proposed subdivision after meeting with the public and neighborhood association. They were asked to protect the significant fir trees, increase open space and provide more specificity about plans for Lot 104. To help accomplish these goals, Council said it would allow up to 10 percent of the total units to be attached housing. In response, the applicant has made a number of changes, including the realignment of Johnswood Drive to minimize the impact on trees in the Northeast corner, creation of two new open space areas and the addition of a traffic island on Johnswood Drive. He said the applicant is now proposing that Lot 104 be developed into either eight or nine lots with the main access provided by a driveway easement at the center of the block that meets Fire Bureau requirements. Those lots would obtain access that way until the future Mapleleaf Lane or Barr Street are developed. The northwest corner of the site is modified to allow for rectangular lots and eight to 10 attached homes are shown. The staff report notes several minor problems that can be corrected with conditions. A portion of Lot 77 needs to be vacated and some lot line adjustments will be needed to meet the standards. He listed the subdivision requirements that need to be met and recommended including the two conditions proposed by Mr. Shannon. Planning staff recommends tentative approval by Council of the subdivision with the conditions in the staff report. The applicant would prepare the findings for adoption.

Commissioner Kafoury moved adoption of the archaeological amendments. Commissioner Hales seconded. (Y-3)

Mayor Katz emphasized that the testimony heard today must focus on the design.

Tim Ramis, attorney representing HOST, said HOST is happy with the outcome of the process. They focused on the issues Council identified and support the staff report and conditions as well as those proposed by the Native American Program.

Ted Gilbert, HOST, said they commissioned a tree survey which has been transposed onto the site plan. Next they met with the neighborhood association and the public four times, three of which were medited. Although the neighborhood association stated its opposition to any outcome short of abandonment of the project, its members did make some very constructive suggestions which have been incorporated into the design. HOST has responded to the neighborhood's concern to keep structures at a distance that would preserve a shallow root system for the mature fir trees, particularly a grove in the northeast corner. Also addressed were the creation of open space, traffic speed within the project and consideration of some attached wall. He noted, however, that the original group of neighbors HOST met with were adamantly opposed to attached wall. He described major elements of the revised plan, noting that they were able to save almost the entire grove of fir trees by creating two open space areas and eliminating 11 lots. Streets, curbs and sidewalks will be built a sufficient distance away to preserve the root systems. A pedestrian access has been preserved and the Parks Bureau has agreed to accept responsibility for the open space areas. The creation of a traffic island on Johnswood Drive has enabled them to save three mature trees, improve the entryway and slow traffic. Lots were realigned along Columbia Boulevard to focus on existing trees. They will save 42 of the 45 mature fir trees on the site, losing only those that fall in the right-of-way. An

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additional 100 street trees will be planted along Columbia Boulevard. He noted that the neighborhood requested three traffic circles but that is a decision for the Bureau of Traffic Management. He said they walked the entire site with the City forester and may be able to preserve additional trees but that decision will be made on a lot-by-lot basis. On Lot 104, originally not proposed for improvement because of the need for the consent of adjacent property owners, a driveway access easement is proposed, enabling them to develop it and add some attached housing, similar to what HOST has done in Woodlawn.

Commissioner Hales asked if the driveway access would function as an alley. Would the house fronts face Mapleleaf or Bank Streets.

Mr. Gilbert said they will make that decision when they do the house designs. There are no streets there now. This would be a part of Phase III although market conditions may change what phase that would occur in.

Howard Nolte, Executive Director, HOST, read a letter from Mike Burton, Metro Director, stating his support for the revised plan which appears to have addressed his concerns about tree preservation and creation of open space.

Brian McNerney, Forester, said HOST met with a City arborist to see if a majority of the fir trees can be retained in good health. From a cursory look at the site and the plan he believes the trees are worth saving and can be saved. HOST, however, should be required to retain a consulting arborist to work with the project design and construction and to develop a tree preservation plan. His office would be interested in reviewing the consultant's plans and also recommends that an arborist oversee the protection of the other trees during the construction period. The sycamores on Columbia Boulevard can be removed and replanted on the sound berm. His office will work with HOST to determine the appropriateness of tree varieties.

Mayor Katz asked what criteria is used to preserve trees on City property. It was clear to her when she visited the site that the grove of trees should have been preserved. She asked what his role would be.

Mr. McNerney said there is some question of overlapping jurisdictions. Once a plan moves into the planning permit phase, than Planning reviews it but his office is available for consultation.

Commissioner Hales said some of the trees still look awfully close to the right-of-way and may end up having to be removed.

Mr. McNerney said that is why a consulting arborist should be involved.

Mayor Katz asked if he would have recommended removal of that grove of trees.

Mr. McNerney said no.

Mayor Katz said if that had been part of the recommendation, Council may not have had to go through all this. A recommendation earlier in the process from the Forester would

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have made things easier.

Citizens testifying in support of the project and the new design included:

Mike Duffy, 3821 NE 71st, 97212
Carol Ashworth, 9807 N. Smith, 97203
Larry Hollibaugh, 8006 N. Oswego, 97203
Leora Mahoney, 9571 N. Tioga, 97203
Wally Masters, 11230 NW Reeves, 97229-5137
Bud Logan, 1335 NW 23rd, 97210

Supporters said the redesigned project meets Council's objectives and is creative and positive. They said the project will benefit both the neighborhood and the City, improving the neighborhood and providing more affordable housing. Regarding the proposed open space, Mr. Hollibaugh said it should be designated a park, with maintenance the responsibility of the home owners.

Dennis Keepes, Chair, St. Johns Neighborhood Association, asked that the record remain open for seven days. He said SJNA wants to preserve Johnswood Park and the school site as open space and at its most recent meeting voted 53 to 6 to do that. They are on the record as opposing the development and will appeal any decision to the contrary. He said the SJNA was instructed to come up with a better plan with HOST but while they were doing this, without notice, the School District transferred the school property to HOST. Mr. Keepes said the SJNA proposed design plans with 110 units that also preserved the park. HOST was unresponsive to these plans which incorporated themes supported by the Planning Bureau. He said HOST's current plan is incomplete, citing 33.805.030 (b) (6), which states that it is inappropriate to adjust the process to accept the design at this point. It is a denial of due process to do this as it denies notice, input and comment. Also, 33.805.040 (a) states that applicant must show that his design is equal or better than the existing design. That has not occurred as there is no tree preservation plan, only a proposal. There is also an inadequate stormwater treatment plan. Planned Lot 77 cannot exist and some other zoning and subdivision requirements are not met. He said Council approval at this time is inappropriate and requested a 30 day continuance until the SJNA receives actual notice of the completed plan. The SJNA opposes this subdivision because final approval will deny it lawful opportunity for input, review and comment. It continues to advocate for the preservation of Johnswood Park and the school site.

Kevin O'Sullivan, Land-Use Committee Chair, SJNA, said parks are especially important to St. Johns residents because they live in the most heavily industrialized area in the State and have the highest concentrations of toxic pollutants. Quality schools are especially important also to this community of blue collar and low-income families with a large percentage of non-English-speaking immigrants. Because of their socio-economic status, these residents are perceived as having little financial resources for legal battle with the City, resulting in discriminatory treatment by the City. HOST has received preferential treatment throughout this process and this hearing appears to be window dressing as just last week the School District property was sold for only \$152,000. He said SJNA met several times with HOST which produced only one new design which sets aside a tiny amount of open space with a new street running through the heart of it. Members of his

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committee submitted nine designs in response to Council's request to demonstrate the large number of possible designs. HOST did not respond to any of those ideas and the Planning Bureau's recommendation neither mentions or incorporates them. There are too many unanswered questions with design implications and Council should continue this, allowing the various City bureaus to fully study questions regarding: 1) deed restrictions back to the 1858 Indian Treaty; 2) existing sewer and cesspools; 3) toxic waste contamination; 4) drainage patterns; 5) whether the park is surplus; 6) whether the school property is surplus; and 7) Chinook Nation claims to the land. The SJNA also opposes row houses and believes the design will destroy wildlife habitat. Street designs are not adequately addressed, there has been no public involvement in determining whether the Park or school property is surplus, nor has the possible impact on cultural resources plan for the Columbia River Corridor area been assessed. Perhaps an Indian Culture and Education Center should be sited here. The current St Johns Neighborhood Plan clearly calls for the preservation of Johnswood Park and retention of the School District land.

Sam Oakland, consultant to the SJNA on law and public policy, Box 225, University Station, 97207, said there can be no design or redesign if there is a cloud on the title as these properties may have deed restrictions and even easements. No one knows for sure because the City cannot find the deed to show that the title is clear. Until that title is clear, it will cast a cloud of uncertainty over the property and it cannot be transferred to anyone. The City should also check with the Auditor's Office to see if there are any liens on the property. He noted a memo from John Sewell of the Parks Bureau to Susan des Camp of Commissioner Hales' office stating that he has not been able to locate the deed. Another memo, dated March 27, 1994, to Planning Bureau Director David Knowles from Susan Hathaway-Marxer in Parks states that Johnswood should be designated as surplus because it is not large enough or located in a suitable location for development for attractors and should be sold, traded or partnershiped. He questioned the authorization for this declaration and said if one person can declare Johnswood Park surplus because it is neither large enough or in a good enough neighborhood, then 15 other parks are in the same category and face the same fate. For the City to say that it has a better balance because it has bought 50 acres of strawberry fields in East County for park use and given away nine acres flies in the face of anything that is fair. He said this process has been flawed and the HOST proposal, which seems to have been championed by the Planning Bureau, is premature. He said the 1959 design for the same land still holds the force of law and should have tentative approval ahead of this. The HOST design is unoriginal and bland, overreaching and underreaching at the same time. It does not speak to the Council's direction, which the SJNA took seriously, working out about a dozen alternative plans, all of which saved the entire grove listed in the 1959 plan and the City-directed green buffer zone along the Columbia. HOST made cosmetic changes and then even cut the grove in two, giving up only a couple of lots.

Mayor Katz said declaration of the School District property as surplus needs to be taken up with the District. The City has no authority over that action.

Mr. Oakland said the neighborhood, in working on the revised plan, discovered there were four entrances from the south but the northeast road is horrible, cutting through the root system of some of the trees and adding to the traffic problems on upper Richards. They also found four different ways to get into the project without going onto Columbia. If you

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go onto Columbia, you can have people running through the whole project. He said the SJNA has reduced some of the infrastructure and with that, HOST could get away with 70 or 80 houses, leaving the green buffer and the grove intact and not putting the road through. He said they want to help HOST do this right.

Bruce Cody, Chair, Centennial Neighborhood Association, said the Neighborhood Association asks the City not to rezone this from Open Space.

Ms. Beaumont noted that the Comprehensive Plan and Zoning issue is not before Council. It is simply the issue of design.

Mr. Cody said the design issue then is to remove the houses from the park. If Johnswood is seen only as real estate for housing developments it makes everyone else uneasy about the future of their undeveloped parks. It is only the continued livability of Portland that will keep the Urban Growth Boundary intact. Density without amenities is unacceptable and should not be forced down people's throats. The input of the neighborhood has greatly improved the project, but unfortunately has come at the tail end, and there is still a way to go. There is no win-win deal here, not even a consensus compromise. All lose when the public's trust is eroded.

Commissioner Kafoury asked if he was aware that HOST sought input from the neighborhood two years ago.

Mr. Cody said the level of interest in St. Johns become far higher once there was outreach into the community. Prior to that there was very limited input into the plan. He said he is aware of the long history, however.

Lewis Marcus, Chair, Friends of Cathedral Park, 625 SW 10th, Suite 100, 97205, said the Cathedral Park Neighborhood Association adopted a neutral position on the plan at its December 3 meeting. He said substantial portions of this neighborhood are closer to Johnswood Park than much of the SJNA but this is their first chance to speak to this issue. They are concerned with the development's impact on livability and the increase in automobile trips, estimated at 1,000,000 trips a year. He asked Commissioners Kafoury and Sten to respond.

Commissioner Kafoury said she believes the project will enhance the neighborhood. Commissioner Sten agreed that well-designed projects help a neighborhood.

Other citizens testifying in opposition to approval of the Subdivision included:

Tom Cropper, PO Box 18025, 97213
Lynda Hval, 10176 N. Charleston, 97203
Paul Richmond, PO Box 454, 97207
Chris Hellmer, 7327 N. Kellogg, 97203
Al Clark, Gilbert Neighborhood Association, 3147 SE 129th, 97236
Rosemary Seminara, 8433 N. Olympia, 97203
Liz Callison, 6037 SW Knightsbridge Dr., 97219
Cherie Holenstein, 6141 SE Steele, 97206

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Lou Sutton, 50571 Maple Ave., Scappoose, 97056
Art Lewellan, 3205 SE 74th, 97202
Eric Nelson, 310 NW 6th, 97209
Tamra Nelson, 310 NW 6th, 97209
Rose Marie Opp, 11135 SE Yamhill, 97216
Dennis Keepes (speaking as an individual)
Bill Mathiew, 8704 N. Swenson, 97203
Joe Vazini, St. Johns resident, no address given

Opponents criticized the design as incomplete. They questioned the preference for housing over preservation of open space and the process for declaring the Parks and School District's property as surplus, some claiming that HOST received preferential treatment from the City. They raised questions about the affordability and appropriateness of the homes. The negative traffic impact of this project on adjoining streets and the difficult access to Columbia Boulevard were also cited. Some asked that approval be deferred until the archeological investigations had been completed.

In rebuttal, Mr. Ramis said it will be impossible to satisfy those who are committed to appealing this project no matter what the design. However, the process Council directed has led to changes in the design which many feel improve it. The question that arises from today's hearing is whether other ideas have been presented which would further improve the design. He cited two. The first is maintenance of Open Space and if Mr. Marcus' proposal cannot be accepted, they agree with the memorandum from the Parks Bureau to Duncan Brown that indicates HOST's future responsibility for maintenance and the Park Bureau's future role. HOST would have no problem if that were converted to a condition. They would also support a condition, responding to the City Forester's suggestion, requiring that an arborist be hired. Issues such as deed restrictions, however, are not germane to the criteria before Council today although there may be other processes where they may be relevant. With reference to the 1950's document, there is no law that requires the applicant to address an unreported plat. Finally, the claim that the design affects vital wildlife has been refuted by Michael Houk of the Audobon Society in a letter to the Council.

Mr. Gilbert said the claim that HOST did not consider the neighborhood's designs is erroneous. He said they were carefully examined. Following HOST' third meeting with the neighborhood, the neighborhood presented some of their ideas in writing for review. In November, he addressed them specifically. The designs had two things in common. First, they proposed that at least three roads be developed in the project. Also of concern was sewage and drainage although they did not choose to speak about that. But they wanted to eliminate a great deal of housing and their plans ignore the infrastructure cost of building three streets, not even including the inner streets, and the sewer system. There was virtually no change in infrastructure costs but about half the housing was eliminated. This would dramatically affect cost and that is why HOST could not further pursue those plans.

Mr. Brown, responding to questions regarding Tax Lot 104, said it encompasses the community garden area. That lot will not change in any way as this proposal does not include any portion of it. It remains to the west in its present configuration and the

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community garden is not a part of this proposal.

Mayor Katz asked about traffic access on and off Columbia Boulevard. She noted that it is a difficult access.

Kevin Hottman, Office of Transportation, said their 1994 traffic study showed that the proposed access will be acceptable. They considered another access but wanted to avoid cut-through traffic, in keeping with City policy. He said he is not sure the traffic circles the neighborhood proposed would be effective but would like to be involved in the design.

Mr. Brown said the current condition calls for City standards to be met.

Mayor Katz asked if there was any guarantee the trees on people's lots would not be cut.

Mr. Brown said only through the City Forester's preservation plan.

Commissioner Lindberg moved to add that as a condition.

Mayor Katz said she was not sure the City could guarantee maintenance of the open space areas.

Susan Hathaway-Marxer, Parks Bureau, said the Parks Bureau expects to become the owner of the trees in the open space and that they will work with HOST to have homeowners take over responsibility for the trees as part of the community service requirement imposed on HOST home buyers.

Mayor Katz asked about the cloud on the deed and the process for either negotiating sale of the land or going out for bid.

Ms. Beaumont said she cannot respond to the issue of the cloud on the title at this point, as she has seen no information. It would be examined very closely, however, before any transfer of the property. The City has very broad authority to determine the method by which the property can be disposed and it is up to the Council to decide that.

Mayor Katz asked whether a contract would come to Council for approval, if the parties wish to negotiate this.

Ms. Beaumont said ultimately something will come to the Council. Prior to coming to Council, issues about the title and any encumbrances will be addressed.

Commissioner Hales moved to tentatively accept the staff report and recommendation with some additional conditions. The record would be held open for seven days and then the findings would be brought back.

Mayor Katz said Council has been making tentative decisions in this manner and if it should not, someone needs to let them know.

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Ms. Beaumont strongly advised Council not to make a tentative decision until the record is closed.

Mayor Katz asked for that in writing.

Commissioner Hales said he would like to see staff draft some conditions. He added that one of the advantages of making a tentative decision today is that people then know where Council is coming from. He said he does not want to wait until the end of the period for submission of additional information and then give instructions about recommended conditions.

Ms. Beaumont said everyone is aware, by the motions Council adopted, that, if Council is inclined to approve this, that it would like to see these conditions and people can respond to those concepts during that seven-day period.

Commissioner Hales said Council ought to make it clear in the condition concerning maintenance of the open space, that the long term responsibility for maintaining what will become a City park should be the Park Bureau's. It is not reasonable for the City to be questioning its ability to maintain the system and a 1-1/2 addition will not make much difference. He said he wants an explicit statement that, after the community service period elapses, the maintenance responsibility shifts to the Park Bureau.

Ms. Beaumont recommended that this be continued for two weeks, seven days to keep the record open and another seven days for people to respond to the additional information.

Disposition: Continued to December 18, 1996 at 2:00 p.m.

At 5:10 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council