
CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 4TH DAY OF JUNE, 1997 AT 9:30 A.M.

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

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

Agenda Nos. 812 and 827 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 813** Accept bid of Thyssen Elevator Corporation for garage elevator modernization at two locations for \$285,287 (Purchasing Report - Bid 181)
- Disposition:** Accepted; prepare contract.
- 814** Accept bid of Nutter Underground Utilities Co., Inc. for SE 90th Avenue and SE Woodstock Blvd. street improvement for \$169,616 (Purchasing Report - Bid 192)
- Disposition:** Accepted; prepare contract.
- 815** Accept bid of Tice Electric Co. for FY 97 traffic signal remodels for \$380,000 (Purchasing Report - Bid 204)
- Disposition:** Accepted; prepare contract.
- 816** Accept bid of Proline Industries for closed circuit TV systems for the Portland Building and City Hall for \$73,754 (Purchasing Report - Bid 207)
- Disposition:** Accepted; prepare contract.
- 817** Accept bid of ACS, Inc. for bicycle and pedestrian crossing improvements at SE Sandy Blvd./Ankeny St./11th Ave. intersection for \$74,428 (Purchasing Report - Bid 211)
- Disposition:** Accepted; prepare contract.

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Mayor Vera Katz

818 Confirm appointment of Edward Ferrero to the Towing Board of Review (Report)

Disposition: Confirmed.

***819** Authorize disbursement of City money in connection with forfeiture of property at 5034 N. Girard Street, declare forfeited property to be surplus and authorize its sale and conveyance (Ordinance)

Disposition: Ordinance No. 171226. (Y-5)

Commissioner Jim Francesconi

820 Accept contract with Williamsen & Bleid, Inc. for interior painting of the Kerby Garage as complete and authorize the final payment and release of retainage, except for \$794, for a total of \$2,596 (Report; Contract No. 31049)

Disposition: Accepted.

***821** Amend contract with F.E. Ward Constructors to allow for final payment for emergency landslide repair at Hillside Center Park (Ordinance; amend Emergency Purchase Order 4775)

Disposition: Ordinance No. 171227. (Y-5)

Commissioner Charlie Hales

822 Accept contract with M. Stearns Construction Company for Hillside Community Center renovation as complete, authorize final payment and release of retainage (Report; Contract No. 30542)

Disposition: Accepted.

823 Declare the purpose and intention of the City of Portland to construct street and storm sewer improvements in the NE 47th Place/Sumner HCD Local Improvement District (Resolution; C-9923)

Disposition: Resolution No. 35617. (Y-5)

***824** Contract with Nutter Underground Utilities, Inc. for the 90th/Woodstock intersection realignment project in the amount of \$169,617 and provide for payment (Ordinance)

Disposition: Ordinance No. 171228. (Y-5)

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***825** Approve agreement with Multnomah County for the joint use of the City's traffic signal control computer (Ordinance)

Disposition: Ordinance No. 171229. (Y-5)

***826** Authorize a contract and provide for payment for the W Burnside Street below NW Hermosa Blvd. slide repair project (Ordinance)

Disposition: Ordinance No. 171230. (Y-5)

Commissioner Gretchen Miller Kafoury

***828** Contract with Burlington Water District for fire prevention and suppression services for FY 1997-98 (Ordinance)

Disposition: Ordinance No. 171231. (Y-5)

***829** Authorize a contract with Zoll Medical, Inc. for purchase of five semi-automatic defibrillators for \$54,124 without advertising for bids and provide for payment (Ordinance)

Disposition: Ordinance No. 171232. (Y-5)

Commissioner Erik Sten

830 Accept completion of the SE 103rd area, Project 6001, and authorize final payment to Andersen Pacific Contractors, Inc. (Report; Contract No. 31022)

Disposition: Accepted.

***831** Authorize the purchase of a parcel of land needed for the South Airport sanitary trunk sewer project (Ordinance)

Disposition: Ordinance No. 171233. (Y-5)

***832** Authorize the continuance of negotiations for the purchase of a temporary construction easement required for construction of the NE 59th Place Wastewater Pump Station project, authorize the City Attorney to commence condemnation proceedings and authorize the City Attorney to obtain early possession (Ordinance)

Disposition: Ordinance No. 171234. (Y-5)

833 Amend contract with KPFF Consulting Engineers for professional services under Phase II of bridge repair project (Ordinance; amend Contract No. 29668)

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Disposition: Passed to Second Reading June 11, 1997 at 9:30 a.m.

- 834** Authorize a contract and provide for payment for the construction of a 12-inch water main in NE 112th Avenue, an 8-inch water main in NW Pittock Avenue and NW Barnes Road and an 8-inch water main in SW Mt. Hood Lane (Second Reading Agenda 785)

Disposition: Ordinance No. 171235. (Y-5)

REGULAR AGENDA

- 812** Accept bid of Deborah Wilcott dba Wilcott Landscaping for furnishing an annual supply of decorative fountain maintenance for \$111,108 (Purchasing Report - Bid 166A)

Discussion: Cay Kershner, Clerk of the Council, said a one-week continuation had been requested by Purchasing.

Disposition: Continued to June 11, 1997 at 9:30 a.m

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

Discussion: Commissioner Hales said this should be referred back to his office.

Disposition: Referred to Commissioner of Public Safety.

- 810** **TIME CERTAIN: 9:30 AM** - Present the Lents Revitalization Plan (Report introduced by Commissioner Francesconi)

Discussion: Commissioner Francesconi said the purpose of today's report is to inform Council and the public about the Plan and about what has already been accomplished. He noted the major roles the Portland Development Commission (PDC) and the Bureau of Environmental Services (BES) are playing in bringing the community together. He said one goal is to establish a park there that can function as a major attractor.

The following individuals, including representatives of community groups and City staff, described the process, accomplishments, issues and goals.

Ken Turner, Lents Target Area Chair, noted the high school drop out and unemployment rates in Lents, which is seen as a blighted area. He also referred to perceived promises made by the City to Lents which were never kept. One roadblock to bringing new employers into the area is the proposed System Development Charge (SDC) which would encourage developers to go

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somewhere else. A smaller complaint concerns the failure by the City to keep its promise to bring the Oregon Symphony to Lents Park this year for their annual Founders Day. A key concern is preservation of the Johnson Creek Watershed and the need to prevent future flooding, particularly in the face of new developments. Speeding on Foster Road also must be slowed down to make this area a viable economic center. He encouraged Council to support PDC's effort to establish property at 92nd and Foster as a flagship development.

Denise Switzer, Co-Chair, Marshall-Kern Community and Chair of the Resident Involvement Action Team and Personal Advocate for Southeast Works, said she has also been very active on the Lents Outreach Committee. She described outreach efforts to date and what more needs to be done in order to reach all elements of the community in the most cost-effective manner.

Commissioner Francesconi said some additional funds will be available to help organize the outreach effort, based on forming some alliances.

Mayor Katz said Lents may also be able to obtain private funds to help leverage those resources.

Ray Costinen, Outreach Committee member, stressed that revitalization and economic development in Lents must be done only in conjunction with innovative and aggressive flood plain management of Johnson Creek. Land acquisition for flood storage is only one option. Other options to explore include straightening out and returning Johnson Creek to its original channel and restoring Beggars Tick Marsh to allow for additional storage. Residents also are concerned about the use of condemnation to acquire land, rather than through a willing seller program. Despite somewhat heated discussions with Commissioners Francesconi and Sten, most residents believe Southeast residents are finally going to be heard. Regional upstream regulation of Johnson Creek is also needed in order to minimize additional water control problems.

D.W. Owens, Foster Area Business Association, 8834 SE Reedway called for the City to help developers make projects pencil out and facilitate the process. He said development of a large open spot underneath the freeway would also help although the property owner, Oregon Department of Transportation, has been resistant so far.

Commissioner Hales said no one is looking forward to imposing a SCD which increases development costs but a number of Council members have reluctantly concluded it is necessary in order to fund the street improvements residents are requesting. He noted the SDC as proposed contains a very deep discount for transit-oriented buildings, as opposed to car-oriented buildings. Fast food restaurants, for instance, would pay much higher development charges.

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Mr. Costinen said the charge is one more barrier, however, to bringing in major employers if they are looking at half a million dollar charge.

Mayor Katz suggested that the Lents group identify one long term and one short term priority item for each Commissioner to focus on specifically.

Steve Johnson, resident and Johnson Creek Watershed Council member, expressed concern about some of the suggested solutions, such as straightening the channel, which could increase flooding and property damage downstream. The Watershed Council is working with Gresham and other agencies so as to not create more problems in the Lents area. It has also brought money to the table; BES in cooperation with Johnson Creek now has somewhere between \$7 to \$10 million for restoration, plus other grants. He said the unique qualities of Lents and Outer Southeast areas are the Springwater Corridor Trail and the Creek itself and these should not be considered as barriers. While many people believe the freeway land site should be a regional park, the Watershed Council believes other options that blend economic development with environmental preservation should be considered.

Vernon Stockwell, Johnson Creek frontage area resident, said development has continually enlarged water flow into the Creek. The answer is a storage area in Lents and restoration of the Creek to its original channel. Lents is being asked to plan for 1900 acre-feet of stormwater storage which will take up a very large amount of land there. Until the amount of water that is being dumped there is addressed, there can be no economic development in Subarea Six. He said the City has a Department of Environmental Equality permit to dump 110 percent of stormwater into the Creek, which does not make sense.

Greg Swanson, Chair, Foster Powell Neighborhood Association, said his organization is interested in integrating its own plans with Lents'. He said many different jurisdictions contribute to the conditions of the watershed and one of the biggest potential barriers will be gaining the cooperation of Gresham over development in the hills that will increase the water flow. All users of the watershed need to be incorporated into the plan and share the cost.

Mr. Johnson said the State has recognized the Johnson Creek Watershed Council as the inter-jurisdictional body to deal with these questions. He cautioned against setting up another group. Instead the Watershed Council should be empowered to do something about the problems.

Doug Strickler, staff person for the Plan, thanked PDC for its help with outreach and staff time. He said they will get back to Council with their priority action lists.

Bob Roth, Watershed Coordinator, Johnson Creek Watershed Council, said flood reduction strategies are very important for the economic revitalization of

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Lents. But other aspects, including water quality, recreation uses, wildlife preservation and the enactment of minimum standards in all the watersheds, as suggested by Metro, also need to be addressed.

Mary Stockwell, 6457 SE 106th, said there are fundamental problems in areas three, one and six. There is a mind-set division between the Lents and the Gilbert/David Douglas school districts which has resulted in Gilbert never being all that interested in what Lents did. This plan, however, goes out beyond the Lents boundary at 103rd to 122nd, thus including a large portion of Gilbert. She said while the Watershed Council talks about Johnson Creek's importance as a natural resource, many long time residents know that it is an open storm sewer. It was built as a water control project in 1934 and 1936 and has a fixed capacity that was exceeded by 1950. No improvements have been made since 1935 by any government entity and by 1980 when Metro studied it, flow volumes had increased by 60 percent due to municipal storm sewer use. By 1990 the Corp of Engineers showed there had been over an 80 percent increase in the volume of water sent into Johnson Creek. When people in Area Six request that the storm sewer be upgraded, they are opposed by people who see Johnson Creek as a natural, beautiful stream. But every photograph of the WPA work shows that no habitat was left along Johnson Creek in 1934/1935. A 75-foot right-of-way on each side was stripped and everything that exists there now was planted then. The Johnson Creek that existed prior to the WPA work was 20-foot wide and 6-feet deep. After the WPA work, the Creek was 50 feet wide in Clackamas County and 35 feet in Multnomah County with an average depth of 8 feet. People in Milwaukie do not want Lents corrected because it would mean they would get more water. That is what Gresham did when it straightened out its portion and dumped water down onto Lents. Many long time residents say that Johnson Creek can be restored to its channel along the base of Mt. Scott.

David Knowles, Director, Bureau of Planning, stressed the importance of the revitalization plan in fulfilling strategic City and regional goals to accommodate housing and jobs. This is an area where a community plan really makes sense and while the Planning Bureau can put together the Comprehensive Plan policies, Zoning map and land use regulations, it cannot make changes happen without implementation plans such as this one.

Howard Cutler, Bureau of Housing and Community Development, said all segments of Lents have now been drawn into this revitalization plan and everyone has learned a lot about what the major projects, such as the large developments and Johnson Creek, involve. But outreach and smaller community projects like street trees and banners are just as valuable and productive. The next priority is making these community projects happen and keeping the promises made to the neighborhood.

Ivy Francis, BES Johnson Creek Watershed Manager, said the City does not

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see Johnson Creek as a storm sewer but as an asset with wildlife and fish resources that can be protected while still maintaining the integrity of Lents for economic and neighborhood revitalization.

Mark Clemons, Economic Director, Portland Development Commission, said they believe that this is an area where PDC can uniquely integrate economic development and jobs, physical revitalization in downtown Lents and housing. Another critical element is the partnerships that have been created among the bureaus and with the State and Metro. The community has talked a lot about being planned to death and is now looking for action. So is PDC which is looking for those key projects that can move forward now and at the same time integrate the community's natural assets into the redevelopment effort.

Commissioner Francesconi said two pieces are missing in the plan. First the community needs to talk more about improving Lane School and the Marshall/Kern community and about how to use young people as a resource to help the Lents area. Second, the City needs to spend the dollars necessary to produce a range of affordable housing, including home-ownership opportunities, for parks and stream restoration and to complete the transportation improvements along Foster Road. He said the City also needs to think through how to get dollars into outer Southeast without the tax increment financing and Enterprise Zone opportunities that are available in Northeast. He has been talking to developers and banks about a capital access fund and more creativity needs to be shown about getting access to capital for infrastructure improvements.

Commissioner Hales said the Lents community now has the vision and has created enough partnerships to achieve its potential. The coalition of interest groups should be kept together even though they do not always agree.

Commissioner Kafoury said the increasing efforts of Rose Community Corporation in housing redevelopment in Lents should be recognized. She said a lot has been going on here and all bureaus have tried to give this area more attention than in the past.

Commissioner Sten said as Commissioner-in-Charge of BES his priority is to find a solution to Johnson Creek, noting that in the short term there is enough money to continue the work out there even though, as today's testimony indicates, there is no consensus yet on the best strategy. Over the summer BES will be discussing flood plain regulations with the community and expects to return to Council with a request to adopt much stricter development standards in areas that may flood. BES is trying to walk a fine line between protecting the property rights of long-time owners but not building a lot more structures that are going to flood. BES is acquiring property to create more flood storage areas and correct prior mistakes. Agreements have been reached with two major properties -- the freeway land and the drive-in theatre -- that

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development will not occur there before the new regulations are adopted. He said in some cases the City's environmental and economic development policies conflict on Johnson Creek, with one bureau finding a piece of property can be developed while another finds it must be protected. Like the rest of Council, he believes economic development and environmental protection go hand in hand. The Brookside project is the first major piece of the flood storage plan and will also provide a beautiful park and a community attractor. He cited the need to form a coalition to go to Metro and the State and make sure the City's efforts are not wasted because Gresham and others are sending more water into the Creek.

Mayor Katz thanked the Portland Organizing Project for educating her about a part of the City that had been forgotten and hopes the complicated Johnson Creek issue can be resolved once and for all. She too is concerned about making the schools in the area more accountable to the needs of the community. Finally, the City is trying to learn how to transfer its economic development and housing successes in Northeast Portland to other geographic areas even though there are many differences. She is glad to see establishment of a leadership base in Lents but hopes that in establishing the priority list they will not overlook the importance of little things such as flower baskets, benches and trees in making the community better. She also urged the leadership not to pit one group against another.

Disposition: Accepted. (Y-5)

811 **TIME CERTAIN: 10:30 AM** - Direct bureaus to proceed with a public/private planning process to develop district-wide framework plan, complete other planning actions for the North Macadam District and acknowledge the creation of a steering committee (Resolution introduced by Mayor Katz)

Discussion: Greg Baldwin, Zimmer, Gunsels and Frasca, said this neighborhood is being created to meet City housing and job objectives and still preserve and enhance the Willamette River.

Larry Dully, Portland Development Commission (PDC), said this resolution creates a district-wide framework plan and a Steering Committee. It also addresses the issues raised earlier at the Council Informal on this subject regarding housing affordability, a jobs strategy and creation of open spaces, including non-park uses such as schools and churches.

Commissioner Kafoury said she did not see any change in the resolution to reflect Council's desire to have affordable housing.

Mayor Katz suggested adding the words affordable housing. She said she also wanted additional citizen members on the Steering Committee.

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Michelle Haynes, PDC, said a number of options for affordable housing are being considered but it is early days yet for finalizing those.

Commissioner Kafoury said she wants to make sure a mixed-income approach is built in right from the start, unlike the River District. She is concerned with the notion that this area will serve higher-end incomes and "others" will live elsewhere.

Ms. Haynes said the developer understands that concern.

Commissioner Francesconi said he wants to see the numbers so he can tell what it takes to build housing for families and singles in North Macadam versus what it takes in Lents.

Ms. Haynes said clearly there is cheaper land and lower development costs elsewhere but they are doing that analysis now.

Mayor Katz said vital, exciting neighborhoods are those that reflect a variety of incomes and ages. The City should not walk away from mixed housing even if it costs more. This is a good policy question.

Ms. Haynes said another issue to grapple with in developing a whole new downtown neighborhood is planning infrastructure that can serve a broad variety of housing.

Commissioner Hales said he would like to amend the resolution (No. 9) not to add the word "public", not "open", space. He said a neighborhood consists not just of private development and the public right-of-way but also of a non-private sector that provides libraries, churches, schools, etc.

Commissioner Kafoury said the fifth "whereas" should be amended to add the words "including affordable housing" after the words "1800 new housing units."

Commissioner Francesconi asked that a citizen parks advocate be added to the committee. He indicated he would like to have Barbara Walker serve.

Mayor Katz said it was her intention to appoint her as one of the two public members.

Commissioner Francesconi said he would be more comfortable with a citizens park advocate.

Council members agreed that adding one would be acceptable.

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Roll was called on the resolution with the three amendments.

Commissioner Francesconi said keeping the central city vital is of increasing concern and this offers a lot of potential. This also is an opportunity to provide housing of all kinds and get more low- and moderate-income people into the City. Finally, unlike the River District, one of the primary missions of this Plan is to provide much needed employment.

Commissioner Hales said this is the City's chance to prove it can succeed in developing a whole new neighborhood, something it has never done before. Currently the City has no way to provide for the non-profit sector but that is an important part of any real neighborhood. While he is not suggesting that this should be an exaction from the property owner, the City ought to be able to figure something out here. He also assumes that the word infrastructure includes parks as well.

Commissioner Kafoury said she is very excited about this project.

Commissioner Sten said this has great potential and he is looking forward to getting the numbers worked out for affordable housing on the front end. He said BES is also willing to try to do some creative things here.

Mayor Katz said this is a once in a lifetime opportunity to create a neighborhood, and will help St. Johns, Lents and other neighborhoods by taking some of the pressure off them to add more density.

Commissioner Hales said he wishes a more creative name could be found for this area other than North Macadam.

Disposition: Resolution No. 35618 as amended. (Y-5)

Commissioner Jim Francesconi

***835** Agreement with the Association for Portland Progress to manage the City-owned Smart Park garages (Ordinance)

Discussion: Commissioner Francesconi said he needs more time to review this.

Disposition: Referred to Commissioner of Public Utilities.

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Commissioner Erik Sten

- *836** Amend franchise granted to FirstPoint Communications, Inc. (Ordinance; amend Ordinance No. 171032)

Discussion: Commissioner Sten said this is a new kind of franchise with FirstPoint developing communication infrastructure that it then sells to other companies. In the past the City has required any company that sells part of the right-of-way to return to Council each time but in this case that would not make sense. This agreement calls for the City to get the standard five percent gross revenue as a franchise fee and a one-time one percent fee every time something is sold.

Disposition: Ordinance No. 171236. (Y-5)

City Auditor Barbara Clark

- 837** Assess benefitted property for the costs of improvements in the Westside Light Rail Underground Utilities Local Improvement District (Second Reading Agenda 758; C-9853)

Disposition: Ordinance No. 171237. (Y-5)

At 12:05 p.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 JUNE, 1997 AT 2:00 P.M.

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

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

Commissioner Charlie Hales

839 Adopt and implement the Bridgeton Neighborhood Plan (Second Reading Agenda 802 as amended)

Discussion: Cay Kershner, Clerk of the Council noted that this and the following ordinance reflect the changes Council approved last week (regarding the Bridgeton Road connection).

Disposition: Ordinance No. 171238 as amended. (Y-5)

S-840 Establish a Transportation Street Network Concept Plan for the Bridgeton Neighborhood (Second Reading Agenda 803)

Discussion: Commissioner Hales moved the Substitute and hearing no objection, the Mayor so ordered.

Disposition: Substitute Ordinance No. 171239. (Y-5)

841 Adopt the Implementation Action Charts of the Bridgeton Neighborhood Plan (Previous Agenda 804)

Disposition: Resolution No. 35619. (Y-5)

838 **TIME CERTAIN: 2:00 PM** - Appeal of Arnold Creek Neighborhood Association against Hearings Officer's decision to approve application of Palatine Heights Associates for an environmental review for placement of in-stream structures and riprap within an environmental zone without proper land use review, located between SW Arnold Street and 27th Avenue, north of Leah Court (Hearing; 96-00141 EN)

Discussion: Ruth Spetter, Senior Deputy City Attorney, outlined the procedures to be following during an on-the-record hearing. She said Council's final decision must be limited to the facts already on the record and the appeal issues regarding the illegal placement of riprap and rocks.

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Council members described their visits to the site.

Duncan Brown, Planning Bureau, said the applicant is developing a 31 home Planned Unit Development (PUD) and was required to construct a stormwater disposal system directing water to Arnold Creek. Design modification required by the Bureau of Environmental Services (BES) after PUD approval included additional riprap around the outlet and two in-stream structures below the outfall. However, the applicant failed to obtain the proper review of the modifications, which conflict with conditions of approval that allow no additional structures in the common open area. In addition, an environmental protection zone had been placed on the Arnold Creek Corridor so environmental review was required. There are a number of other unresolved land-use issues but this appeal is limited only to the placement of these structures in an environmental zone without proper review and in violation of conditions of approval on those points and no others. He cited the approval criteria 33.430.250 (g) and 33.269.310 (c) that must be met and reviewed the eleven points appealed by the Neighborhood Association. He noted that the Hearings Officer concluded that if the applicant sought environmental review before placing the in-stream structures and riprap, it would have proceeded under the applicable environmental review criteria, 33.430.250 (a-f). However, once a violation occurs, it is the intent and practice to apply only the criteria in 33.430.250 (g). The appellant also believes that Code criteria 33.269.370 (c) regarding stormwater load capacity applies but the Hearings Officer does not. Nor does the appellant believe 33.260.370 can be met. However, BES reviewed the proposal, visited the site and, in fact, required the riprap quantity and location. Since the stormwater outfall type is not part of the review, this portion of the appeal does not apply. Finally, appellant believes the space taken up with the riprap creates a permanent loss of resources. The Hearings Officer stated that mitigation offset the resource values so there would be no permanent loss. In response to other contentions by the appellants, BES has investigated and found that the riprap and in-stream structures are functioning as intended. The Hearings Officer approved the review with several conditions. The appellant objects to inclusion of one, an agreement between the City and applicant because it was not included in the record. This agreement was included to ensure that certain conditions of approval would occur and although it is not physically in the record, the appellant has asked that it be included. Finally, appellant believes that Condition B should be amended to require monitoring and mitigation for a period of three years after replacement of the plantings.

Mayor Katz noted that the Hearings Officer continually talks about the question of liability for potential resource loss because of the lack of BES engineering descriptions. Has that technical work been done?

Mr. Brown said yes, the technical work has been done to the satisfaction of BES.

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Mr. Brown showed slides to indicate the location of the riprap and rock structure. He said the riprap was required to prevent erosion, noting that some of the mitigated trees have died, probably because the land was too wet, and will be replaced. He said the in-stream rock structures are working and while there may be other PUD issues remaining, these are the only two issues for Council consideration today.

Alan Shearin, Arnold Creek Neighborhood Association, said today they are requesting a reversal of the Hearings Officer's approval, for a clear decision on how to review violations and for a time line for completion of the mitigation and landscaping. He said Palatine Heights Associates (PHA) requested a modification of the approval of Condition W but did not submit the wording until one month after the hearing, only 45 minutes prior to closure of the record. Because of reference to the Performance Agreement, this condition had to be appealed as the intention to combine the Environmental Review with the Performance Agreement was never stated. In addition, two major areas were not adequately addressed: 1) full compliance with PUD approval criteria as a whole; and 2) demonstrated benefits from any of these changes. In this case it is unusual because the final plat has been approved and the majority of the houses completed and occupied. Yet there is no evidence to show that all the criteria have been met. City Code requires that connections to stormwater facilities be discussed but there is no evidence in the record that this has been done. Details of the CC&Rs must be submitted also. Both the Bureau of Planning and the Hearings Officer have misapplied and misinterpreted Code Chapter 33.430.250 (g) as there has been no environmental review of the riprap and in-stream structures. He said statements in the staff report and Hearings Officer's decision on the in-stream structures are referred to as remediation for the riprap but it does not seem possible that one violation should serve to remediate another violation. Even if these are the correct actions, they are violations as they were constructed without permits. Evidence of additional violations, including construction of a culvert and stairs, was also presented to the Hearings Officer and Palatine Heights would like to have all such structures reviewed at the same time as the riprap and in-stream structures are reviewed. There is no evidence to support the efficacy of these. He said upholding the Hearings officer's decision will allow the developer to take the easy way out, opting for violations and remediation rather than going through the required permitting process which would require identification and evaluation of the impacts on the resource. This case should be sent back for complete review and the Bureau of Planning should be instructed to clarify this section of the Code. The Palatine Heights project has dragged on far too long and the Neighborhood Association would like Council to assign a specific timetable, no more than 120 days, to resolve the remaining issues.

Commissioner Francesconi asked what is better for the watershed, leaving the structures in or taking them out of the creek? Would approval of the appeal force the developer to take them out?

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Mr. Shearin said leaving them in would be best.

Leonard Gard, Southwest Neighborhood Information, said if environmental review had been sought prior to placement of the structures in the applicants would have had to meet those approval criteria. It is not right that a different set of criteria apply because of the violation. He also asked why the Planning and Building Bureaus had not taken action against other violations by the developer, such as the stairs and culvert.

Amanda Fritz, SW Vacuna, said the appeal should be upheld because construction in environmental zones must be reviewed against the criteria in 33.430.250 (a), not just the violation criteria, to find out whether they should be allowed to stay. Not all the applicable approval criteria were used in the review and there is no evidence in the record that the riprap needs to stay there other than that BES and Planning staff says it does. There is no evidence that water ever flows over the riprap; rather it shows that there is too much riprap in relation to the amount of water flowing through it after the revision to the stormwater system. The original approval of the development by the Hearings Officer did not approve any development in the environmental protection zone without additional environmental review. If this decision of the Hearings Officer is not reversed, there will never be a review of why construction in the environmental zone is the best option. This decision also fails to consider at all the sanitary sewer connection, also made in the environmental zone zone without a review, or acknowledge other violations to condition W. The new mitigation planting plan also needs review. She said they object not to the development, but to failure of the development to meet the standards set for it, to the way the Code has been disregarded and to failure to apply the proper criteria.

Arnold Rochlin, PO Box 83645, said the swale is nothing but a ditch set in mud that is just waiting to sag into the stream. He said Code 33.430.250 requires that all applicable environmental approval criteria be met. Subsection 250 (g) concerns a violation when no permit was applied for and requires only remediation, with no standards for a permit. He said according to the Hearings Officer's reasoning, if he were to cut all his trees in an environmental zone, a clear violation of the criteria, the Hearings Officer would say the criteria do not apply after a violation. All he would have to do to remedy the situation is to plant a few cedars. He said whether the water structures should be taken out cannot be determined yet because the standards have not been addressed.

Liz Callison, Director at Large, West Multnomah County Soil and Water Conservation District, said the need for approvals from Oregon Fish and Wildlife and other agencies was ignored prior to placement of the in-stream structures.

David Marlin, 2545 SW Palatine St., 97219, said failure of the City to enforce

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the Code encourages detrimental development. He said there is no plan on record for the stormwater connection so one does not know if the riprap is appropriate or effective. He also contended that the swales were not built as intended, resulting in sewer overflow into the environmental protection zone (and onto his property) and creating a new ravine behind Lot 9.

Robert McGowan, 2535 SW Palatine St., 97219, said mud and dirt have been allowed into the stream from the beginning. The in-stream structure does not work and needs more study. Houses have been willfully placed in the wrong places and Crawdad Creek has been destroyed. He called on the City to right the situation as there are still major problems to be dealt with in this development.

Mark Dane, Alpha Engineering, representing Palatine Heights Associates (PHA), said they have been trying to solve the problems here for 1-1/2 years. He said need for the riprap was identified in the PUD and the original approval; this is only an extension of it. He said BES said there must be riprap here to prevent erosion and the developer, because of the danger of slides, went ahead and put the riprap in because the permits could not be obtained in time to open the storm drains. PHA believed they had "as built" approval to do so because the riprap was an extension, about 25 feet more, of what already had been approved. With winter coming, no one wanted to have a repeat of the slides of the prior year.

Commissioner Francesconi asked if PHA intentionally did not seek a permit.

Mr. Dane said they had preliminary approval of the system and thought this was an extension of that, an "as built" situation that did not need further approval.

Mayor Katz asked what "as built" means in terms of making these kinds of changes.

Mr. Dane said it usually applies to unforeseen things that are worked out on a day-to-day basis with the Bureau of Buildings. He said the in-stream structures are one of several experimental requirements placed on this development by the City and are definitely working. They were done as an enhancement to mitigate for water quality and, if they are taken out, it would cause a lot more problems. He said PHA is actually now being asked to mitigate for mitigation, a Catch 22 situation.

Commissioner Sten asked if they were led to believe by the Planning Bureau that no permit was needed for the structures.

Mr. Dane said the in-stream structures and riprap were put in as staff told them to do and they are trying to do the right thing here.

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Commissioner Hales asked who required it.

Mr. Dane said BES is trying this as an experiment. David Knowles set the time limit.

Commissioner Hales said Council is trying to track this. The original PUD applications generally require coming back for environmental review on the stormwater.

Mr. Dane said BES reviewed their mitigation.

Commissioner Hales said the heart of the matter is that PHA went ahead without separate review.

Mr. Dane said yes, because they were trying to stop erosion and further environmental problems. He said there were numerous conflicts between Planning, Buildings, BES and the neighborhood. He said PHA followed the City's direction and is now trying to deal with the issues.

Mayor Katz asked if PHA was overwhelmed by the issues.

Mr. Dane said there were a lot of issues because of construction complications and intense opposition from neighborhood groups. Some complications resulted because BES standards changed and such requirements as the swales, in-stream structures and riprap were added later. Some problems have resulted from the swales which are on private lots and are not being maintained properly by the people who live there.

Mayor Katz asked if it would not have been better to deal with all the problems at once.

Mr. Dane said they tried to do that in 1995 and presented a two-inch thick document of applications to deal with all the problems that had arisen after the initial PUD approval. Land-use regulations changed in the meantime and some of their lots had been added to the environmental protection zone. The Hearings Officer was going to require that portions of the lots be put back in Open Space. The whole thing then collapsed and they tried to do things little by little, including the swales, the riprap and in-stream structures. More issues keep cropping up.

Commissioner Francesconi asked if all these issues could be addressed within six months.

Mr. Dane said all the issues listed to be done October 15, 1997 are complete except for the final tree replanting in October. Then the bond can be released. If the swales are not maintained by the property owners, they will fail. He said

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they had tremendous difficulty obtaining permits to open the drains and feared the whole hillside would collapse.

In rebuttal, Mr. Shearin said the application PHA submitted in 1995 to complete everything was approved but PHA did not meet all the conditions so withdrew it. Regarding the riprap, Condition O states that there will be no construction in the environmental zone without review. BES never required riprap.

Mayor Katz said this is a very important issue.

Commissioner Sten said if the point of view is to do whatever BES says regardless of proper review by Planning, he will instruct BES not to meet with developers until the permit is applied for.

Commissioner Hales said there are regulations that were imposed earlier in the process, however, that said design your improvements to the satisfaction of BES. So applicants are caught in a Catch 22 when they are supposed to get direction from BES but, if it concerns an environmental zone, they also have to go back for formal review.

Commissioner Sten said it is not a Catch 22 as the approval calls for coming back for environmental review. Condition O does not say BES had administrative authority to sign off.

Mayor Katz said Council needs to know exactly what message was sent to the developer.

Commissioner Sten said it is crystal clear in Condition O that the standard environmental review process is needed. BES has never had the authority to sign off on that.

Mayor Katz said she does not disagree but the City still needs to make very clear what is said to folks.

Mr. Shearin said Mr. Dane mentioned that the riprap was in place after the mud slides occurred. However, the riprap was in place prior to any slides and there is nothing in the record to date to show that it exists, either in its original or present condition (due to the extension). There is still no evidence, no matter what Bureau suggested it be in place, what the riprap is and how it could possibly be approved. No one required the in-stream structures; instead PHA suggested them as mitigation or remediation for the riprap violation. He said because of the swales, a Palatine Heights Homeowners Association was formed by PHA without the permission of the homeowners themselves, who would have preferred to wait until all these issues were solved and were never notified of this appeal or the original hearing. The replanting plan suggested in

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this application is in a plan that has only been suggested but never approved.

Mr. Brown said the original Palatine Heights PUD application in 1991 predates application of the City's environmental zones on that land. Condition O refers to the Interim Resource Protection Zone which controlled what could occur within 25 feet of the center line of the Creek. Condition O is what Mr. Shearin quoted but he did not state that this refers to land within 24 feet of the center line of the Creek, not the common open area or what is now the environmental zone. What is at issue is the sanitary sewer construction, i.e. the ancillary riprap, from the outfall to within 25 feet of the Creek. That is what is in violation of that particular condition. The Hearings Officer concludes that the fact that Condition O was violated does not mean it should be amended as the applicant is being required to meet the condition by going through environmental review. Condition O is not violated if the review is completed. Regarding Mr. Shearin's testimony, he said "remediation" is a higher standard and that is why there is separate environmental resource violation criteria. A typical violation is often the removal or destruction of a resource and when a tree is already cut down you need to deal with the remediation. The location of the remediation is much more specific than mitigation for other development, which can be placed on the site or even within the same watershed. Remediation for a violation has to take place in the location where it occurred. For instance, if Mr. Rochlin cut down his trees without a review, a higher standard than mitigation would apply and the remediation would have to take place in the location where the violation took place. Ms. Fritz's statement that there is nothing in the record to indicate where the stormwater is coming from is incorrect as the testimony he gave before the Hearings Officer was virtually the same as what he gave Council.

Mayor Katz asked what an applicant would have to do if he went through the land use review rather than sustaining a violation.

Mr. Brown said staff would look at proposed locations, design and construction methods that are less detrimental to the identified resource and functional values in order to minimize the impacts and mitigate for any that remained.

Mayor Katz asked if it is true that when one avoids a required review and there is a violation, then you do not have to go through any of that process. What is the logic here when there has been no review of the options to deal with the problem?

Mr. Brown said violators do go through a review process but at a little higher threshold as they are remediating in a more specific location, not just mitigating for the overall area.

Susan Feldman, Bureau of Planning, said in this case they did know what the

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problem was and what resource was removed. The developer will have to replace that in the very same place rather than some other place.

Mayor Katz asked if the riprap or rocks within the creek had been reviewed by anyone in the City who knew that was the right solution.

Mr. Brown said the answer is more than likely yes regarding the riprap as it is location specific and is there to reduce erosion. It had to be there to pass a 25-year storm threshold without creating valleys in the soil. Regarding the in-stream structures, Ms. Callison is incorrect in stating there was no input as the Oregon Department of Fish and Wildlife and the Bureau of State Lands were consulted prior to their placement. That testimony is in the record and has been accepted by the Hearings Officer as factual information.

Mayor Katz asked if staff told a client to do these things without going through a review first.

Mr. Brown and Ms. Feldman said no.

Mr. Brown said in developments there are usually two plans -- "as designed" and "as built." The latter reflects drawings made to respond in the field to small mistakes that do not correspond exactly to the design.

Mayor Katz asked if this happens after the review process and an agreement has been reached about what will work.

Mr. Brown said yes, except when something is put in as a violation. Field notes are used for review.

Dan LeFay, BES, said often what is shown on design plans, such as distances to the manholes, do not get constructed exactly as indicated and the plans also do not show sewer branches and collaterals to the houses. When BES gets the "as built" plans back from the inspectors that information is shown so the owner can be told where to connect. In all situations there is both the plan and the "as built." The plan shows riprap, which would be common for a storm outfall like this.

Mayor Katz asked whose decision it was to use the riprap. Did BES approve it and go through all the design and all the engineering processes?

Mr. LeFay said BES went through all that process, which was shown on the earlier plans that went through environmental review. At that time the hearing showed that riprap would be placed at the end of the storm outfall. No dimensions are shown but it does show it as being in the Environmental Zone. An inspector might tell them to extend it clear to the edge of the stream.

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Commissioner Hales asked if we know that.

Mr. LeFay said the "as built" drawings show the riprap got placed at the end of the outfall but he does not know what the original design showed. It probably did not show where the end of the environmental zone was either.

Commissioner Sten said the Hearings Officer's November 30, 1995 decision clearly shows that she expected something to be put in the stream.

Ms. Feldman said the applicants never recorded or followed through on that decision (LUR 95-00005). They decided instead to take advantage of the original approval and that is how they got into negotiations over how to make that approval work, given the new stormwater requirements. It was put into the record by the appellants.

Commissioner Sten said he understands the expectation that something would be put in the stream. His question is whether, after PUD approval is given, one still needs a permit to actually build the structure. And would other things that happen be non-binding until you had a permit.

Staff said yes.

Commissioner Sten said it is clear BES was working in good faith with the applicant and there is a good chance that a lot of what they did would have been approved if they had bothered to apply for a permit. That is where the neighborhood would have a chance to weigh in.

Mayor Katz asked if BES told the developer to get a permit so they would not be in violation.

Mr. LeFay said at the time the developer was actually negotiating with the Neighborhood Association to make some changes in the Plan and were aware permits were needed to work in the environmental zone.

Commissioner Francesconi asked if the in-stream structures would be taken out if Council reverses the Hearings Officer.

Mr. Brown said that is a likely possibility as they would still be in violation and the applicant would either have to go through violation review or remove the structures.

Ms. Feldman said there may be other solutions to satisfy the remediation.

Commissioner Sten asked if what the Hearings Officer conducted was a violation review?

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Mr. Brown said yes. She reviewed it for the violation and to modify Condition W of the original PUD approval, which limited structures within the common open area. This was changed to add the riprap.

Mayor Katz noted that both Ms. Fritz and Mr. Rochlin believe the standards for permitting need to be reviewed, not just the violation.

Commissioner Hales said he did not think 96-00141 was a violation review; he thought it was an attempt by the applicant to comply with the requirement to apply for environmental review that was in the original PUD. He noted that PHA applied for this. Condition O said come back for environmental review and this looks like what they are doing here. They have also, in the meantime, perpetrated a violation and that is the issue the neighborhood raised.

Mayor Katz said then broader standards of review are needed.

Mr. Brown said Condition O says come back for review under the applicable environmental regulations. In this case, the applicable regulation was a violation review. The Planning Bureau is correcting, through the Code rewrite project, the confusion that has resulted from this case.

Commissioner Francesconi said he has three concerns: 1) what further mitigation of the watershed is needed; 2) how to solve the ongoing issues with the neighborhood, possibly through a timeline or mediation; and 3) how to penalize a developer who violates the standards.

Mayor Katz said Planning acknowledges the confusion regarding this review and whether only one requirement (Condition G) is looked at or whether all the standards are reviewed as part of a total review. She said the way it is now a violation can be mitigated by the developer who never has to deal with any other issues. How is this being resolved?

Ms. Feldman said Planning believes the current Code requires this process but does understand that was not the intent of the regulation. A Code amendment process is now underway that would require compliance with the whole set, or with whatever is deemed appropriate during the rewrite process.

Mayor Katz asked the City Attorney if she agreed.

Ms. Spetter said the process going on now appears to be what the Code requires (applying Condition G only). She has not looked at this in depth, however.

Commissioner Kafoury said she cannot get past the inconsistency of saying that one basically has free rein.

Ms. Feldman said the violation criteria was inserted during the Code

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streamlining process several years ago because they found that going through regular review was not working well.

Ms. Spetter said this is a violation review process and not a case where people are getting away with avoiding reviews they would otherwise have to have. The review in the violation section is actually a tougher one because it deals with the violation itself and where it occurred.

Commissioner Kafoury said the point is they did not deal with it. The report does not say this rock should stay in or go out.

Ms. Spetter said she assumes that was part of the Hearings Officer's review.

Mr. Brown said the Hearings Officer approved the in-stream rock structures with conditions.

Ms. Spetter said just because the developer did that does not mean they would get to do that in any particular instance. But in this instance there was a review by the Hearings Officer and, presumably, BES.

Commissioner Francesconi asked if Council could fine the developer.

Mr. Brown said no, at this time they are in a review process. The developer could be fined through Code enforcement. The applicant was given two options, either to go before the Code enforcement officers or apply for the necessary land-use review.

Commissioner Francesconi said he should not have the either/or option.

Mr. LeFay said a lot of people in this area had slides which they shored up with riprap. Most are having to go through an environmental review and BES has set up a process to expedite that. To save their homes, however, many went ahead and did something, even though it was against Code. Those people are in somewhat the same circumstances as the developer.

Commissioner Hales asked what options Council has in this proceeding.

Ms. Spetter said the Council could deny the appeal, deny it but modify the conditions, or grant the appeal.

Commissioner Sten said he will not support the Hearings Officer's recommendation as written. He said he is willing to uphold the appeal on principle because he thinks the appellants had no chance to review this and it was done improperly. He does not want to send a message that if you do not get a permit to begin with, you can come in afterwards. He said he senses the in-stream piece will probably be approved although he is not sure about the

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riprap. However, he believes the neighborhood could go through this whole process again and end up with something very similar to the four or five conditions that Duncan Brown has taken from Ms. Fritz' testimony. He wants to send a strong message that people cannot do business without a permit and then put in some conditions that satisfy the neighbors. He noted Mr. Shearin's request that Council have clear criteria for violation reviews and a clear timeline to get all the PUD issues resolved. He would also consider upholding the Hearings Officer's decision but adding stronger mitigation measures and a clear timeline. If it is not possible to do all that, he will vote to uphold the appeal. If there is a way to address the neighborhood's concerns without going through the whole process he would like to explore that also.

Commissioner Francesconi said he was thinking of denying the appeal but adding some conditions, making the first three stronger. Reconfiguration of the storm water appears to be the part that BES thinks may be okay and he would like BES to evaluate this to determine if it is right or wrong. He is also willing to require a letter of credit from the developer and add a strict timeline of November 1, 1997. A separate enforcement mechanism rather than an either-or process is also needed.

Mayor Katz asked which direction the Neighborhood Association preferred and if it had more severe conditions to suggest.

Mr. Shearin said they think just using Condition G as the approval criteria is wrong and would prefer that Council uphold the appeal. While applying Condition G makes someone correct something they did wrong, it does not tell what resources were lost.

Mayor Katz said very similar results could occur, if Council upholds the appeal.

Commissioner Sten said the neighborhood is right on principle but could possibly get substantially less than it wants, based on what BES is going to say, rather than the conditions he is willing to place on the developer right now. It looks to him like the developer followed the advice of BES, the bureau that will be advising the Planning Bureau, and that he made a procedural mistake.

Ms. Fritz said the neighborhood is appealing the fact that there has been no public review of the proposed mitigation. They want that review. She said there is nothing in Condition G that says that only those approval criteria apply and Council can apply the other ones as well. Regarding the riprap, the City could say do not take it out until after the review and see what the appropriate mitigation is and what the other violations are, such as the bridge and the culvert.

Commissioner Francesconi asked if the appeal can be upheld with the condition that the rocks or riprap not be removed until after review.

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Ms. Spetter said she did not know that the City could do that. If the appeal is upheld, then the violation stands and something has to be done about it.

Ms. Fritz said the developer has been in violation for three years. Another few months should not make a difference.

Mr. Rochlin said if the Bureau of Buildings does not order PHA to take them out, it will not happen.

Mr. Dane read from a September 12, 1995 letter from A.G. Crook regarding ODFW approval of the in-stream structure.

Commissioner Kafoury said she is not convinced upholding the appeal will get anywhere.

Commissioner Sten said the neighborhood could get less for the stream because, if the applicant had a permit, he would vote to uphold the Hearings Officer. He moved to tentatively uphold the appeal. Commissioner Francesconi seconded.

Commissioner Hales said he will make sure the Bureau of Buildings gets their instructions.

Commissioner Kafoury said this appears to be a situation where Council has to intervene and say the wrong conclusion was reached. But she is very leery as this delay does not seem practical.

Ms. Feldman asked if this interprets the Code to say that both sets of the approval criteria must be met and the Code Enforcement Office will have to make a determination about the violation or order them to come back for full review.

Commissioner Hales said Council may be able to get closer to common sense in the findings by informing the Hearings Officer and Bureau of Buildings that it is not its intention to require removal of the in-stream storm structures while this is being worked out.

Ms. Callison withdrew her earlier request for a continuance.

Commissioner Francesconi asked about mediation.

Council and staff set the date for findings six weeks from today.

Mayor Katz suggested that both parties work together during that time to resolve their issues.

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Disposition: Tentatively uphold appeal; prepare findings for July 16, 1997 at 2:00 p.m.

At 4:30 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 5TH DAY OF JUNE, 1997 AT 2:00 P.M.

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

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

Mayor Katz welcomed a delegation from Ulsan, Korea, one of Portland's Sister Cities.

842 TIME CERTAIN: 2:00 PM - Adopt Natural Resources Management Plan for Peninsula Drainage District No. 1 and amend official zoning maps (Ordinance introduced by Commissioner Hales)

Discussion: Commissioner Hales said this Plan concerns an unusual area of the City where no one lives (yet) although a lot of people work and play there.

Tom McGuire, Planning Bureau, showed slides and described the area, which is entirely within the historic Columbia River flood plain, that is included in this Plan. Major features include the Portland International Raceway (PIR), the Expo Center and the Heron Lakes Golf course, with the vast majority of the land under public control although there are some developed industrial uses, including the radio tower property to the east owned by Excel Communications. It is industrially zoned although it is mostly wetlands and the entire property is within the Environmental Conservation overlay. The area contains a diversity of natural resources including sloughs, wetlands, riparian and upland forests and one of the largest Great Blue Heron rookeries within the City. He noted that the Excel property is the first choice of the Sheriff's Citizens Selection Committee for location of a new jail for Multnomah County.

Mr. McGuire said the Plan provides prime opportunities for restoration as the quality of the resources varies considerably throughout the area. The Plan will also benefit property owners by adding another level of certainty about areas where mitigation can be done as development occurs.

Mr. McGuire said all the property owners and the parties involved seem satisfied with this recommendation. However, a locator map that is to go into the Zoning was inadvertently left out and the two-acre fill identified at PIR should have been removed from Exhibit No. 10, as per the Planning Commission's recommendation. He said he will correct the documents in the final Plan.

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Mike Houck, Audubon Society, said the Society supports this excellent piece of staff work, as the Plan talks about this area from an ecosystem, watershed management perspective. He said Exhibit 7 (Page 38) shows what the area looked like in 1888 and should be compared with Exhibit 8, the current natural area habitat inventory. Such a comparison shows why one should be concerned about losing even another acre of wetland or riparian area. He noted the enhancement potential map (Area J on Exhibit 10) and said one area to the west was not designated for enhancement at the request of the James River Corporation. He hopes over the next several years the City can convince them of the huge potential for enhancement there. Regarding the potential fill for the radio tower site, the Planning Commission did a good job of compromising between those who want 47.9 acres of wetland filled and those who believe that is inappropriate. He said the City made a mistake many years ago in zoning this wetland area for industrial and now has to deal with the conflict that has been created. However, there are City, State and federal procedures to go through regarding the fill. He urged adoption of the Plan as forwarded from the Planning Commission.

Commissioner Francesconi asked how long it will take the Sheriff to go through all the permitting processes following this.

Mr. Houck said each of the processes has a comment and review process. The 47.9 acres being discussed was settled upon outside a public process and that is a problem. The permitting process for the fill, however, will involve open and full public discussion. Regardless of what the City says, the Division of State Lands (DSL) and Corps of Engineers may not give their permission based on the importance of the wetlands to be filled. Their process will be done together to avoid duplication of efforts but separately from the City process. It is inappropriate public policy for the City to presume preapproval of the fill.

Sheriff Dan Noelle, Multnomah County, said the basic issue is public safety and the lack of insufficient jail space. Currently 430 spaces are under construction, which does little more than take care of State mandates. The new jail space is critically important in terms of public safety and will provide 300 alcohol and drug treatment beds. He described the site selection process as an open, albeit slightly messy one, where everyone had a chance to testify. He described some of the extensive outreach efforts made throughout the County. Hundreds of people attended the meetings followed by public workshops before the 15-member committee finally selected three sites in a ranked order. The radio tower site was chosen as the top site. While none of the three are perfect the Multnomah County Board of Commissioners accepted the recommendation of the Siting Advisory Committee in February, 1996 but asked that a technical committee spend three months to analyze and collect technical data for each of the sites. The results will be presented to the Board and Siting Advisory Committee and an open house will be held so that the public can talk directly to the experts.

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Sheriff Noelle said unless there a fatal flaw is found, he told the committee he would continue to support the radio tower site. The committee was very concerned about the environmental impacts on that site and directed the County to go well beyond whatever regulations are required for the environmental projects. He said the County will do everything possible at that site, if selected, to make it a net plus to the environment and the watershed. He said regardless of what site is chosen, the County will form a citizens working group to advise on design, construction and operational issues. Overall, the intent is to make this facility reflect the overall vision of this plan.

Bob Stacey, attorney representing Excel Communications, owner of the radio tower site, said the previous property owner worked with the City on the Natural Resources Management Plan (NRMP) and on alternative mitigation plans. He said the site is approximately 90 acres, a substantial proportion of which is wetlands. The property owners desire future development options and are considering fill on a portion of the site. They have tried to identify resources that would provide additional opportunities for mitigation and enhancement, including creation of new wetlands. The May, 1996 draft identified a 47.9 acre portion as available for fill under the NRMP as long as State permits were obtained. Staff changed that and in the second draft showed that site as an exclusively preservation and enhancement site, with no place for development. That was disappointing as a great deal of work had been done with Parks to identify sites, particularly at PIR, where wetland opportunities could be provided, both for mitigation of their fill and limited activities the Parks Bureau had in mind. The Planning Commission responded to their concern by adding a note on Exhibit 10 that makes it clear that this site can be developed with up to 47.9 acres of fill, if mitigation is carried out that creates as many or more acres of wetland for every acre filled. However, the applicant must still go through environmental review and seek State approvals, a very public process. He said his client is not as happy with this second draft as with the earlier one but is reconciled to the approach recommended by the Planning Commission.

In response to a question from Commissioner Francesconi, Mr. Stacey said under the first draft his client would not have had to get full environmental review approval from the City. It would have been a Type 1 review.

Mr. Houck said had there been a full and open public process to arrive at that 47.9 acre figure, and the fill had been shown on the map, that would have sent a clear message to DSL and the Corps that it was okay to fill this. That was not the case here.

Peter Teneau, Kenton area resident, strongly supported the plan on the basis of its coordinated ecosystem approach and its inclusion of a trail system. However, he is very concerned about the north wetland area and urged the City to acquire easements or purchase that land, which is contiguous to Smith and Bybee Lakes. He likes the Plan's flexibility and the tradeoff between

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restoration and improvements. He questioned the the need, however, to specifically include the 47.9 acres. Finally, he recommended that the caliper of replacement trees be specified for each tree over six inches in caliper that are removed.

Commissioner Hales said even though the Plan itself does not mention caliper the environmental zone Code is pretty specific.

Mr. McGuire said the Code is specific but staff wanted to leave some flexibility as in some cases smaller trees actually will do better.

Jay Mower, Columbia Slough Watershed Council, supported the plan. A subcommittee of the Council reviewed it and made many recommendations before asking the full Council to approve it. He said they recommend that the predetermined fill in the earlier draft not be included and that the applicant go through the normal land-use process.

Commissioner Francesconi said he favors the plan but is concerned about the vital need to site the jail versus the very serious environmental issues at this site. He noted that the Sheriff deferred the selection process to a citizens committee which did not have adequate information about some of the environmental consequences. He said he needs to figure out which of these sites he is going to support and then aggressively work for that one as he believes another jail is needed. The environmental advocates need to help the City find a good site, if this is not the right one. He said he does not like the current process.

Sheriff Noelle said representatives with a vital interest in the environment did serve on the committee, including David Eatwell who represents Kenton and is also on the Columbia Slough Commission. The technical review will be completed July 1 and he will make it available to Council then. He stressed the critical need for a site and said this is the one the citizens tell him is the best.

Mayor Katz asked if Council will have a chance to look at all the sites, regardless of the recommendation.

Commissioner Francesconi said he believes jails are part of the law enforcement system that the City has some responsibility to coordinate.

Sheriff Noelle said the documentation issued with the committee's report is very extensive. Only the three final sites, however, are covered by the technical review.

Mr. Houck said from day one David Eatwell supported this site, which he considers the path of least resistance. That was a mistake predicated on the earlier draft of the plan which showed this site as already targeted to be filled. He said he told Mr. Eatwell not to make that assumption and believes this was

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an error in the process which swayed the opinion of many people on the committee who felt since it was already slated for fill they would get all sorts of wonderful mitigation. He said this makes intuitive sense but is the wrong process. If this site gets the permits, he wants to see a lot of good mitigation and enhancement. However, he does not believe he has a responsibility to locate a site.

Commissioner Francesconi said, however, he does not necessarily think it is Sheriff Noelle's job to have to go through all these different processes.

Mr. Houck disagreed.

Commissioner Sten said this is not his choice as administrator of BES but it is not his choice that the land was zoned industrial either. However, it is too late for that. He said he cannot support this until the environmental review is done and it is determined that the site can be filled under the rules of the game. Then it is probably the best possible use the City can ever come up with as the Sheriff is willing to put a lot of time and effort into enhancing the environment. But whether the site can be filled responsibly and still protect the Columbia Slough, which the Council is spending millions and millions to do, is not answered. The Sheriff does not like the Northwest site because a chlorine manufacturer is across the street and he is worried about an evacuation plan. But is it easier to figure out how to evacuate inmates or how to clean up the environment?

Commissioner Hales said he disagrees with Commissioner Francesconi about Council taking an activist role in siting. The responsibility for that rests with the Sheriff and the Multnomah County Board of Commissioners. The City's job in this case is to be a responsible regulator in an area with very high natural resource values as well as responsible to a property owner who owns land zoned for industrial uses. He believes the balancing of these different interests has largely succeeded.

Mayor Katz said the City has a responsibility to review all the sites within the City limits although it may end up with little choice. She is not happy with this site but understands the Sheriff's needs. She worries that if the County is unable to obtain the necessary permits, then everything goes back to ground zero. She is troubled that one of the City's agencies actually sited this land for the jail, which sent a message that this may be the location.

Mr. McGuire said in the early stages of this Plan the decision about the fill on that property was made by the prior owner of the site in conjunction with the Planning and Parks Bureaus. He disagreed with Mr. Houck about the public process as the purpose of the draft is to propose ideas that the public can respond to. In this case they got a response and made a change regarding the fill. The decision to make that change happened between the Planning Bureau and the Parks Bureau before the Sheriff's Citizens Committee made its decision

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and the draft itself did not come out until after that decision. He said he personally explained to at least two of the committee members that the fill was going away and they nevertheless chose to continue on and select that site.

Mr. Stacey said even before the Sheriff evidenced an interest in this site, his client was interested in developing the underutilized 90 acres of industrial land in an environmentally sensitive way. His client will still seek to do that if the jail goes somewhere else.

Mayor Katz said she is still concerned that the Sheriff may end up at ground zero.

Sheriff Noelle said his frustration with the change is that the draft came out in May, 1996 and sat there for a long time. As soon as the Advisory Committee selected the site everyone scurried around and changed the Plan. By July 1, the technical information on all three sites will be available.

Commissioner Sten said no matter who develops this site, they would have had to go through a fill permit process. What is different is the level of public process in which the City is directly involved. There will be a federal process either way so it is important to err on the side the City is in charge of. The Sheriff has come up with some very inspiring environmental ideas but those can only happen after the fundamental decision is made as to whether this is a buildable site at all.

Commissioner Francesconi said he believes in the regulatory process but also feels the City has an obligation, on the public safety side, to help site a facility.

Sheriff Noelle said if this site does not work, he needs the City's help in selecting one that does. He said they have not looked at any site, including the Northwest Industrial site, where someone did not suggest restoring it to some kind of environmental level, i.e. restoring Guilds Lake.

Disposition: Passed to Second Reading June 12, 1997 at 2:00 p.m.

At 3:05 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council