



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF FEBRUARY, 1997 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales and Sten, 4.

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

The 75th anniversary of Steinfeld Pickle Company was observed by Mr. Pickle and other dignitaries.

On a Y-4 roll call, the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 167** Amend Purchasing Report awarding contracts on Bid 95-A for furnishing aggregates (Amended Purchasing Report - Council Calendar No. 112)
- Disposition:** Accepted.
- 168** Accept bid of Commercial Affiliates, Inc. dba Carpet Resource Center for the Portland Building 14th and 15th floors carpet installation for \$110,275 (Purchasing Report - Bid 83)
- Disposition:** Accepted; prepare contract.
- 169** Accept bid of International Tel-Data, Inc. for water demand monitoring equipment and software, furnish and install for \$210,095 (Purchasing Report - Bid 88)
- Disposition:** Accepted; prepare contract.
- 170** Accept bid of Brant Construction, Inc. for Lents Park improvements for \$215,800 (Purchasing Report - Bid 93)
- Disposition:** Accepted; prepare contract.
- 171** Accept bid of Brundidge Construction, Inc. for Insley Basin CSO sump project, Unit 3, Phase II Project 5989 for \$191,152 (Purchasing Report - Bid 107)
- Disposition:** Accepted; prepare contract.

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Mayor Vera Katz

172 Give preliminary approval for two multifamily housing revenue bond issues in an amount not to exceed \$6,430,000 (Resolution)

Disposition: Resolution No. 35587. (Y-4)

***173** Merchant services processing agreement with US Bank for credit card donations for Classical Chinese Garden project (Ordinance)

Disposition: Ordinance No. 170897. (Y-4)

***174** Authorize the Purchasing Agent to negotiate a service agreement with Digital Equipment Corporation for digital hardware and software maintenance for an annual amount of \$340,000 and provide for payment (Ordinance)

Disposition: Ordinance No. 170898. (Y-4)

***175** Pay claim of Robert Schafer (Ordinance)

Disposition: Ordinance No. 170899. (Y-4)

***176** Pay claim of Anthony Darnell Lowery (Ordinance)

Disposition: Ordinance No. 170900. (Y-4)

***177** Amend the labor agreement between the City of Portland and the Portland Police Commanding Officers Association to include additional provisions concerning domestic partners to the agreement approved by City Council by Ordinance 170638 on October 16, 1996 (Ordinance)

Disposition: Ordinance No. 170901. (Y-4)

***178** Amend the labor agreement between the City of Portland and the Portland Police Commanding Officers Association to correct an omission in the agreement approved by City Council by Ordinance 170638 on October 16, 1996 (Ordinance)

Disposition: Ordinance No. 170902. (Y-4)

***179** Amend the labor agreement between the City of Portland and the Portland Fire Fighters Association to correct an omission in the agreement approved by City Council by Ordinance 170611 on October 2, 1996 (Ordinance)

Disposition: Ordinance No. 170903. (Y-4)

***180** Accept a 12-month grant in the amount of \$437,351 from the Center for Substance Abuse Prevention on behalf of the Regional Drug Initiative (Ordinance)

Disposition: Ordinance No. 170904. (Y-4)

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Commissioner Jim Francesconi

181 Accept contract with Cedar Landscape, Inc. for Parklane Park improvements as complete and authorize final payment (Report; Contract No. 30341)

Disposition: Accepted.

182 Accept contract with Jasco Construction Services for the BIS Customer Service Center remodel as substantially complete and authorize final payment (Report; Contract No. 30895)

Disposition: Accepted.

***183** Agreement with Pittock Mansion Society for operation of the Pittock Mansion (Ordinance)

Disposition: Ordinance No. 170905. (Y-4)

Commissioner Charlie Hales

***184** Increase contract amount with Ebony Iron Works, Inc. for the Harbor Wall flood railing project and provide for payment (Ordinance; amend Contract No. 30956)

Disposition: Ordinance No. 170906. (Y-4)

Commissioner Gretchen Miller Kafoury

185 Accept contract with Shaw West Co. as complete for purchase and installation of five emergency standby generator systems at five fire stations and make final payment (Report; Contract No. 30581)

Disposition: Accepted.

Commissioner Erik Sten

186 Accept the project by J.E.C. Mechanical, Inc. to provide mechanical construction services for rehabilitating Ira Keller Fountain as substantially complete and authorize final payment (Report; Contract No. 30512)

Disposition: Accepted.

187 Accept the project by E.I.R. Electric, Inc. to provide electrical construction services for rehabilitating Ira Keller Fountain as substantially complete and authorize final payment (Report; Contract No. 30541)

Disposition: Accepted.

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- 188** Accept contract with Brundidge Construction, Inc. for 6-, 8- and 12-inch water mains in SE Harney Drive and SE Clatsop Street as complete and authorize final payment (Report; Contract No. 30711)

Disposition: Accepted.

- 189** Accept completion of the Taggart Basin CSO sump project, Unit 2 and 3, Phase I and authorize final payment to S-2 Contractors, Inc. (Report; Contract No. 30943; Project 5491)

Disposition: Accepted.

- *190** Authorize a contract and provide for payment for the Taggart Basin CSO sump project, Unit 2-3, Phase II (Ordinance; Project 6060)

Disposition: Ordinance No. 170907. (Y-4)

- *191** Authorize a contract and provide for payment for the Oswego Basin CSO sump project (Ordinance; Project 5292)

Disposition: Ordinance No. 170908. (Y-4)

- *192** Extend and increase scope of work on the contract with Campbell Delong Resources, Inc. for customer profile and analysis study (Ordinance; amend Contract No. 30189)

Disposition: Ordinance No. 170909. (Y-4)

- 193** Contract with the U.S. Geological Survey for streamflow and water quality monitoring without advertising for bids (Second Reading Agenda 149)

Disposition: Ordinance No. 170910. (Y-4)

- 194** Authorize the appropriation of additional funds for fiscal year 1996/97 for technical services provided by Suzanne Crane Engineering, Inc. dba Crane & Merseth (Second Reading Agenda 154; amend Contract No. 29884)

Disposition: Ordinance No. 170911. (Y-4)

REGULAR AGENDA

- *166** **TIME CERTAIN: 9:30 AM** - Amend Ordinance No. 165980 to allow the towing of vehicles which are operated by individuals who are committing the offenses of driving while suspended, revoked or without a valid operator's license (Ordinance introduced by Mayor Katz; amend Code Section 16.30.220)

Discussion: Mayor Katz said this is a tool which will allow the Police to tow the cars of those found driving with suspended or revoked licenses and those with no licenses at all. She noted that illegal drivers drive up insurance rates for others and people also need to be responsible about who they loan their cars to.

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Captain Patrick Nelson, Police Bureau, said the people who will be affected are the worst drivers out there and should be kept off the roads. He noted a number of instances where Police had cited individuals with many prior recorded accidents and violations who were still driving. He said they currently tow 865 vehicles a month for no insurance and estimate that, after passage of this ordinance, the number of tows will increase to between 1200 and 1600 per month.

Dan Handelman, Portland Cop Watch, PO Box 4256, expressed concern about taking property away from people without due process and depriving them of their constitutional rights. He fears that people with no prior convictions will be caught by this as well as those who cannot afford to renew their licenses.

Captain Nelson said before a vehicle is towed, the driver has to have had a conviction on his/her record. All have a citation that has resulted in the State taking their license away.

David Woboril, Deputy City Attorney, said the ordinance regulates vehicles, rather than taking them. A significant public harm has been identified due to the presence of vehicles on the streets that are not being well-managed by their owners. The City believes it has the ability to regulate this kind of situation and that there is no constitutional problem. Other communities have used these ordinances successfully.

Commissioner Francesconi said there is no such thing as a constitutional right to drive an automobile. As an attorney who represented over 250 victims of uninsured motorists, he knows that vehicles can be weapons and need to be in the hands of responsible people.

Commissioner Hales agreed that driving on a public street is not a constitutional right. This is a reasonable step which will help keep public resources from being spent dealing with the same offenders over and over again.

Disposition: Ordinance No. 170912. (Y-4)

Mayor Vera Katz

195 Further amend City Code Chapter 14.100 to add a drug-free zone (Second Reading Agenda 136)

Disposition: Ordinance No. 170913. (Y-3; N-1, Sten)

Commissioner Jim Francesconi

***196** Accept a grant from Metro in the amount of \$7,300 for FY 1996-97 for the Delta Park slough restoration project (Ordinance)

Disposition: Ordinance No. 170914. (Y-4)

Commissioner Charlie Hales

197

Request that Tri-Met develop a Central City bus circulation plan that integrates the phasing of light rail service and addresses the overall transit circulation needs of the Central City (Resolution)

Discussion: Commissioner Hales said now that a scaled-down South/North light rail project is being considered, the City is asking Tri-Met to prepare a study about how bus service on the north end of the mall might function with a new alignment. It would also address the Central City Streetcar project.

David Yaden, Executive Director of Policy and Planning, Tri-Met, said the resolution restates the commitment Tri-Met made to develop a bus circulation plan when the Tier I report of the South/North light rail project was adopted. A draft concept plan will be submitted by May, 1997, at the time amendments to the Draft Environmental Impact Statement (DEIS) for the project are adopted. Since the final circulation plan will be based on the alignment choices made at the conclusion of the DEIS process, the concept plan will not be a final document but will show alternatives for changes in downtown bus routes, depending on the alignment chosen. He said the mall will reach capacity whether or not light rail is built. Inclusion of the Central City Streetcar into the bus circulation plan is consistent with the Tier I recommendations and does not anticipate that the streetcar become part of the light rail DEIS.

Commissioner Francesconi asked how mass transit is linked to job creation.

Mr. Yaden said a substantial expansion of the entire transit system will be necessary if Tri-Met is to meet demands for existing ridership and anticipate job creation and housing development. There is no separate goal for job development. Employee incentives is one tool they have used and have worked with both the Lloyd District and Marquam Hill to improve service.

Commissioner Francesconi asked about service to the Columbia Corridor and other employment areas.

Mr. Yaden said the Columbia Corridor is on their list of areas needing improved service but Tri-Met's priority is to provide more service to those who have already passed peak capacity.

Ken Zattern, Tri-Met, said they now have a shuttle service to the Corridor from Gateway and are trying to create a van pool program in the Columbia Corridor to meet the demand.

Commissioner Francesconi asked about bus service for some of the more popular lines, especially on the east side. Is there a tradeoff between buses and light rail?

Mr. Yaden said in the long run light rail, in addition to concentrating growth, increases operating efficiency by carrying more people at less cost. Also as roads get more congested, it costs Tri-Met a lot of money to put additional buses on to keep them moving at the same speed. Bus service is probably the biggest victim of congestion.

Mayor Katz asked whether Tri-Met still planned to move about 30 percent of the buses

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from the mall onto 10th and 11th and if the streetcar was a part of that plan.

Mr. Yaden said yes.

Irwin Mandel, 1511 SW Park, a member of the Downtown Rail Advisory Committee, said this plan, a kind of "half-route" downtown, was never discussed by the Committee. There were many objections to the downtown route as planned then for the mall, including concerns about buses displaced to 10th and 11th. He said there has been no public input on this latest plan and it should not be imposed from the top down.

Disposition: Resolution No. 35588. (Y-4)

198 Revise Transportation Regulations to clarify minor ambiguities (Ordinance; amend City Code Title 16)

Discussion: Commissioner Hales said those the portions dealing with shuttle service originally included have been deleted from the ordinance before Council today.

Commissioner Francesconi said he has asked the Taxicab Board to review the proposed shuttle service regulations and will return with a recommendation to Council later.

Bill Graham, Bureau of Traffic Management, said this makes some changes to Title 16, which was rewritten in 1992, to help them better administer traffic regulations on the public right-of-way. He described the changes, including giving the Emergency Incident Commander the authority to open and close roads instead of going through the Traffic Engineer first. There are changes clarifying the Disability Permit Program and voter eligibility for area parking permits. Civil penalties for painting illegal signs on the streets have also been added.

Anne Larkin, Parking Patrol Division, said this ordinance will change the Division's name to Parking Enforcement to avoid confusion with Parking Control. Another change makes vehicle owners responsible for parking citations, in compliance with State law.

Linda Gardner, attorney representing Hertz, Avis and Alamo Car Rental Companies, 121 SW Salmon St., #330, said several years ago they worked out a successful procedure to ensure that car rental companies received prompt notice of parking violations committed by customers so the cost could be passed onto them. They are concerned, however, about the proposed change which would take a judgment against the owner of a vehicle without specifically requiring that the vehicle's owner be notified and without a reasonable period of time elapsing. They suggest adding a requirement calling for mailed notice to the owner and for a reasonable time frame before a judgment would be taken.

Doug Graham, Deputy Court Administrator, State of Oregon, said they support the proposed amendment.

Ms. Larkin said they also support the change.

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Mayor Katz said the amendment reads: "In no event shall a judgment be taken sooner than 60 days from the date of the citation and without prior notice by mail to the person against whom the judgment is taken."

Commissioner Hales moved that amendment. Commissioner Francesconi seconded and the motion carried. (Y-5)

Disposition: Passed to Second Reading as amended February 19, 1997 at 9:30 a.m.

Commissioner Erik Sten

***199** Authorize application to the Environmental Protection Agency for a grant in the amount of \$450,000 for sediment contaminant tracking in the Columbia Slough (Ordinance)

Disposition: Ordinance No. 170915. (Y-4)

At 10:15 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF FEBRUARY, 1997 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales and Sten, 4.

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

- 203** Tentatively grant appeal of Mike and Ardele Obrist, applicant, against Hearings Officer's denial and approve application with conditions for a 25-lot major land division and planned unit development with environmental review located south of SE Foster Road and west of SE Barbara Welch Road (Findings; Previous Agenda 162; 95-00661 SU PU EN AD)

Discussion: Cay Kershner, Clerk of the Council, noted that the findings had not yet been filed.

Disposition: Continued to February 19, 1997 at 2:00 p.m.

Commissioner Charlie Hales

- 202** Appeal of Lents Neighborhood Association against Hearings Officer's decision to deny application of Lents Seventh Day Adventist Church for a conditional use to expand its 48 space parking lot to 63 spaces at 8835 SE Woodstock Boulevard (Previous Agenda 163; 96-00843 CU)

Disposition: Appeal denied; Hearings Officer's decision upheld and fee credit authorized.

- *200** **TIME CERTAIN: 2:00 PM** - Clarify the terms related to rowhouse infill on vacant lots allowed by Chapters 33.405 and 33.505 (Ordinance introduced by Commissioner Hales; amend Title 33)

Discussion: Michael Harrison, Planning Bureau, said this clarifies language relating to application of the A zone and the infill provision on vacant lots. This will make it clear that to qualify as "vacant" the lot must have existed for five years in that condition. The A zone was invented as a way to target vacant lots without creating a potential for removal of sound housing. They also wanted to create a potential for infill at slightly higher densities, generally one more unit than is permitted on lots that had been vacant. The second clarification defines "vacant" as being without one or more dwelling units on it in the past five years. Thus, the existence of a shed or garage on the property would not prevent an owner from taking advantage of the provision. The A zone has been controversial and, in the case of the Southwest Community Plan, is undergoing intense scrutiny right now so concern about its placement there is premature. He noted,

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however, that the City told residents in Albina and Outer Southeast when their community plans were enacted, that the A zone would eventually be applied throughout the City and not just to their neighborhoods.

Commissioner Sten said he would like to do this citywide as soon as possible, as well as doing it through the Southwest Plan.

Mr. Harrison said the 2040 Compliance Team hopes to have a proposal for the accessory unit provision before Council by June.

Commissioner Francesconi asked if accessory units are part of the Urban Reserves Framework Plan.

Commissioner Hales said it was introduced as a provision in that plan. It says that local governments throughout the region will make a provision for the availability of accessory living units.

Mr. Harrison said when Council considered the Albina Plan in 1993 there was a provision to allow detached buildings in backyards to accommodate an additional dwelling unit. That was quite controversial in some parts of Albina and was taken out of the A zone and Albina Plan at that point. Council did pass a resolution asking that this be brought back as a citywide measure and that will be part of the package being prepared to respond to the framework plans requirement that accessory units be applied more broadly.

Commissioner Francesconi said the sooner the better.

Mr. Harrison said the 2040 Compliance Project now underway involves a review by two City planners of the Metro framework plan to see what modifications the City needs to make to its Zoning Code to make it consistent with the plan. The City may also wish to go farther than the minimum standards contained in the framework plan. Issues include: 1) parking minimums and maximums; 2) the size of retail establishments allowed as conditional uses in industrial and employment areas; 3) allowing new construction to include an accessory dwelling unit; and 4) fine tuning of minimum density standards. In the R1 zone, for instance, minimum density standards would probably be increased from 20 units per acre to 30. The first provisions to come to Council will be those related to accessory dwelling units.

Council members agreed that a Council Informal is needed on this.

Louise Cody, Centennial Neighborhood Association, said Hazelwood, Glenfair and Pleasant Valley all endorse Centennial's support of the amendment clarifying that lots qualifying for rowhouses have been in existence and vacant for five years. This is what Outer Southeast residents thought they were adopting as part of the Outer Southeast Plan but then found that vacant lots were being created and approved for R2.5 development by the Planning Bureau. The neighborhood then asked for an administrative stay on the availability of Comp Plan designations and amendments or corrections to remove them from both the Outer Southeast Zoning and Comp Plan maps for 10 years, if the trigger goes off as was previously agreed.

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Ms. Cody said the neighborhoods oppose, however, the amendment liberalizing use of the R2.5 option, which changes the interpretation of a building. Under this amendment garages, small offices or other non-primary structures will not count and land will be considered vacant unless it contains a primary dwelling unit. This is not the interpretation they accepted a year ago. Then, any building made the property non-vacant. The issue is whether neighborhoods really want R.2 development in established R5 and R7 single-family neighborhoods. Lots can be up to four times smaller than the base zone. Also, attached housing is incompatible with single-family established residential neighborhoods. Even design review cannot make tiny lots with attached houses compatible. The use of the R2.5 attached housing A zone is a drastic change and indirectly establishes R2.5 in R5 and R7 zones. She noted the uproar in Southwest when extensive R2.5 zoning was proposed there. She suggested that the A attached housing provision on vacant land be removed from the A overlay and that R2.5 zoning be applied directly. She called for separate votes on the amendments.

Jim Worthington, 3232 SE 153rd, 97236, supported the first amendment changing the word "site" to "lot." However, he does not like the second proposed amendment regarding "primary dwelling units."

Mr. Harrison said the language proposed states: "there has not been a dwelling unit on the lot."

Commissioner Hales said it could mean any living unit.

Mr. Worthington said they fear some property in Outer Southeast could quickly be changed because they do not have a dwelling unit on them. In Centennial about six fall into that category and he believes it would be better to zone R2.5 outright rather than through the back door.

Commissioner Hales asked how much of the area in these neighborhoods is subject to this mechanism.

Mr. Harrison said the A zone was discussed with these neighborhoods as an alternative to upzoning and in general it has been well received. Some neighborhoods do prefer the rowhouse infill provision, however, over the accessory rental unit provision. That was true in the Overlook neighborhood. The A zone has only been applied in locations within one-fourth mile of transit streets and in Centennial several transit street (162nd and 148th) designations were removed because there was no current or long-range transit usage. Hazelwood centers along the Burnside light rail alignment and the City's intent is to increase density along the existing light rail stations there. Because the housing in Hazelwood is fairly new and redevelopment is unlikely, they tried to use the A zone as a way to target vacant lots without putting redevelopment pressure on them. He said the Planning Commission has cautioned about placing high density redevelopment zones on areas where redevelopment was not likely to occur for some time, causing those areas to decline because people stopped maintaining existing buildings. The lower density zones like R2, R3 and R2.5 make neighbors nervous because they fear that houses will be torn down to make way for redevelopment. That is fairly rare and usually has occurred when a house is on an unusually large lot. That concern is what prompted staff to include the rowhouse infill provision in the A zone.

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Again, the A zone is only applied within 1/4 mile of transit streets in outer southeast and in Albina, where it was negotiated neighborhood by neighborhood.

Commissioner Hales said it is reasonable to do these amendments together. This provision about dwelling units will not have a significant impact, but is clearer than the current Code.

Mr. Harrison said the Planning Commission did not think there would be a significant number of sites that had some kind of other building on them.

Commissioner Hales said he was glad Centennial Neighborhood flagged this but does not think the number of non-residential buildings that will provoke unexpected redevelopment is very large. However, this clarifies that land must be vacant for five years before it can grow row houses.

Disposition: Ordinance No. 170916. (Y-4)

201 TIME CERTAIN: 2:30 PM - Appeal of Multnomah County, applicant, against Hearings Officer's decision to deny application for a conditional use permit and adjustment to expand the existing Inverness County Jail at 11540 NE Inverness Drive (Hearing; 96-00756 CU AD)

Discussion: Kathryn Beaumont, Senior Deputy City Attorney, described the procedures to be followed during this evidentiary hearing.

Council members announced they had no ex parte contacts to declare.

Marguerite Feuersanger, Planning Bureau, described the proposal to expand the existing jail facility and showed slides of the site, which is surrounded by the Columbia River Slough on the north and south sides. Environmental Protection (p) zones are established over both waterways. The proposed two-story addition would add 74,000 square feet to the existing 90,000 square feet and originally a 35-foot high parking structure was proposed adding 259 new parking spaces, for a total of 349. Detention facilities are allowed in the General Industrial zone only with Conditional Use approval. Applicant originally asked for adjustments to waive the pedestrian requirement and to allow portions of the gravel road and the paved Inverness Road to remain within the p zone. The Columbia South Shore Plan District, in which this site is contained, requires that existing paving on a site must be relocated outside the p zone unless an adjustment is granted. She said the central issue of contention is the location of the environmental boundary (the p zone) on the north side of the property. A zoning map error identified the Environmental zone location on the north side as 50 feet back from the edge of the resource. The Natural Resources Protection Plan for the Columbia South Slough identified the edge of paving as being the edge of the resource and development was to be set back 50 feet from that. However, the planner drew lines on the aerial maps that did not reflect the 50-foot buffer and those were transferred to the proposed zoning maps.

Commissioner Francesconi asked if the aerial photo is the key document.

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Ms. Feuersanger said yes, it determines clear legislative intent. Because of the error, however, the official zoning map and the intent differ. Planning staff recommended approval of the expansion on the basis that although there is an error in the official zoning map, those are official documents and need to be changed through a Type II zone map correction. That correction was not requested at the time of application and staff believes the applicant is entitled to the zoning in place at the time of application. The Hearings Officer rejected the proposal because it violated the Columbia South Shore Plan District. She interpreted the Code maps and Code text as found in the Plan District. Those maps are part of the Code but are not the official zoning maps. They show more generally that the zone shall be 50 feet from the resource. The Hearings Officer said there is no difference between what the Code text says and what the map says and therefore, there is no error. She found that this application proposed development in the p zone, contrary to what is allowed. After the Hearings Officer's decision, the Multnomah County Board of Commissioners directed a revision of this proposal that respects the 50-foot wildlife corridor along the north side of the site. The County entered into mediation with neighborhood and environmental groups and came up with a revised proposal. The mediated agreement references the top of the bank as the p zone boundary as opposed to the edge of the pavement, which is what the Natural Resources Protection Plan calls for. The County has attempted to draw back their development to the South and buffer the Slough. The agreement has been signed by most neighborhood groups and concerned citizens although some feel the County should hold to the original intent.

Sandra Duffy, Multnomah County Counsel, said this involves a legal interpretation of the Code provision which indicates that when there is a difference between the Code text and Code maps, the maps control. Planning staff told the County that any references in the text to maps were to the official City Zoning Code maps. This makes sense as most people would not expect to have to abide by anything other than the official zoning maps. The Hearings Officer's interpretation that any map found in a natural resources plan, district plans or any other kind of Code attachments could also be a controlling map creates a great deal of confusion. She urged Council to interpret its Code as referring to the official zoning map only. However, in some ways that issue is moot as the County has now done more than what the official zoning map required. It has entered into an agreement with a number of environmental groups and agreed to create a 50-foot buffer from the top of the bank. As the County moved through the process someone indicated that there was an aerial photo attached to the Natural Resources Protection Plan that indicated the County needed to deal with a 50-foot buffer from edge of pavement. That would prevent any jail expansion. The County has already adjusted the proposal out of sensitivity to the environmental resource, not because it is legally necessary.

Dan Noelle, Multnomah County Sheriff, described the need for additional jail space to relieve severe overcrowding and his frustration about the delay in the conditional use permit process. He said after Alice Blatt told them the lines are wrong and the Hearings Officers agreed, the County appealed even though it agreed that Ms. Blatt was morally right about the need for environmental protection. However, because the County did not want to throw away \$1 million in planning efforts, they redrew the edge of their facility, pulling the line back from the top of the bank and proposing a compromise that most have agreed to. The County lost 30 beds in the process. The

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County believes it has dealt with both the legal and moral issues and asks for approval of the appeal. Because the time line is so critically important to public safety, he asked that the permit process be allowed to move forward as soon as possible.

Mayor Katz asked if the project had lost beds or parking.

Sheriff Noelle said they lost beds. To address the parking, they are trying to negotiate an agreement with the City to trade some property in order to complete the parking plan.

Commissioner Francesconi said a Code revision is needed so the City does not find itself in this situation again if a map is drawn incorrectly. If someone like Alice Blatt does not pick up on edge of the road just because of an aerial photo there needs to be a clearer way to determine where the edge is. Is the boundary the edge of the road and pavement as shown in the aerial photograph?

Ms. Duffy said Council has the authority to interpret its Code to apply any maps it wishes since right now the Code does not say only the official zoning maps apply. It just says "map." However, that would create a great deal of uncertainty in the development process.

Commissioner Francesconi asked if it is edge of the road as opposed to edge of the bank.

Ms. Duffy said they believe the intent was edge of road but they learned that very late in the process, probably sometime in the last three months, when one of the parties, Lyn Mattei of Northwest Environmental Advocates, found it after a great deal of research. She noted that Planning staff did not know or advise the County about it so the County relied on the official zoning map.

Commissioner Francesconi asked if she agreed that the Plan District Environmental Transition Area Map and the Zoning Map are both part of the Code.

Ms. Duffy said the Transition Map is part of a special District Plan and she does not believe it is part of the Code.

Ms. Beaumont said the Columbia South Shore Plan District is a part of the Code. However, the Natural Resources Management Plan is not a part of the Code. It is a separately adopted document.

Commissioner Francesconi asked if Transition Map 515.5 is part of the Code.

Ms. Beaumont said yes.

Commissioner Francesconi asked if it were true that there would be no jail expansion if this is adhered to.

Sheriff Noelle said it would diminish the amount of usable space so much that the site would no longer work. He said they already raised the jail facility up to two stories,

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rather than the one he would prefer, in order to get the number of beds they need. He said they had originally planned 450 beds and have reduced that by 28 in order to meet the 50 feet from top of bank requirement. He needs to net out 330 beds to meet State requirements under Senate Bill 1145 to make this cost effective. They are also looking at another site and will bring a recommendation to the County Commission next week.

Commissioner Francesconi said that may have even more environmental problems.

Sheriff Noelle said Multnomah County is trying to do the right thing here which is why they stopped the process and now have a signed agreement. The County gave up 30 jail beds it desperately wanted in order to do so.

Ms. Feuersanger read the approval criteria into the record.

Alice Blatt, Wilkes Community Group and Columbia Watershed Council, said they support the negotiated redesign for the Inverness Jail expansion as that seems the most cost-effective way to meet the public mandate for jail creation and still preserve the 50-foot buffer. She said she was the one who mistakenly identified the line as 50 feet from the top of the bank and now stands corrected. She said it is not true that the only document Multnomah County had to work with was the zoning map. It was supplied at the preapplication conference with the Columbia South Shore Plan District and Natural Resources Protection and she presumes it included Appendices A and C, the zoning and aerial maps. The zoning map was the only document in error; all the text and other maps were very clear and she believes the Hearings Officer's interpretation is correct. The Planning Bureau however, interpreted the Code differently and led the Sheriff's Office to believe they could proceed in spite of the map error. She said it is hard to believe no one realized an error had been made at the preapplication level as the planner who wrote the protection plan and drew the maps was the original planner on this process. The Sheriff's office asked that he be removed because he was "difficult to work with." If the Planning Bureau had initially acknowledged and corrected its mistake, none of this would have happened and the jail building would be well underway now, in compliance with the Protection Plan.

Mayor Katz noted that Ms. Blatt had participated in the mediation.

Ms. Blatt said they suggested mediation after Multnomah County appealed for they realized that if the County had to go all the way back and redesign the project it would be four or five months before a new facility could be built. She acknowledged the County Commissioner's good work in recognizing the need for resource protection.

Commissioner Francesconi asked if a legal mistake was made when the Hearings Officer said the zoning maps are not considered part of the Zoning Code.

Ms. Blatt said she did not know.

Mike Houck, Audubon Society, said he supports the mediated agreement even though there is a zero to 20 foot disparity, because other provisions will mitigate some of the impacts. However, he does not want to see this happen again. He said people made a good faith effort to find a solution that better protects the resource but the new parking,

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with so many surface parking spaces, has come as a last-minute surprise. The City should direct the County to see if structured parking can be built to reduce the amount of space and to deal adequately with the stormwater runoff. He said he wants to go on record that this site is a very poor choice for 38 acres of fill in a wetland.

Linda Robinson, 1115 NE 135th Ave., Columbia Slough Watershed Council member, said the Watershed Council was part of the negotiations and, if this gets appealed, they agree with the Hearings Officer's decision. They agreed to the mediated agreement so the jail would not be delayed and the County would not have to start from scratch on the permit process. There are a few areas that do not have quite 50 feet but those have been mitigated for.

Commissioner Sten asked if the mitigation is significantly better than what would have occurred if the line been clear about what the County was required to do under the Code.

Ms. Blatt said equivalents are hard to determine. This is generous with reference to the top of bank line and therefore closer to what would have been required if it were edge of pavement.

Mayor Katz asked why the group did not deal with the stormwater runoff and parking issue.

Ms. Robinson said they did not know about the surface parking lot at the time.

Ms. Blatt said the Hearings Officer's major point was that an obvious clerical error, which this clearly was, should not be predominate over everything else.

Jay Mower, Coordinator, Columbia Slough Watershed Council, 7040 NE 47th Ave., described the mediation process undertaken by the Council after Ms. Blatt discovered that the environmental buffer meant to protect the Slough was somehow missing from the jail's site plan. This was just a week before the matter went to the Hearings Officer who then denied the application. After the denial, a number of meetings were held between the County and community and environmental groups, leading to the mediated agreement, although not everyone agreed to it. One of the participants still strongly objects to certain directions the mediation group took regarding maps, measurements and mitigation methods. He said the parking lot was never a part of those discussions and is a completely new issue. The agreement calls for a 50-foot buffer measured from the top of bank, which generally meets the intent, if not the letter, of the Columbia South Shore Natural Resource Protection Plan.

Jim Worthington, 3232 SE 153rd, President, East Portland Coalition, suggested changing the wording to state that the text, not the map, takes precedent. He said this is a good agreement and noted that no more protected area could be gained because of the buildings presently sitting there although they are not sure how all of them got put into the plan. The County needs to go ahead and get the jail built as soon as possible.

Lyn Mattei, representing Northwest Environmental Advocates, 133 SW 2nd, #302, 97204, and Oregon Chapter, Sierra Club, 1413 SE Hawthorne, 97214, and Northwest

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Environmental Defense Center, 10015 SW Terwilliger, 97219, asked Council to deny the appeal on both procedural and substantive grounds. She said she was the "black sheep" in the mediation process although she is not trying to kill the project. She thinks, however there are environmental zone requirements that have not, but can, be met. The notice is deficient because the revised notice was mailed only five days ago, instead of the State-required 20 days. Because there are so many proposed changes and because the hearing was changed from de novo to on the-record, the public needs more opportunity for review. She said a lot of the changes are unclear as well. Appellant's request to hold a de novo hearing violates the City's adopted policy requiring that such requests be made at the time of application as well as a 120-day waiver. She said the site plan in the revised (2/6) notice contains land beyond that included in the original application and should therefore be considered a new application, with full notification and a new hearing. She said the site plan is insufficient to determine if the Zoning Code regulations are met. There is no landscaping, no dimensions, etc., and since this is a conditional use any adjustments must be considered part of the review. Information on the environmental zone boundaries differs from what is shown on the zoning map contained in the notice, which in turn differs from the map in the Hearings Officer's decision. She said the Hearings Officer's decision is correct as she was the only one to thoroughly research the history of the environmental zone application in this area, including text and map adoption, to determine the correct location of the E zone line. She said the City's map correction decision (filed 12/28/96) must be incorporated into this review because it predates the appellant's new application and applies even though it has not yet been implemented. Also, because the map correction went through before this application came out, the City's map correction for the boundary on the western portion of the property just south of the North Slough should be followed. In other words "edge of resource" should apply.

Ms. Mattei said she tried to measure the difference between using top of the bank for the p zone line and edge of the road and as best she can tell about 30,000 square feet of p zone is lost because of the difference, a significant amount. Based on these objections, the groups she represents request a continuance and new notices. The acquisition of the new land from BES gives the applicant an opportunity to minimize the impacts of the jail to allow the full p zone. However, all the County has done is to reduce their two-story parking structure down to one-story sprawl. She said if everyone cooperates, the structured parking and jail expansion can happen, along with preservation of the p zone from the edge of the road. A better look needs to be taken at where the environmental zone really is on the new portion that has been purchased because the environmental zone line in the application for this new part conflicts with the zoning lines in that application. Ms. Mattei said she participated in the mediation but was not listened to or given the consideration due the resource and will not sign the mediation agreement. The County must have known from reading the Hearings Officer's decision that the edge of the p zone was the edge of the road. However, she is not adverse to the process and thinks things can still be worked out.

Commissioner Francesconi asked how much damage is done to the environment by the 0-20 feet differences versus the good done to the environment that will come through the enhancements.

Ms. Mattei said the damage to the environmental zone, about 1,200 feet, is not

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overcome by putting a few trees in as mitigation. Taking away 20 or 25 feet along that corridor is very damaging, especially when it is possible to correct the error and restore that without undue hardship.

Commissioner Francesconi asked Ms. Mattei if there is a particular kind of evidence they need more time to introduce.

Ms. Mattei said it was very difficult to get an exact reading about the loss of p zone on the western part of the property. The loss of over two-thirds acre warrants taking more time. There is also a discrepancy in the E zone line on the east part of the site as shown in the site plan in the new notice. Using the new land to possibly consolidate and redesign the parking also warrants taking more time.

Commissioner Sten asked her if she truly believes a better compromise can be reached or if she just needs more time to bolster her arguments and the Hearings Officer's decision.

Ms. Mattei said there is a real opportunity for a compromise, especially with the parking. Ms. Blatt agreed to "top of bank" thinking that was correct and then refused to go back on her word even after she found out that was incorrect.

Stella Rossi, 3710 NE 147th, 97230, said she was a member of the mediation group who also did not sign the agreement. She said this error should never have happened in the first place and the Planning Bureau should not be so recalcitrant about its mapping. Ms. Blatt prevailed in the courts three years ago to retain even this minuscule protection corridor but Planning has still not produced a true zoning map and has continued, even as late as January 7, to maintain the validity of the erroneous map. The Bureau shamefully let Multnomah County proceed with a proposal it acknowledged was flawed and based on incorrect mapping. Architectural fees are over \$1 million and still climbing and countless work hours were spent to reach a settlement that would have been evident on a corrected map. She requested a continuance and that the record be left open for an on-site review of damage caused by denuding vegetation at the site. The proposed manicured landscaping is inadequate to protect the habitat and sustain wildlife.

Mayor Katz asked for comments from other members of the mediation group about regarding the request for more time.

Mr. Houck said if Council wants to continue the discussion, he will be happy to participate but he would not have signed the current agreement if he did not think they had basically addressed the issues to the maximum extent possible. He cannot honestly say they have gotten a comparable amount of wildlife habitat protection based on all the provisions in the agreement but he believes they did. That is open to interpretation. They did, however, end up with a only minimum level of protection through the Natural Resources Management Plan and that is why they get upset about the loss of even two-thirds of an acre. Because the resource has already been so degraded, every additional insult is very difficult to justify.

Ms. Robinson said she also would participate in extended discussions and would like to

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have some input on the parking areas as she believes more mitigation there might help. There is still room for improvement but she does not want to start again from Square One.

Ms. Blatt said there is obviously a discrepancy between the edge of the bank and the edge of the road. She has not, however, studied the maps in the way that Ms. Mattei has and would probably favor a middle ground between two-thirds of an acre and zero. She would love to have more mitigation regarding the parking as there is certainly a shortage of pervious ground in the area. A corridor is a corridor by virtue of its width and the biggest problem is the bottleneck to the west where the laundry and storage buildings are. The p zone in the bottleneck area is down to about 16 feet as opposed to the 50 they would love to have.

Ms. Duffy said after the buffer zone was moved back, the Sheriff was unable to build the parking structure originally designed. Because the City still required the amount of parking originally agreed to, the County had to move to the adjoining property, which was owned by the City. It was only after the mediation that this became necessary and they did not think it was controversial. Ms. Mattei contends she has been prejudiced because she has not been able to address the loss of p zone on the western part of the property (the City-owned property) but the parking lot is totally outside the p zone. Ms. Duffy also noted that because of this project, there are all kinds of protections that would otherwise not occur, including removal of a major road to increase the buffer between the Slough and the used part of the property. She said City planners interpreted the maps for them and the County relied on those lines.

Verne Alman, KMD Architects, said if the County loses 20 feet, the jail's' operating costs will increase to a point where the Sheriff cannot afford to build it. When he saw the zoning photograph which identifies edge of pavement he could not interpret that was the intent of the document. However, the zoning ordinance clearly states top of the bank and that was their impression when they began their negotiations. He is still under that impression and does not believe 20 feet of additional space is warranted based on the Code.

Commissioner Sten asked if the parking could be rearranged to be less intrusive.

Mr. Alman said there are cost and operational issues. For security reasons, parking for the general public and staff needs to be clearly separated. Structured parking makes that more difficult but if they use the adjacent property they can subdivide the areas so the two do not interface.

Commissioner Sten said he has seen parking separated quite easily.

Sheriff Noelle said placing the parking higher and closer to the building creates a security problem for the jail. He said they laid out the parking so it was completely out of the environmental zone and if there is an issue about stormwater runoff they can correct it.

Commissioner Sten asked about the land swap with the Bureau of Environmental Services (BES) to gain space for parking.

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Sheriff Noelle said he believes BES has agreed to it.

Mayor Katz said initially the parking structure was located on the same site as the jail.

Mr. Alman said once the 20 feet was cut off the original plan, they had to go to an additional story to accommodate the parking. When they did that, the building height became a security concern.

Mayor Katz asked if a two-story parking structure can be built on the new site.

Mr. Alman said he does not think two stories would give them the number of parking spaces they require.

Commissioner Hales noted the two requests for continuance.

Ms. Beaumont said under State statute if someone requests a continuance in an evidentiary hearing, they are entitled to it. Seven days would be allotted for new evidence to be submitted, seven for response and a final seven days for the County to provide written argument. The County is willing to waive the last seven-day period.

Commissioner Hales moved to continue the hearing for 14 days rather than making a tentative decision now.

Commissioner Francesconi said the Planning Bureau should change the Code to state that when there are differences between Code text and maps, the maps control unless an error in the mapping is demonstrated. Then one goes to the intent of the regulations. He would also like the Bureau to come back with a specific Code recommendation on the intent of the regulations and a report on just how out-of-line the maps are. Clarity is needed about the edge of the bank issue as this process has caused tremendous problems and expense. He will probably vote in favor of the staff recommendation to grant the application as he believes the Hearings Officer' erred in her decision stating that zoning maps are not part of the Zoning Code. That is legally incorrect, in his opinion. However, there is a good argument that because there are two maps one goes to the intent. On the procedural issue, he will not second guess the people who were party to this agreement unless he hears convincing new legal evidence.

Mayor Katz said she does not want to delay this but believes that if the County can deal with the stormwater runoff issues for the parking lot that would be well worth talking about.

Commissioner Sten said this is an unfortunate situation but the compromise seems reasonable and gets close to solving two very strong needs. He would like more discussion about the parking and believes it odd that the BES is giving up land to allow more impervious surface parking.

Mayor Katz said it would be very helpful if the Sheriff talked to BES some more.

Sheriff Noelle said he is concerned about the need for a new notice if they amend the plan.

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Commissioner Sten said he would like to give everyone a better understanding of the parking situation but still wants to give the County room to go forward.

Commissioner Hales said he does not believe that making changes at this level constitutes a new site plan. A continuance would not restart the whole process or require a new notice.

Ms. Beaumont said a new notice would be required only if what is proposed is so significantly different from this proposal that the two do not resemble each other. That is not the case here.

Commissioner Sten said he thought there would be another mechanism to look at the BES land transfer.

Commissioner Hales said he will take the suggestion about improving the Code language up with the Planning Director. He also asked participants to participate in the Code Language Improvement Project currently underway.

Disposition: Continued to February 26, 1997 at 2:00 p.m.

At 4:15 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council