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CITY OF  
**PORTLAND, OREGON**

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**OFFICIAL  
MINUTES**

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A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 15TH DAY OF OCTOBER, 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; Ben Walters, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

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

**CONSENT AGENDA - NO DISCUSSION**

**1558** Accept bid of Silco Construction Co. for Columbia Pool phase II, gutter replacement, shallowing and shell repair for \$321,300 (Purchasing Report - Bid 98004)

**Disposition:** Accepted; prepare contract.

**1559** Accept bid of Triad Mechanical, Inc. for Tryon Creek water systems upgrade for the Bureau of Environmental Services for \$178,456 (Purchasing Report - Bid 98020)

**Disposition:** Accepted; prepare contract.

**1560** Accept bid of Reed Crane Service for furnishing crane and hoist certification and inspection program services for a total estimated annual amount of \$27,024 with a two year option for a total of three years (Purchasing Report - Bid 98040)

**Disposition:** Accepted; prepare contract.

**1561** Accept bid of J.P. Contractors, Inc. for Eastmoreland golf course parking lot renovations for \$310,283 (Purchasing Report - Bid 98041)

**Disposition:** Accepted; prepare contract.

**OCTOBER 15, 1997**

**1562** Vacate certain portions of SE Tacoma Street, SE 24th and 25th Avenues, under certain conditions (Second Reading Agenda 1526; C-9905)

**Disposition:** Ordinance No. 171670. (Y-5)

**1563** Vacate certain portions of an alleyway in Block 35, Irvington Park Addition, under certain conditions (Second Reading Agenda 1527; C-9936 and C-9938)

**Disposition:** Ordinance No. 171671. (Y-5)

**Mayor Vera Katz**

**1564** Confirm appointment of Roberto Berry and Judy Higgins to the Housing and Community Development Commission (Report)

**Disposition:** Confirmed. (Y-5)

**\*1565** Give final approval for the issuance of Multifamily Housing Revenue Bonds in an aggregate amount not to exceed \$15,000,000 (The Village at Lovejoy Fountain project) (Ordinance)

**Disposition:** Ordinance No. 171672. (Y-5)

**\*1566** Pay claim of Sandra Roberts (Ordinance)

**Disposition:** Ordinance No. 171673. (Y-5)

**\*1567** Pay claim of Qinghua Mai (Ordinance)

**Disposition:** Ordinance No. 171674. (Y-5)

**\*1568** Pay claim of Oregon Arena Corporation (Ordinance)

**Disposition:** Ordinance No. 171675. (Y-5)

**\*1569** Agreement with the Association for Portland Progress for the purpose of providing police services in support of the Clean and Safe program (Ordinance)

**Disposition:** Ordinance No. 171676. (Y-5)

**\*1570** Create one Assistant Police Chief position in the Bureau of Police in accordance with the Personnel Rules adopted by City Council (Ordinance)

**Disposition:** Ordinance No. 171677. (Y-5)

**OCTOBER 15, 1997**

**\*1571** Appoint David S. Butzer to the position of Assistant Police Chief above the midpoint of the pay grade (Ordinance)

**Disposition:** Ordinance No. 171678. (Y-5)

**\*1572** Appoint Lynnae C. Berg to the position of Assistant Police Chief above the midpoint of the pay grade (Ordinance)

**Disposition:** Ordinance No. 171679. (Y-5)

**\*1573** Approve a Memorandum of Agreement which modifies the labor agreement between the City of Portland and the City of Portland Professional Employees Association (COPPEA) (Ordinance)

**Disposition:** Ordinance No. 171680. (Y-5)

**Commissioner Jim Francesconi**

**1574** Accept project for structural repair of the fifteenth floor of the Portland Building by Paverini-Hoffman Companies as substantially complete, release retainage and make payment (Report; Agreement No. 50776)

**Disposition:** Accepted.

**\*1575** Agreement with Oregon Museum of Science and Industry for termination of museum lease and assignment to City of OMSI's rights and responsibilities in parking lot lease and parking lot operating agreement (Ordinance)

**Disposition:** Ordinance No. 171681. (Y-5)

**Commissioner Charlie Hales**

**1576** Set hearing date, 9:30 a.m., Wednesday, November 12, 1997, to vacate a certain portion of NW Hilltop Court east of NW Hilltop Drive (Report; C-9916)

**Disposition:** Adopted.

**1577** Accept contract with Barnum Construction for SW Multnomah Blvd. near SW 61st Avenue slide repair as complete, approve Change Order Nos. 1, 2, 3, make final payment and release retainage (Report; Contract No. 31331)

**Disposition:** Accepted.

OCTOBER 15, 1997

**\*1578** Amend Intergovernmental Agreement with Portland Development Commission for construction and management services for improvements to NW Naito Parkway from Steel Bridge to NW 9th Avenue and provide for payment (Ordinance; amend Agreement No. 50615)

**Disposition:** Ordinance No. 171682. (Y-5)

**\*1579** Contract with Portland General Electric to install street lighting and traffic signal conduit on NW Naito Parkway at \$54,097 and provide for payment (Ordinance)

**Disposition:** Ordinance No. 171683. (Y-5)

**1580** Approve two agreements with Tri-Met to authorize the Bureau of Maintenance to sell Tri-Met tickets, passes and transportation guides to its employees and to establish an experimental annual pass program (Second Reading Agenda 1536)

**Disposition:** Ordinance No. 171684. (Y-5)

**Commissioner Gretchen Miller Kafoury**

**\*1581** Contract with the Association for Portland Progress for crime prevention services in the downtown area for the period April 1, 1997 through June 30, 1998 and provide for payment (Ordinance)

**Disposition:** Ordinance No. 171685. (Y-5)

**\*1582** Approve Intergovernmental Agreement with Multnomah County for funding and responsibilities of the Metropolitan Human Rights Center (Ordinance)

**Disposition:** Ordinance No. 171686. (Y-5)

**\*1583** Contract with JOIN for \$26,340 to provide outreach services for homeless campers and provide for payment (Ordinance)

**Disposition:** Ordinance No. 171687. (Y-5)

**\*1584** Contract with the Central City Concern in the amount of \$754,756 to support the acquisition of the Rose Wood Apartments for persons with HIV/AIDS and provide for payment (Ordinance)

**Disposition:** Ordinance No. 171688. (Y-5)

OCTOBER 15, 1997

Commissioner Erik Sten

1585 Accept completion of Columbia Blvd. Wastewater Treatment Plant storeroom remodel project by Meng-Hannan and make final payment (Report; Contract No. 30307)

**Disposition:** Accepted.

1586 Accept contract with Brundidge Construction Co. for Hayden Island crossing project as substantially complete and authorize final payment (Report; Contract No. 30771)

**Disposition:** Accepted.

\*1587 Grant a temporary, revocable permit to Qwest Communications Corporation and establish terms and conditions (Ordinance)

**Disposition:** Ordinance No. 171689. (Y-5)

\*1588 Contract with GeoEngineers, Inc. for groundwater technical services support for the Columbia South Shore well field at a cost not to exceed \$100,000 (Ordinance)

**Disposition:** Ordinance No. 171690. (Y-5)

\*1589 Contract with GeoEngineers, Inc. for development of a groundwater flow model to estimate sustainable yield for the Columbia South Shore well field at a cost not to exceed \$140,000 (Ordinance)

**Disposition:** Ordinance No. 171691. (Y-5)

\*1590 Authorize a contract and provide for payment for the construction of conduit protection, Ditch Camp slide area, horizontal drains, Phase II (Ordinance)

**Disposition:** Ordinance No. 171692. (Y-5)

\*1591 Authorize amendments to contract with Murray, Smith & Associates, Inc. for \$442,000 to provide additional professional engineering and construction services to accommodate impacts to the water system related to the Oregon Department of Transportation Sunset Corridor projects and provide for payment (Ordinance; amend Contract No. 30441)

**Disposition:** Ordinance No. 171693. (Y-5)

**OCTOBER 15, 1997**

**1592** Amend City Code to implement an administrative review procedure for sewer connection charges (Second Reading Agenda 1549; amend Chapter 17.36)

**Disposition:** Ordinance No. 171694. (Y-5)

**City Auditor Barbara Clark**

**\*1593** Cancel City liens which must be extinguished because of Multnomah County foreclosure or which are otherwise uncollectible (Ordinance)

**Disposition:** Ordinance No. 171695. (Y-5)

**REGULAR AGENDA**

**1557** **TIME CERTAIN: 9:30 AM** - Accept report on the doubling of traffic fines in school zones (Report introduced by Commissioner Hales)

**Discussion:** Commissioner Hales said last year 262 Portland school children were injured by automobiles. The City and the schools have been working on this problem for some time, emphasizing education, engineering solutions and enforcement. That has not been enough, however, and the City is now recommending a doubling of fines in school zones, with enough enforcement planned to put this into action.

Mia Burk, Manager, Community Traffic Safety Program, described the educational outreach program that has been initiated, including three days of intensive training at six to eight schools each year selected on the basis of their special traffic problems. She said these and other programs cost less than \$15,000 a year but leverage a value of over \$300,000. Engineering efforts include 12 safety projects around schools which use a variety of traffic devices, such as islands, speed bumps and curb extensions. Flashing beacons are used in the most vulnerable school zones.

Carol Fenstermocker, community outreach director, Office of Transportation, described outreach efforts to educate the public about the fines.

Captain Pat Nelson, Police Bureau traffic division, said speeding cars was one of the major livability concerns expressed by citizens and one of the Chief's major goals is to emphasize traffic enforcement. Citations this year to date are 101,042 compared to the 73,817 issued last year, a 37 percent increase. The Police are stepping up traditional enforcement and using photo radar in school zones in addition to targeting high risk and neighborhood complaint areas. Educational efforts with school children are also underway.

Commissioner Francesconi said this seemed like a very high number of accidents and asked if there were any explanation.

OCTOBER 15, 1997

Captain Nelson said it seems to be the result of more cars, less enforcement and a lack of attention by motorists.

Commissioner Hales said he hopes clear regulations and expensive fines will result in fewer tickets and fewer accidents.

Commissioner Francesconi said he is glad to see enforcement being equally balanced with education and engineering.

**Disposition:** Accepted.

- 1594** Accept bid of Triad Mechanical for Columbia Boulevard Wastewater Treatment Plant wet weather facility chlorination improvements for \$2,208,906 (Previous Agenda 1550; Bid No. 98034)

**Disposition:** Accepted; prepare contract. (Y-5)

**Mayor Vera Katz**

- 1595** Authorize submission of FY 1997-98 Fall Supplemental Budget to the Multnomah County Tax Supervising and Conservation Commission (Resolution)

**Disposition:** Resolution No. 35647. (Y-5)

**Commissioner Jim Francesconi**

- 1596** Urge the Metro Council to adopt a regional inclusionary housing strategy as part of the Region 2040 Framework and Functional Plans (Resolution)

**Discussion:** Commissioner Francesconi said the City is doing the best it can in the area of affordable housing but generally there is agreement among all regional entities that there is a major crisis here and more effective tools are needed to deal with it. He said while lot sizes have been decreased to increase density, more affordable units have not resulted. He said inclusionary zoning is just one tool for getting additional units and is designed for first-time home buyers not lower income households. He said the homebuilders strongly object to inclusionary zoning and by a 9 to 8 vote IMPACT members agreed to a one-year study. Eight members voted for mandatory regional inclusionary zoning.

Peggy Lynch, Washington County representative on IMPACT, said having a regional policy on affordable housing is very important and inclusionary zoning will help address the need for starter homes. She said the Metro Council will need to be courageous in the face of opposition from the homebuilders who, she noted, chose not to support the real estate transfer tax at the last legislature.

OCTOBER 15, 1997

Tasha Harmon, Coalition for a Livable Future, said inclusionary zoning is a crucial piece in dealing with a huge problem that will take a variety of clear and mandatory tools to address. She said the Coalition is proposing that half of the moderate income homes be offered first to non-profits. She noted that developer Homer Williams has stated that it is unfair to place inclusionary zoning on a single developer and jurisdictions will argue likewise that it is unfair if this zoning is not applied regionwide.

Kelly Ross, Homebuilders Association, said housing prices in this area dramatically price people out of the market and it is unfair to look at the small niche homebuilder to solve this problem. Inclusionary zoning raises serious constitutional issues and could be considered a "taking." He said inclusionary zoning worked in Montgomery County, Virginia because it had very strong incentives including density bonuses and various types of housing. He said builders have very high infrastructure costs and he is not sure they will be able to pencil out a profit if this zoning is adopted. He said this is a polarizing issue, noting the split between the Metro Technical Committee and IMPACT, and will only create a minimum of houses. Other efforts, they believe, would bring effective results, such as quicker approvals for entry-level homes.

Mayor Katz asked what the Homebuilders Association's position on the Urban Growth Boundary expansion was.

Mr. Ross said they support the 10,000 acre expansion but never said they believe that will bring down prices, although it is hoped this will help stabilize them. He said the region is running out of large parcels to develop and with 23 homes in the average sub-division, it is hard to get economies of scale.

Mayor Katz asked what other incentives might be used.

Mr. Ross said an expedited approval process to make this housing happen faster would help as would placing more burden on those who oppose new development.

Ms. Harmon said in most cases they have found that this will work, with some incentives, such as deferred service development charges for planned unit developments until sale of the homes, density bonuses and regulatory incentives.

Commissioner Sten said monetary incentives are important and inclusionary zoning is only part of the package. This Council puts more money into housing but is an island in the region. He said market rate housing is subsidized through the federal tax deduction. He believes the real estate transfer tax is the best way to go but something must be done either Statewide or regionally, not just in Portland.



OCTOBER 15, 1997

Mayor Katz asked if a regional real estate transfer tax was being considered.

Ms. Lynch said it is being studied but there is no consensus.

Mayor Katz said if Portland is the only jurisdiction doing affordable housing then it should get money from regionally-pooled sources.

Commissioner Francesconi said affordable housing has to be tackled on a regional level. He said more requirements are needed on private industry and more focus should be placed on other governments doing more. A pot of money to achieve housing goals is also needed. He said the City is an island in the region and cannot have poor folks living here only. Inclusionary zoning cannot be done only in the City but must be regional.

Commissioner Kafoury said she is cynical about the way the goal posts get moved on this issue. She asked what Metro is for but to set regional policy. There is a crisis in affordable housing right now and this is the time to do this.

Commissioner Sten said money needs to be on the table and innovative ways of building need to be found as well. He said Metro has to step up and do something stronger with regards to affordable housing.

Mayor Katz said if affordable housing is not done on a regional basis by those demanding expansion of the Urban Growth Boundary, then the City should consider formation of another regional government. She added that if there are more higher paying jobs the need for affordable housing will decrease.

**Disposition:** Resolution No. 35648. (Y-5)

**\*1597** Contract with Silco Construction Co. for \$321,300 to perform gutter and piping replacement and shallowing at Columbia swimming pool (Ordinance)

**Disposition:** Ordinance No. 171696. (Y-5)

**\*1598** Grant revocable permit, with conditions, to the Portland Chapter of the American Rhododendron Society to construct a gatehouse and related improvements at the Crystal Springs Rhododendron Garden (Ordinance)

**Discussion:** Ted Van Zeen, a volunteer at the Rhododendron Garden, said this is the long-awaited answer to providing a decent entrance to the gardens for the handicapped.

**Disposition:** Ordinance No. 171697. (Y-5)

OCTOBER 15, 1997

**Commissioner Charlie Hales**

**1599** Consider vacating a portion of N Tyndall Avenue, N Trenton Street and N Delaware Avenue at the request of Familian Northwest (Hearing; Report; C-9939)

**Disposition:** Approved; City Engineer Prepare Ordinance.

**\*1600** Amend City Code to modify Transportation System Development Charges to make minor technical adjustments (Ordinance; amend Chapter 17.15)

**Discussion:** Paul Shirey, Office of Transportation, said this includes a number of housekeeping measures that make minor adjustments to the Code and also to adjust the rates. One change will confer upon the Office of Transportation Director the authority to appoint a coordinator to oversee administration of the Transportation System Development Charges. They also wish to adjust the rates for day care centers as otherwise it will be very difficult to develop them.

**Disposition:** Ordinance No. 171698. (Y-5)

At 11:00 a.m., Council recessed.

OCTOBER 15, 1997

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 15TH DAY OF OCTOBER, 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; Kathryn Beaumont, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

**1601** **TIME CERTAIN: 2:30 PM** - Appeal of Marshall Grimberg Group, applicant, against Hearings Officer's decision to deny a planned unit development and subdivision with adjustments at NW Miller Road and Bartholomew (Hearing; 97-00550 SU PU AD)

**Discussion:** Kathryn Beaumont, Senior Deputy City Attorney outlined the rules of procedure to be followed.

Bob Haley, Planning Bureau, said this is an appeal of a proposed 98 unit housing development on Tract F of Forest Heights, a nine-acre site across from the Forest Heights Village. He showed slides of the site to indicate the location in relation to other portions of the development. The proposal was originally reviewed in a 1996 application (96-00980) as an amendment to the Forest Heights Planned Unit Development (PUD) requesting a three-year extension to the eight-year limit all PUDs are subject to. The Planning Bureau approved that request but that approval was overturned by the Hearings Officer on appeal, who denied the extension. As a result the original application was withdrawn and resubmitted and many discussions were held with staff and the City Attorney's office to see if a solution could be found for getting Forest Heights back on track. Staff asked the applicants to submit a new application which would then be subject to all Code regulations in effect at the time of submittal. Prior to this decision, the medium-density tracts in Forest Heights were being built under final development plans of the original PUD. At the end of the eight years, the City was no longer able to process them so a new PUD plan was needed.

Mr. Haley said the main issue here is whether the density imposed in previous conditions of approval continues to apply. In the Hearings Officer's denial of this project, she cited the City's current Code, Chapter 33.700.080 (a), which states that land use applications will be processed based on the regulations in effect at the time a complete application is submitted to the City. Since the eight-year phasing limitation of the original Forest Heights has expired, the applicants are required to submit a new preliminary development plan to be reviewed subject to current regulations. The current regulations include the

OCTOBER 15, 1997

R10 base zone, which allows about 30 units on Tract F instead of the minimum 98 units as required by the original PUD. While the Hearings Officer believes the past conditions of approval continue to remain in effect, she does not believe the City Code grants the authority to allow past conditions of approval to supersede or cancel out the requirement for compliance with the current Code. Since the Hearings Officer determined that the proposed density exceeds the current R10, the approval criteria regarding current maximum density cannot be met. For that reason, the Hearings Officer determined that the related approval criteria for Open Space, lot sizes and coverage and front yard paving, could also not be met and denied the proposal. Unless the City can get past the conflict between today's current Code and the old PUD regulations, Council faces the same dilemma the Hearings Officer did.

Mr. Haley said the appellants believe the Hearings Officer misinterpreted the relationship between the base zone maximum density and the requirement of past approvals. The appellants have identified the Code provisions where the Hearings Officer found specific approval criteria could not be met based on her initial determination that the density was too high.

Mr. Haley said staff originally recommended approval as it believed there was a clear argument that past conditions, particularly concerning the density, remained in effect. Staff felt that the prevailing ordinance and past conditions were not just vested but actually required the applicant to build at this level. There are now two options for Council: 1) uphold the Hearings Officer's decision and deny the project; or 2) overturn that decision and approve the project or add conditions. There are no simple answers to the dilemma raised by this case but staff has some suggestions. If Council upholds the Hearings Officer's denial, alternatives identified by staff include encouraging the applicant to submit a Comprehensive Plan Map Amendment and zone change in order to get rid of the conflict between the existing R10 and the number of units required in past approvals. An R2, low density multi-family zone, would remove the conflict the Hearings Officer had difficulty in overcoming. Another alternative would be for Council, if it believes the density is too high, to have the applicants submit a major amendment to the PUD to lower the density to match today's zoning. A combination of the two, the Hearings Officer's preferred alternative, is based on her opinion that eight years is a reasonable time for a project to build out and, if that does not happen, the development needs to be reviewed in relation to today's goals and policies. This third alternative requires a Comprehensive Plan amendment and zone change and a major amendment to the PUD to determine the appropriate amount of density for each tract. Realistically, some density would be lost. For instance, under the old PUD, 161 units are required on Tract W and it is now clear to everyone that this area is much too steep to support that many units and has other potential problems. There is a condition in the old Forest Heights PUD which allows units to be taken from Tract W and placed on other tracts but not much thought has been given as to whether those other tracts can support them. The

OCTOBER 15, 1997

Hearings Officer believes her alternative clearly meets the intent of the eight-year requirement and gives one a chance to take a fresh look at the project.

Mr. Haley said the fourth alternative is a legislative fix that amends the Code to extend the eight-year phasing limitation. This change is being considered in the Title 34 rewrite. It would have to be made retroactive to apply to this case. A final option would be to find that the prior conditions of approval represent regulations in effect at the time this application came in and overturn the Hearings Officer's decision.

Ms. Beaumont reviewed her memo to staff regarding the density on Tract F. She said one issue is what the impact on Tract F and subsequent tracts is now that the Hearings Officer has ruled that the eight-year time limit cannot be extended. Ms. Beaumont said she concluded that prior conditions imposed either as part of the original PUD approval or as part of approvals for subsequent phases, continue to apply to Tract F and that the effect of the Hearings Officer's decision was not to terminate those conditions. The applicant would have to come back to the City with fresh PUD plans for Tract F. Most significantly, she also believes that, because the Council specifically approved the 98-unit density for Tract F by ordinance, applicant could submit an application for development of that parcel at that density, notwithstanding the R10 zone regulations. She believes they did not need to apply for Comprehensive Plan amendment and zone change in order to do that. The Hearings Officer concluded that prior conditions of approval, even if established by ordinance, were not the functional equivalent of regulations in effect at the time. She also noted that under the ordinance that established the 98 unit density, the applicant could bring in final development plans for each of these unit developments. But since what they propose today is a preliminary development plan, the Hearings Officer found the prior condition did not have the status of a regulation and conflicted with the R10 zoning regulations. An alternative argument would be that, in order to ensure that the maximum density originally envisioned by Council for this site was fulfilled, one would treat any ordinances the Council had adopted as regulations in effect. Council would thus be saying that regulations are not just what is codified in the Zoning Code but also includes any ordinances Council has adopted that apply to the parcel.

Mayor Katz said the issue for her is the Hearings Officer's denial of the extension of the eight-year timeline.

Lemoyne Eiler, 2336 SW Osage, #603, 97205, project designer, said the application for Mill Creek Town Homes meets all applicable Code requirements and with the requested adjustments, also meets all the conditions of approval and the intent of the Forest Heights PUD. Density is the major issue today, however.

OCTOBER 15, 1997

Steven Hultberg, attorney for the applicants, 1211 SW 5th Ave., #1500, 97204, said the applicant is not seeking approval based on conditions of approval imposed with the original Forest Heights PUD or thereafter. The issue is the density imposed by the 1975 zone change ordinance which changed the zoning to R10, with conditions. The Hearings Officer erred in concluding that there is a conflict between the conditions of approval and the current Code. That is not the issue and the expiration of the eight- year timeline is a complete red herring and irrelevant to this decision. What is relevant is whether this proposal complies with the 1975 zone change ordinance specifying the density. He said every decision construing the density issue at Forest Heights has held that the 1975 zone change ordinance controls the density and that density controls development. The ordinance itself provides that it is the sole authority on density at Forest Heights. It includes two simple requirements: 1) develop as a PUD; and 2) develop at the maximum density allowed in 1975. The present Code also mandates that conditions of approval for zone changes continue to apply even if the zone has been changed. Such conditions run with the land and are in effect until repealed by Council. The Code does not repeal or amend zone change ordinances. He noted that every Council decision for the past 15 years has stated that a specific density is mandated by the zone change ordinance, with the ordinance as the overall guide controlling density at Forest Heights. Everything that happened at Forest Heights in the last eight years was judged upon compliance with the zone change ordinance. At least five decisions construe the density issue at Forest Heights in this manner. In an 1982 decision, for example, the Council applied two formulas, one based solely on the 1975 ordinance and one based on the then current zoning, illustrating that even then the density controlled.

Mr. Hultberg said during the approval process for Phase 3, the Forest Park Neighborhood Association (FPNA) and Parks Bureau voiced concerns that density at Forest Heights would not reach what was mandated by the ordinance. The approvals reflect these concerns and unequivocally state that the standard to be judged by is compliance with the 1975 zone change ordinance. Between 1993 and 1995 during approvals for Phases 4, 5 and 7, the Planning Bureau, Hearings Officer and Council again faced the density issue and all three approvals clearly state that the ordinance establishes a maximum and minimum density for Forest Heights that supersedes the density requirements of the Code. At the same time those phases were being approved, Council amended the PUD to adjust the density for the overall PUD. Just two years ago Council answered the same questions before it today by finding that the required density is substantially equivalent to 2,100 units, the standard imposed by the ordinance. The only conclusion Council can reach today is that the zone change imposed over 20 years ago controls density.

Mr. Hultberg said that through the history of Forest Heights the FPNA has argued consistently that it must be developed in accordance with the zone change requirements. Now it has changed its position, arguing that the

OCTOBER 15, 1997

ordinance does not control. The Hearings Officer, despite numerous decisions to the contrary, found that the density standards in Code Chapter 269 somehow control the more specific requirements of the zone change ordinance. She found that the conditions of approval imposed were not regulations.

Commissioner Hales asked if any design questions are at issue between the developer, Arnold Rochlin and the neighborhood association.

Mr. Eiler said Mr. Rochlin brought up several during the hearing but his client believes they can all be solved. Staff concurred. One of the biggest issues raised was open space and how it was measured on the parcel. Because the parcel is part of a larger phase in a PUD, they believe that common open space can be counted within that phase as applying to Tract F. The Hearings Officer disagreed and, in response, they have modified the plat to establish an equal amount of common and private open space. The issue was not a deficiency in open space but the balance between common and private open space. They argued that the common open space in Phase 4 satisfied that requirement but the Hearings Officer considered Tract F as a completely separate parcel. However, with the modification, the requirement has been met. Other issues relating to lot size, building coverage, front yard setbacks and so forth have been addressed in a written memo to Council but essentially all those issues go away if the density issue is dealt with. Mr. Rochlin argued that the development standards put in place for Phase 4 for low density single family applied to Tract F, which is medium density. If that were the case only 81 units could be developed on the site. The Hearings Officer did not agree. In the application for Phases 4, 5 and 7, 98 town houses were shown on the site to meet the requirements. Everyone understood that when the PUD came in for this medium-density parcel there would also be development standards created for this specific parcel. Lots are shown with a minimum size of 1600 square feet and a maximum coverage of 60 percent, similar to an R2.5 zone. In terms of front-yard paving, the Code requires that a certain percent of the front yard be in paving and they have asked for an adjustment to allow two car garages for the town homes. Mr. Rochlin argued that would add too much paving in the front yard and reduce the amount of on-street parking by too much. If all the two-car garages are eliminated, however, only five more on-street parking spaces can be achieved while 176 parking spaces are eliminated, both in garage and driveways. The applicants contend that the proposed front-yard paving is the minimum that can be used to get the maximum amount of parking on the site. They will be 18 feet from the curb edge or edge of the sidewalk, whichever is closer to the front of the garage, so that an 18-foot parking space can be provided between those areas and the garage face. Regarding the setbacks, Mr. Rochlin argued that the front-yard setbacks should be 18 feet from the right-of-way to the garage, not from curb edge or sidewalk to the garage. That seems to counter the argument that there is too much paving in front. He was arguing for setbacks and lot sizes similar to an R10 zone, which do not apply in this case. Since the Hearings Officer did not know what the density was, she could



OCTOBER 15, 1997

not make a determination about this issue.

Commissioner Hales asked if there were any design issues with other City bureaus and why are private streets being proposed.

Mr. Eiler said there were no issues from other bureaus, including the Bureau of Transportation. Within Forest Heights, all the medium density parcels have been developed with private streets, using a standard street size that is narrower to accommodate the steeper slopes in the area. That allows them to shrink the amount of cut and fill and better handle topography issues.

Mayor Katz said she needs more grounding on the difference between this PUD and a regular subdivision. She said this application looks more like a subdivision to her.

Mr. Haley said most PUDs are combined with subdivisions. A PUD has no minimum lot size requirement and there are no setback requirements except along the perimeter. This gives the developer the flexibility to create smaller lots in order to achieve the common open space needed and protect the natural resources. The overall guiding principle for a PUD is that the density cannot exceed the base zone density.

Commissioner Sten said if the 1975 R10 zoning prevails, then clearly 98 units cannot be built here. However, the applicant is saying it is R10 for the entire Forest Heights development.

Mr. Eiler said the ordinance requires a certain number of units over the entire property. The only way to achieve that is to put that density on these parcels. There were amendments which specified exactly 98 units for this Tract as the only way to achieve compliance with the overall density requirement.

Mr. Hultberg said R10 was used as the base zone to calculate the total number of units within the project. The PUD placed them in different configurations but still used the R10 overall.

Commissioner Sten said the scheme by which the applicants are trying to achieve R10 density was approved in 1989 but that ran out in 1997.

Mr. Eiler said this is not based at all on the approvals from the original PUD. It is based on the 1975 zone change which did not indicate where the units might be located.

Commissioner Sten asked how that would then tell one that this particular parcel had to have 98 units.

Mr. Hultberg said subsequent approvals said that. The conditions obtained in



**OCTOBER 15, 1997**

1998 and 1995 specifically pinpointed that this site had to be developed at a minimum of 98 units.

Mr. Eiler said the developer was required in 1995 to record restrictive covenants on all the medium density parcels which required, until the year 2012, the developer to develop as envisioned here.

Commissioner Hales said he does not understand then why they are arguing that the 1975 ordinance controls.

Mr. Eiler said because that set the ground rules and standard.

Commissioner Francesconi asked how one gets around the fact that the 1980 Code required phased PUDs to get final approval within eight years.

Mr. Hultberg said the fact that time has passed is irrelevant and does not change the original standard. Applicant is not trying to get approval based on that preliminary development plan. They are submitting a new application for a new PUD which satisfies all the conditions of the preliminary development plan but is based on the requirements of the zone change. There could have been no development on the parcel from 1975 until the present and the zone change would still control.

Ms. Beaumont agreed. She said the Hearings Officer concluded that the PUD plan expired after eight years and that any development for undeveloped tracts after that period would need to come in as a new PUD. That is what the applicants have submitted for approval. She said the question may be whether anything in the old PUD continues on after the 8-year time limit. Ms. Beaumont said both she and the Hearings Officer agree that any prior conditions of approval of the original PUD and any subsequent phases which were recorded, run with the land and continue to apply.

Mr. Hultberg said they satisfy every condition of approval.

Commissioner Francesconi asked about the Code regulations that state that applications for building permits or land-use reviews will be processed based on the regulations in effect at the time the complete application is submitted to the City.

Mr. Hultberg said the zone change ordinance is such a regulation and is enforceable.

Ms. Beaumont said that is the interpretational question before Council. The key question is what does the phrase "regulations in effect" in the Code mean. Council has the latitude to interpret that. The Hearings Officer did not directly consider Mr. Hultberg's question as to whether the old zone change ordinance is

OCTOBER 15, 1997

a regulation that is binding on this development. Ultimately what she said is that "regulations in effect" mean those things that are codified in the Code. The question before Council is does that phrase mean anything beyond that, including the ordinances Council has adopted that are binding on this property.

Mr. Hultberg said the City in all its past decisions has treated the ordinance as the regulation in control.

Citizens speaking in support of the applicants' appeal included:

Stuart Cohen, 8506 NW Mendenhall St., 97229, president of the  
Forest Heights Homeowners Association Advisory Board

Bob Culver, 8432 NW Hawkins, 97229

George Carter, 9320 SW Barbur Boulevard, #165, 97219, Forest  
Heights Association Manager

Randy Arthur, 1405 NW Slocum Way, 97229

Dwight Schwab, 475 10th Street, Lake Oswego, 97034, co-owner of  
Tract W, with an option on the commercial site

Supporters noted the homeowners association's responsibility to maintain Forest Height's 200 acres of open space, six miles of trails and operate a private bus system that was required as a condition of development. They said lowering the density on this and future tracts will result in fewer home owners to pay those fixed costs and reduce the number of affordable medium-density housing units. They questioned why opponents who had previously argued for higher density now argue for lower density. They said arbitrary administration of regulations will add uncertainty to the future development process and could weaken the master planning that has been done, resulting in piecemeal development of the remaining parcels. They said one reason the eight-year time line ran out was because of the many challenges by FHNA, which they understand will continue. Mr. Carter claimed that FHNA's opposition of today's appeal amounts to harassment and is based on its desire to control development of the commercial tract and gain total approval rights for all commercial uses. FPNA is also requesting an amount of commercial space far exceeding any economic demand at this location. Supporters asked Council to extend the time period for submittal of final development plans and said Council's decision today will send a message on how it wants this project to be built out.

Mayor Katz asked if the cost to existing owners was raised before the Hearings Officer.

Staff said they did not believe so.

Mike Crewet, planning consultant with Harper Regalis, 5200 SW Macadam, #580, 97201, said he represents three of the medium-density tracts, Tract I, M

OCTOBER 15, 1997

and F. He said the eight-year time limit for review of final development plans for the PUD probably should be extended because one never knows when an economic downturn may slow build-out. There has also been confusion about the difference between a preliminary and a final PUD plan, which identifies what will happen in the "blobs" specified in the preliminary plan. A final PUD plan is not the same as submission of final construction documents.

Commissioner Hales asked Mr. Crewet and Mr. Schwab if they expected to be held to the conditions and requirements of the original PUD in terms of the design and density of the phases they are associated with.

Both said yes.

Arnold Rochlin, representing the Forest Park Neighborhood Association, PO Box 83645, 97283, said the FPNA is not opposed to the density but believes the law should be followed. The applicant has tried to characterize the 1975 zoning ordinance change as sacrosanct. However, a formula was established in 1982 which determined there should be 2103 units. That has been amended twice, first to up the density to 2197 and later to lower it to 1850. He argued that this matter deals with a land-use decision, not a specific ordinance, and the Hearings Officer said whether a land use decision is made by an ordinance or a decision by the Hearings Officer, when it becomes final and is recorded, it is a land-use decision and treated as such. The problem here is that there is a condition that specifically calls for 98 units on the final plat for this Tract and there is also a current regulation which says the R10 zoning, which allows 30 units, shall govern. One of these has to be changed. It is a good idea to finish the project with the density intended provided all the infrastructure and services intended to mitigate the impacts are preserved. In its last land-use decision involving Forest Heights, Council imposed a condition which established that there could be residential dwellings only on the second story of the commercial site. Now the applicant's supporters want to do away almost entirely with the commercial area so that all the shopping from the 2,000 residents of Forest Heights will drift onto nearby narrow roads that are already having problems. To keep the traffic down, four acres were designated for commercial. He acknowledged that FPNA offered to settle and not resist the density if they would not modify the amount of commercial area. He said the conditions they proposed were not as absurd as Mr. Carter stated. The current criteria apply and the most basic one for PUD plan approval is that the development standards in 33.269.100 and 33.270 must be met. Because the Hearings Officer found the common open space was inadequate and height and density were incorrect, she could not make conclusions regarding requests for more building coverage, extra paving in the front yards, etc. In the memorandum issued yesterday, the applicant argues that if Council decides in their favor on density, the other issues evaporate. This is incorrect as the Hearings Officer made no findings on those issues. The Hearings Officer also recognizes that the prior conditions have full force until modified and FHNA

OCTOBER 15, 1997

agrees with that. However, they simply cannot take precedence over the current regulations.

Mr. Rochlin said the developers' contention that they had only eight years to complete the PUD plan is wrong as, in actuality, they had 15 years. He also took issue with the contention that the FHNA's appeals had held up anything. Almost every amendment applicant has asked for in the past has been granted and in this case it is their smugness that has gotten them in this position. He recalled that the neighborhood had argued strongly in the past against deferral of the medium-density housing to later phases as it feared that eventually the density would move off the map. Eventually, over 200 units of it did. The Code states that a maximum of eight years is allowed and there is no room for an extension. The Planning Director granted 11 years but the Hearings Officer denied that.

Regarding design, Mr. Rochlin said the Code calls for rear-yard setbacks to be measured from the rear lot line. However, the wording in the application provides for rear-yard setbacks to be measured from the periphery boundary of the PUD. The entire periphery of the PUD is surrounded by common open area which is greater than 15 feet. That means there will be no setbacks at all. The Code requires at least a 10 foot rear setback and condition FF required 15 feet. A zero setback cannot be allowed.

Commissioner Hales asked if there are other design issues that remain unaddressed.

Mr. Rochlin said everyone agrees that all the prior conditions that have not been amended still apply. One of the main conditions (FF) states the standards for all lots in Phase 4 and one of those standards is that the minimum lot size be 2,500 square feet. Seventy-eight of the lots violate that standard. Thirteen lots also violate the standard for a 25-foot minimum lot width and maximum building coverage was set at 50 percent. Now the applicant is asking for 60 percent. No application for amending these conditions was made so procedurally it cannot be done.

Regarding the pavement in front, Mr. Rochlin said the applicant requests allowing front yard paving up to 90 percent to provide for the double garages. That is excessive, particularly with 18-foot driveways going directly to the street and 30-foot wide lots. He said what is proposed is ill-conceived, leaving almost no on-street parking. He also objected to the applicants' failure to propose planter strips as required in Condition D of a prior decision. More on-street parking, rather than more garages, is what is needed.

Commissioner Sten said no matter what interpretation Council makes, the applicants would be allowed to build something there. If he accepts the Hearings Officer's logic on why 98 units cannot be approved, then he would

OCTOBER 15, 1997

have to approve 30. So where is this going?

Mr. Rochlin said FHNA would like to see the project finished as planned. The Comprehensive Plan can be amended to change the zoning on this site to allow the 98 units and FHNA would support it as long as the applicants do not seek to amend the terms that apply to the commercial site.

Commissioner Sten said if the applicants do not prevail and the 98 units do not go through, what legal argument can FHNA use to get the commercial provisions in the earlier proposals.

Mr. Rochlin said FHNA has the right to decide simply to oppose or support something. He said it was very important to them that residents not have to go off-site to get orange juice. He would like to see a package settlement on this.

Commissioner Sten said if all bets are off on the 98 units, why does that not apply on the commercial as well.

Mr. Rochlin said because it does not require a land division, replatting or a new PUD. Neither the 98 or the 30 units are legal now though both are remediable. He said FHNA is not arguing against density, only against an illegal application.

Commissioner Francesconi said he is unclear how Mr. Rochlin wants to resolve this.

Mr. Rochlin said he would like the applicants to agree that the commercial area should have suitable neighborhood commercial. What is "suitable" is difficult to arrive at but could probably be agreed to. For instance, they did not want off-site liquor sales after 8:00 p.m.

Mayor Katz said she is not sure this is a proper issue to discuss at this point.

Commissioner Francesconi asked Mr. Rochlin if he would agree to a mediator regarding this.

Mr. Rochlin said he would agree to mediation but not arbitration.

In rebuttal, Mr. Hultberg said the issue before Council is simply density. Everything else about the eight years expiring and prior conditions of approval should not play a part in Council's decision. The decision should be based solely on whether the 1975 zone change density approval remains. Mr. Hultberg said every prior decision Council has made determined that 1975 zone change controls and Council must follow its previous decisions. The Hearings Officer made an error in law which Council has a chance to correct today. He said the applicant did meet with representatives of the neighborhood

OCTOBER 15, 1997

association and the conditions proposed (regarding the commercial uses) were as egregious as described today.

Dick Catlin, attorney for the applicants, agreed with the Mayor that this was not an issue to be considered today.

Mr. Hultberg said the 1975 zone change requires a certain density in Forest Heights, equivalent to 2103 units. This application is the only way to satisfy that requirement.

Mr. Catlin said they have attempted in their written submissions to analyze the law and review all the decisions Council has made over an extended period of time. He said they have stated why the Hearings Officer's decision was wrong and what the law is in this case. It should not be confused with what conditions or eight-year statutes apply.

Commissioner Sten asked what is the point then of getting PUD approval which specifically describes how this is built-out if, as soon as that expires, all that matters is the zoning.

Mr. Catlin said they have agreed to comply with all the conditions, as difficult as that may be. But the only issue now before Council is whether the density is that which is required by the ordinance. Is that ordinance part of the regulations in effect when this application was made? They believe the Hearings Officer made a mistake that should be corrected.

Commissioner Sten asked if the ordinance anticipates the breaking into parcels and designation of open space and some R2.5. Or does it simply zone the whole area R10?

Ms. Beaumont said it changes the zoning from R20 to R10 on the entire site and says the owner should be allowed to construct a number of housing units using current PUD practices to achieve the R10 density calculated under the 1975 zoning regulations.

Commissioner Hales said it is frustrating to spend so much time on deciding what to rely on to calculate the density and not to spend more time on design issues. He asked if street trees were planned.

Mr. Catlin said they are within the right-of-way. On one side they are behind the sidewalk and on the other side, behind the curb. No planter strips are planned because of the topography, creating a wider area to be graded and cut-and-fill problems. It also pushes the houses to steeper portions of the site.

Commissioner Hales said the Code needs to be changed as street trees are being lost in order to provide parking. He said he would consider a modification of

OCTOBER 15, 1997

the conditions to require street trees to be planted right next to the street. His second concern is having nearly 85 percent of the ground level of the units in garage doors, especially when Council is considering regulations to hold that to under 50 percent citywide.

Mr. Hultberg said they felt strongly that two-car garages were important and outlined the different elements they had used to address the impacts on the front.

Mayor Katz asked if the modified design was considered new evidence.

Mr. Haley said staff believes the modified site plan before Council is new evidence.

Ms. Beaumont said she would defer to staff on that point and suggested that Council rule on Mr. Rochlin's objection.

Mr. Haley said one of the main reasons this amendment is offered is because a determination seems to have been made that if you get over the density hurdle on Tract F alone, then everything else must comply in its own little universe, including meeting the open space requirements. Both the old and the revised plans exceed the general open space requirements for 40 percent open space in a PUD. Half of that open space must be in common ownership and while the total open space has not changed between this plan and the one staff looked at, all that was done was to make the lots smaller so as to get more common open space.

Ms. Beaumont said if Council wants to consider this plan it needs to continue the hearing or keep the record open. Without waiver of the 120-day rule, Council cannot do that.

Mayor Katz asked if the current plan meets the open space requirements.

Mr. Haley said not as a stand-alone Tract F, where staff found they were 1.25 acres short. Staff found that Phase 4 provided 14 common open-space acres more than what is required, even by today's standards, and that Tract F could benefit from that excess, even though the tract itself was short.

Commissioner Hales asked about Mr. Rochlin's allegation that the developer had dropped below the required lot widths and other specifications in condition FF. Is that because of the recalculation of the open space?

Mr. Catlin said no. Mr. Rochlin said condition FF set development standards for all the single-family lots. The applicants contend that those standards were for the low-density single-family lots and, if they apply these to medium-density areas where the intention is to create town homes, then there are five projects

OCTOBER 15, 1997

in Forest Heights that are not in compliance even though they were approved by Council and staff.

Mayor Katz asked Council if it agreed the modified proposal is new evidence and must be set aside. Council agreed.

Commissioner Sten said the issue for him is not the design details raised by Commissioner Hales but which rules apply here.

Commissioner Hales said this is a unique PUD because of its size and he is leaning towards overruling the Hearings Officer's decision about the applicability of the conditions of approval because he believes a PUD should have some certainty. He said a bank of open space, for instance, is specified for the entire site and calculated against the movement of density around it. Once that calculation is broken and the focus is placed on an individual project, the whole point of a PUD is lost. There ought to be a way to get back to the bargain made between neighborhood association, the property owner and the City on what happens on all portions of the site. All the phases should comply with the original understanding of the PUD.

Commissioner Francesconi said he would like to be able to approve this project but does not think the City can do it legally.

Commissioners Kafoury and Sten and Mayor Katz agreed. The Mayor asked what the fastest way to solve this dilemma is so that the project can move ahead at the density originally approved.

Mr. Haley said Council needs to find some way of reactivating the PUD because otherwise it will have to deal with each tract standing alone. Amending the Code to extend the eight years and make it retroactive is problematic. The question is whether that would be better than doing a Comprehensive Plan amendment, zone change, major amendment to the PUD and a new preliminary PUD for all the individual tracts. Those are the two options.

Ms. Beaumont said Council could adopt a Code text change that will allow a phased PUD applicant to apply for an extension of time in order to capture Forest Heights or any other PUD. It would have to be made retroactive. The other alternative is for the Council or the Planning Commission to initiate a zone change and Comprehensive Plan amendment for all the remaining parcels in Forest Heights.

Mayor Katz said the later is probably the best choice because of the retroactivity issue.

Ms. Beaumont said a resolution from Council could direct the Planning Bureau or Commission to initiate a Comprehensive Plan amendment and zone change.



OCTOBER 15, 1997

Council should decide whether to proceed legislatively or quasi-judicially.

Commissioner Sten said there is no good choice here. Technically the Hearings Officer is right but from a common-sense standpoint the 98 unit density is better. The time ran out and there is no mention of this parcel in the zoning ordinance which prevails.

Commissioner Hales said he likes the option of a resolution directing initiation of a Comprehensive Plan amendment and zone change. He asked the applicants and appellant what they thought.

Commissioner Sten noted that would be the process for all pieces of the subdivision that are left.

Mr. Rochlin said the proper legal way would be through the amendment rather than a retroactive extension. He asked that the fate of the commercial site also be included as part of the amendment.

Mr. Hultberg disagreed with Mr. Rochlin about retroactivity, which they believe is an acceptable fix. They can accept the Comprehensive Plan amendment if the City initiates it and sets some strict time lines about doing it. They are not prepared for a "War of the Roses" over the amendment, however, or to spend hundreds of thousands of dollars over the next few years without building anything. He said they believe they are correct in their interpretation of the Hearings Officer's decision and are prepared to take it to LUBA.

Mr. Eiler said if this is opened up for rezoning each parcel, including the commercial site, it should be reevaluated as to where the density should go. Their study shows that in no way can the number of people in the surrounding area support 4-1/2 acres of commercial development and they believe it is very logical to have mixed-use here, with both housing and commercial.

Commissioner Sten said what Council is offering to do is to legislatively recreate the original deal, not make all these changes.

Mr. Catlin said the original deal has come with the necessity of making some adjustments along the way because that is how each phase has been developed over the last decade.

Commissioner Francesconi suggested waiting to approve going forward with the resolution and just voting on the appeal today.

Commissioner Hales said Council is still going to have to try to resolve this so that each project does not go through this kind of hearing.

Ms. Beaumont said staff has submitted some additional language to add to the

OCTOBER 15, 1997

Hearings Officer's decision to cover the time before a Comprehensive Plan amendment and zone change was approved.

Commissioner Kafoury moved to adopt that additional language. Commissioner Francesconi seconded. Hearing no objections, Mayor Katz so ordered.

Mayor Katz said she would like a motion on the appeal and an opinion from the City Attorney as to the legality of extending the eight-year time limit retroactivity.

Ms. Beaumont noted that this cannot be continued due to the 120-day time factor.

Commissioner Hales moved to uphold the Hearings Officer's decision as amended. He said he does not believe this is approvable. Commissioner Kafoury seconded.

Commissioner Hales said he will ask the Planning Bureau to file a resolution soon to initiate a legislative Comprehensive Plan amendment and zone change that would enable the City, with conditions, to create conditions of approval and certainty for the PUD's remaining phases. While the original PUD was not perfect, he does not think it appropriate to start renegotiating the character of later phases after a package has been agreed upon.

Commissioner Francesconi said allowing the neighborhood association and developer to argue for some minor modifications makes some sense, given the passage of time.

Mayor Katz said part of the reason for increasing the density was to create a community where one would not have to get in a car to buy orange juice. She said she hopes the parties can get to some agreement on the commercial.

**Disposition:** Appeal denied; uphold Hearings Officer's decision as amended. (Y-5)

At 4:55 p.m., Council recessed.

OCTOBER 16, 1997

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 16TH DAY OF OCTOBER, 1997 AT 2:00 P.M.

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

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

**1602** **TIME CERTAIN: 2:00 PM** - Adopt and implement the Hillsdale Town Center Plan (Ordinance introduced by Commissioner Hales; amend Code Title 33)

**Discussion:** Ellen Ryker, Planning Bureau staff, described the plan and noted that it may in turn later become part of a larger Hillsdale Town Center that is being considered as part of the Southwest Community Plan. She said Hillsdale is the commercial area along both sides of Capitol Highway between Terwilliger and Bertha. It has five bus lines, two schools, a library, post office and swimming pool. She explained that this is a citizen-generated policy and zoning plan which grew out of the formation in 1993 of the Hillsdale Vision Group. A key element has been the functioning of Capitol Highway. She said in 1995 the Hillsdale Steering Committee was formed to develop a plan and she stressed the high level of consensus that has been reached on each aspect, particularly the recommended changes to the zoning maps as shown in Exhibit B. The Portland Planning Commission held three reviews and approved the plan in August, 1997, after considering a wide range of issues. These included the interaction of stormwater environmental overlays and possible density increases within town centers, the ramifications of having different commercial zones in Hillsdale and their impact on Capitol Highway and on parking, and the importance of improvements to Capitol Highway. They also considered how this Plan would work in connection with the larger Southwest Community Plan. Ms. Ryker said all the objectives spelled out in the seven policies this plan encompasses were measured against the Hillsdale vision statement and they will lead Hillsdale over time to a denser, more pedestrian-friendly town center. The Planning Commission was also interested in the relationship of this plan to the Southwest Community Plan and the Metro Functional Plan. Although Hillsdale lies within the boundaries of Southwest Community Plan district, the Hillsdale plan was initiated in 1993, at least 1-1/2 years before the Southwest Community Plan. It was expedited because of the lengthy time since the the planning process began and because of the widespread consensus. Zoning will be integrated into the Southwest Community Plan although it is possible that issues related to the Hillsdale Town Center may be raised when that is considered. But in the meantime, Hillsdale will begin its needed transition into a more pedestrian-friendly, urban town center. She said the

OCTOBER 16, 1997

Hillsdale Town Center Plan is the first independent plan of a 2040 growth concept mixed area to come to the Council. She said the Metro Functional Plan seems to imply that each Town Center must meet certain employment and housing density requirements but after considerable discussion with Metro staff, it seems likely that Metro will determine how well a jurisdiction meets the Functional Plan based on the aggregate of all Town Centers, rather than on a single one. Metro recognizes that there will be variations in density among the Centers and that Hillsdale will be very different both from Lents or Lake Oswego. Metro has agreed that the recommended Hillsdale Town Center Plan meets the Functional Plan while recognizing that the City still needs to look at density throughout the City. She urged adoption of the plan.

Wes Risher, President, Hillsdale Neighborhood Association, said this vision coupled with action can begin to change Hillsdale and the Southwest Community. He said because the Hillsdale Plan was a ground-up, citizen-initiated process it has resulted in a superior product, one that meets the Metro Functional Plan and will be reviewed under the Southwest Community Plan. The City benchmark for increased housing opportunities is 10 percent although in Hillsdale the housing potential represents a 67.6 percent increase. A major goal is to place housing close to transit. One action already accomplished is creation of a new neighborhood association that made the commercial section the center of the neighborhood rather than bisecting it.

Mayor Katz asked him to share what the neighborhood has learned through this process that can help the city improve the citizen improvement process.

D. Michael Roach, 3620 SW Corbett and owner of La Paloma, said the Hillsdale Steering Committee met for hundreds of hours to hammer out this plan and brought in consultant Robert Gibbs to evaluate the commercial possibilities. He said it was Mr. Gibbs, in a workshop, who challenged the community to reach decisions by consensus and, somewhat to its surprise, this worked. Hillsdale now has the first stand-alone Town Center Plan.

Norman Griffith, 1733 SW Westwood Dr., 97201, objected to the proposed signalized crosswalk and called instead for a pedestrian underpass. He said traffic is too heavy to place a safe crosswalk on such a wide street. He asked Council to defer its decision on that until further study.

Joan and Don Barta, 1918 SW DeWitt Street, 97201, objected to the proposed Hillsdale boundaries as they will change tightly-knit neighborhoods into quasi-public areas. She said calling for sidewalks in some of the more precipitous areas will necessitate putting in retaining walls, at great expense to property owners. Ms. Barta said no one could answer question as to how taxes would be affected by moving to higher density and she believes she is among a minority of people whose concerns were not really heard. Mr. Barta supported building an overpass over Capitol Highway, rather than an underpass.

OCTOBER 16, 1997

Celeste Lewis, Chair, Hillsdale Neighborhood Association, said zoning on property has not been changed. The boundary does include property but only for the purposes of including enough residential. The biggest change on DeWitt would be its designation as a pedestrian district which means sidewalks would be needed.

Brigid Flanigan, Hillsdale Steering Committee, said the change from R5 to R5a overlay will be considered through the Southwest Community Plan process.

Richard Stein, 901 SW Westwood Dr., 97201, urged adoption. He said this plan creates a community and has fostered cooperation and mutual respect among the participants.

Jay Mower, Hillsdale Steering Committee, said Mr. Gibbs, their consultant, called Hillsdale one of the ugliest shopping centers he had seen but then later said he had seen only a handful of communities with the spirit Hillsdale has shown.

Douglas Terrill, 6434-6446 SW Capitol, said the community reached no consensus about what Capitol Highway should look like. Right now the community and the engineers, who want a main street but no on-street parking, are divided. The neighborhood needs a clearer idea of how this is going to work. He said getting more traffic with higher density but without the needed infrastructure will not work.

Commissioner Hales said he thought a lot of the design issues were settled when the Capitol Highway Plan was adopted.

Mr. Terrill said no, the Plan never focussed on the strip through the heart of Hillsdale. He said a specific process is needed that will tie this into the Plan.

Commissioner Hales said the zoning proposed in Addendum B corrects that.

Matt Brown, Office of Transportation, Pedestrian Plan, said the Capitol Highway Plan predates the Hillsdale Plan and needs to be re-examined. He said they did look at removing traffic lanes and at the time the plan was done felt they should not remove five lanes. While they have ODOT money to do some improvements this year, on-street parking is not being precluded as an alternative at this time.

Mr. Terrill said the Storefront Commercial (CS) zoning on one side of Capitol Highway and the General Commercial (CG) on the other do not match up. He said there should be a minimum of two stories for town centers.

Mayor Katz asked Mr. Brown why Transportation could not test the on-street parking component.

OCTOBER 16, 1997

Mr. Brown said they ran through several scenarios but need to hear what property owners want and so far there is no consensus.

Don Baack, Hillsdale Steering Committee, said there is also a problem about what to do with the bike lane.

Commissioner Francesconi asked about parks, open space and trails.

Mr. Baack said there are a few trails through the school property and the community is working with the school district on that. Basically, they will look at parks and open space as a Southwest Community Plan issue.

Ms. Lewis said one problem is that they were driven so much by the need to reach consensus that they could not pick a physical plan and instead are offering five similar but different versions. She said it was very difficult to pick one over another based on the effect on a specific property owner. In the future, she recommended the need to get professional leadership to facilitate a physical plan. Right now there is no community commitment to one outcome.

Mr. Risher noted that if trust is lost, these plans never get anywhere, which is what happened to the Southwest Community Plan. He said the consensus helped and noted that often professional staff does not respect citizen input even when they have a lot of expertise. He called for formation of a committee of technical experts and for empowering staff to make decisions which they now are afraid to make for fear of being overridden for political or other reasons.

Mayor Katz said she believes the Office of Transportation has undergone a metamorphosis which will make it much more cooperative with citizens.

Commissioner Hales said more work needs to be done on the transportation side and he is committed to seeing that happen. He cited NE Broadway and SE Hawthorne as successful community transportation projects.

**Disposition:** Passed to Second Reading October 22, 1997 at 2:00 p.m.

**1603** Adopt the Implementation Action Charts of the Hillsdale Town Center Plan (Resolution introduced by Commissioner Hales)

**Disposition:** Continued to October 22, 1997 at 2:00 p.m.

**1604** **TIME CERTAIN: 3:00 PM** - Amend Title 33, Planning and Zoning, to modify the regulations for radio and television broadcast facilities (Ordinance introduced by Commissioner Hales; amend City Code Title 33)

**Discussion:** Cary Pinnard, Planning Bureau staff, said there has been a proliferation of 126 new facilities in the past two years, most on existing

OCTOBER 16, 1997

buildings. Only six towers have been erected in residential zones but they remain a controversial issue. The Portland Planning commission held three hearings on these regulations and made four recommendations: 1) reduce the visual focus; 2) encourage location on buildings or warehouses; 3) encourage co-location on existing towers; and 4) require towers and antennae, if unable to locate elsewhere, to be well-designed and hidden. When new towers are built the applicant must prove that there is no other way to provide service. She explained how the new rules will make it easier to place such facilities on existing buildings but make it more difficult if towers are required. Ms. Pinnard also showed slides to illustrate the various types of facilities currently used and examples of facilities that have been co-located.

John Hunt, representing Air Touch Cellular, PO Box 746, Kirkland, WA 98087, said the City should make sure its ordinance is in compliance with Federal Communications Commission regulations. He noted a technical problem in Table 274-2 regarding the reference made to power output.

Mayor Katz suggested that he talk to staff about this.

Spencer Vail, representing AT&T Wireless Services, said the "ring of trees" concept (Pages 15 and 23) around the towers are interpreted in two different ways, one quite strict and the other, which he favors, offering more latitude to gauge each site on an individual basis. He said very few deciduous trees can reach the proposed screening height and this will work against co-location if the trees grow too tall. Regarding the table on Page 4 dealing with antennae on buildings and towers, it is unclear that co-location is covered with a lesser review process than a Type III.

Commissioner Hales asked if the trees will interfere with the signal.

Mr. Vail said yes.

Kevin Martin, representing Sprint PCS, said they generally support the tiered approach but have outlined in writing some of the concerns they have with this proposal.

Wayne Wooten, representing US West Wireless, outlined his company's issues. He said the 10-foot landscaping requirement around a monopole site may be more than is necessary as there are cases where "refrigerator-size" cabinets are used, rather than larger structures. Also regarding criteria for mounting antennae on existing buildings in OS residential and CX zones within 50 feet of an R zone (Page 17, Section D-2 (b)), the language calls for the antennae to be practically invisible. He said often antennas are placed on the roofs because the buildings in those zones are not tall enough. Providing stealthing material

OCTOBER 16, 1997

to hide those antennae if they are mounted 10 feet above the existing roof line could actually create a bigger visual distraction than the antennae on their own.

Commissioner Hales said he is not sure language can be written in a way to allow reasonable exceptions but not bad exceptions.

Michael Wyants, representing Nextel Communications, said just requiring landscaping 10 or 15 feet deep will not necessarily do the job. Doing very good quality landscaping on a typical three to five foot area can be more effective than a "more is better" philosophy. A typical site area for Nextel is 45 x 45 feet with a six foot fence and screened landscaping. He said it is unclear to him where the 15 foot landscaping is to occur, within or without the leased area. With respect to the setbacks (Item 7 on Page 15), they can be problematic when a public street is involved.

Steve Gerber, Planning Bureau, said the technical issue raised by Mr. Hunt asks how the Code relates to the issue of effective radiated power. Effective radiated power is used as a cut-off point for initiating City procedures and the City has found it a relatively valuable estimation in determining what a very low-powered facility is.

Commissioner Hales said if the City uses wattage as the basis for determining which review a company goes through, is the City at the right wattage level.

Mr. Gerber said back in 1983 Richard Tell at the Environmental Protection Agency said this estimation would serve the City fairly well and that has proved to be the case.

Commissioner Hales said the City's intention here is to make sure that the typical cellular monopole falls into the first category, 100 watts or less. If the wattage is wrong that is a fairly simple adjustment that can be made later.

Mr. Gerber said there are times when a multiple-channeled facility which is very busy on a certain day could exceed 100 watts effective radiated power. But that would not be the typical situation.

Commissioner Hales asked about the co-location issue.

Ms. Pinnard said it is exempt. Regarding the ring of trees, she said the Portland Development Commission really wanted to be tough on landscaping and so set out fairly prescriptive rules. However, adding the words "or equivalent" to the ring of trees requirement can easily be done if Council wishes to add some flexibility.

Commissioner Hales said he would like to have some more latitude.



OCTOBER 16, 1997

Commissioner Francesconi asked about the base stations.

Ms. Pinnard said the Planning Commission wanted a higher level of screening on these facilities than on other outdoor equipment in commercial or employment zones. The Commission was concerned with the amount of impervious surface created and wanted more landscaping to absorb storm water on the site as mitigation for the equipment and/or the antennae. There is a provision that if the ground level equipment is already screened by a fence or building, one could move the landscaping closer to the street in a place that would do more public good.

Commissioner Hales said he believes the Planning Commission went a little too far. He assumes that the effect of their rules is to make an even stronger case for putting the base station equipment inside the building rather than outside on a pad.

Ms. Pinnard said that will work if the building has room and the owner is willing to lease space.

Mr. Vail said sometimes that will work but sometimes there is not room in the building or 24-hour access is not available. They try to locate within a building when they can.

Mr. Martin said essentially the City is requiring more landscaping for a broadcast facility than for a dumpster. He said Sprint and other companies use simple cabinets that are less obtrusive than a traffic light controller, which do not require 15 feet of landscaping around them. They believe a three to four foot planting strip is often more than adequate.

Commissioner Hales said he would like to see the options for less extreme landscaping requirements.

Ms. Pinnard said the standard in the base zone would be five feet wide. She said staff will return with more flexible language.

Commissioner Hales said what the City wants to do is really discourage towers and how much landscaping is put around a cabinet set against a building is much less important.

Ms. Pinnard said setbacks are also adjustable, on a case-by-case basis, if it makes sense for the facilities to be closer to the street. Freeways do not count as streets. Changes could also be made regarding Page 17 D-2 (b), open space in residential, commercial and EX zones. In situations where a Type I review is called for, the language could be changed to add the words "or other unobtrusive method" and then the roof mounts that were not intrusive could be considered one of the acceptable options.

OCTOBER 16, 1997

Commissioner Hales asked if the planner would exercise judgment as to whether it was obtrusive or not.

Ms. Pinnard said yes, through the Type I process in residential zones, where there is notice. Regarding Mr. Martin's letter, Ms. Pinnard said the second and third points he raises reflect an incorrect reading of the Code. The 40,000 square feet would be adjustable and Type I conditional uses are allowed. She said the goal is to push the industry to come up with sleeker, less intrusive facilities and a discretionary review process is required rather than an over-the-counter approval.

Mayor Katz noted Council's desire to add flexibility to some of the requirements and asked staff to come back with appropriate language.

Ms. Pinnard asked if staff could explore language that would allow some types of roof mounts on buildings in the C and EX zones that are shown in the charts as plan checks.

Commissioner Hales said this Code rewrite is trying to push people to be more creative and encourage the placement of facilities away from towers and onto buildings. He is comfortable with giving staff considerable discretionary authority about how to make this work in a variety of situations.

Mayor Katz asked to see the amendments before Monday.

**Disposition:** Passed to Second Reading October 22, 1998 at 2:00 p.m..

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

BARBARA CLARK  
Auditor of the City of Portland



By Cay Kershner  
Clerk of the Council