



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 10TH DAY OF JUNE, 1998 AT 9:30 A.M.

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

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Ben Walters, Deputy City Attorney; and Officer Larry Sievert, Sergeant at Arms.

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

CONSENT AGENDA - NO DISCUSSION

- 775 Accept bid of Brattain International Trucks for one 50,000 GVW cab and chassis with flatbed and hydraulic crane installation for \$80,695 (Purchasing Report - Bid 98119)

Disposition: Accepted; prepare contract.

- 776 Accept bids of J.E.C., Inc. and Barrich, Inc. dba Metro Rooter and Plumbing for furnishing an annual supply of plumber services for \$147,498 and \$183,903, respectively (Purchasing Report - Bid 98182)

Disposition: Accepted; prepare contract.

- 777 Accept bid of Portland Freightliner, Inc. for one 22,000 GVW utility service truck for \$75,424 (Purchasing Report - Bid 98184)

Disposition: Accepted; prepare contract.

- 778 Accept bid of W.G. Moe & Sons, Inc. for traffic and street improvements to SE Stark St., SE Washington St., SE 106th Ave. to SE 108th Ave. for \$423,720 (Purchasing Report - Bid 98193)

Disposition: Accepted; prepare contract.

- 779 Accept bid of Clackamas Communications for tap out system for \$52,017 (Purchasing Report - Bid 98195)

Disposition: Accepted; prepare contract.

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780 Accept bid of Nutter Underground Utilities Co. for traffic and street improvements to the intersection of NE Marine Dr. and NE Gantenbein Ave. for \$117,333 (Purchasing Report - Bid 98197)

Disposition: Accepted; prepare contract.

781 Accept bid of Selectron, Inc. for access control and security monitoring installation for \$104,550 (Purchasing Report - Bid 98198)

Disposition: Accepted; prepare contract.

782 Accept bid of Moore Excavation, Inc. for N. Maryland/Webster sewer rehabilitation project for \$587,578 (Purchasing Report - Bid 98202)

Disposition: Accepted; prepare contract.

783 Accept bid of Ruffin Construction for Kenilworth Park restroom renovation for \$61,200, Northwest General, Inc. for Dawson Park restroom renovation for \$50,000 and Platinum Construction Services, Inc. for Plaza Blocks (Chapman Square) Park restroom renovation for 40,435 (Purchasing Report - Bid 98212-SMP)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

784 Confirm reappointment of Dave Brook, James Coon, Sheila Holden and Robert Wise and appointment of Ned Dempsey, Allen Lee, Rick Schulberg, Kent Snyder and Christen White to the Sustainable Portland Commission (Report)

Disposition: Confirmed.

***785** Accept donation of 1994 Dodge Caravan from the National Insurance Crime Bureau (Ordinance)

Disposition: Ordinance No. 172338. (Y-4)

Commissioner Jim Francesconi

***786** Authorize agreement for acquisition of the Krebs property adjacent to the western edge of Washington Park (Ordinance)

Disposition: Ordinance No. 172339. (Y-4)

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Commissioner Charlie Hales

- 787** Set hearing date, 9:30 a.m., Wednesday, July 8, 1998, to vacate a portion of SW Multnomah Boulevard between SW 40th and SW 45th Avenues (Report; C-9943)

Disposition: Adopted.

- *788** Authorize contract with Horizon Centre, Inc. to provide system, pilot testing, transition planning, performance measurement and implementation direction services for Blueprint 2000 (Ordinance)

Disposition: Ordinance No. 172340. (Y-4)

- *789** Authorize a contract and provide for payment for material and labor to construct Powell Park improvements (Ordinance)

Disposition: Ordinance No. 172341. (Y-4)

- *790** Amend an Intergovernmental Agreement between the Portland Development Commission; the City of Portland, Office of Transportation; and METRO to extend the contract and increase the budget amount to \$119,964 for the purpose of completing an economic and development impact analysis of selected segments of the South/North light rail alignment (Ordinance; amend Contract No. 30416)

Disposition: Ordinance No. 172342. (Y-4)

- *791** Amend Lease Agreement with Commercial Truck Leasing and Rental Company to update the lease agreement (Ordinance; amend Contract No. 22562)

Disposition: Ordinance No. 172343. (Y-4)

- *792** Authorize contract and provide for payment for improvements at SE 106th to 108th Avenues, SE Stark and Washington Streets (Ordinance)

Disposition: Ordinance No. 172344. (Y-4)

Commissioner Gretchen Miller Kafoury

- *793** Amend agreement with Multnomah County for homeless youth program by increasing the amount by \$6,324 of general funds, modify the scope of work and provide for payment (Ordinance; amend Agreement No. 31497)

Disposition: Ordinance No. 172345. (Y-4)

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Commissioner Erik Sten

- *794** Enter into a Memorandum of Agreement with Division of State Lands for Columbia Slough Wetland Creation and Enhancement (Ordinance)

Disposition: Ordinance No. 172346. (Y-4)

- *795** Agreement with City of Milwaukie for maintenance and payment of sanitary sewer line installed in the SE Johnson Creek Boulevard Phase I street construction contract and the SE 33rd Avenue and SE Sherrett Street sanitary sewer extension construction contract (Ordinance)

Disposition: Ordinance No. 172347. (Y-4)

REGULAR AGENDA

- S-796** Support Metro adoption of the revised Urban Growth Management Functional Plan Title 3 which addresses water quality, flood management, fish and wildlife conservation and the associated maps and model ordinance (Resolution introduced by Commissioner Francesconi and Hales)

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

David Knowles, Director, Bureau of Planning, said Metro's Title 3 sets out regional performance standards in two areas -- water quality and flood management -- with which the City needs to substantially comply. The City may either adopt code language encompassing Title 3 and implement the standards on a case-by-case basis or implement them on the basis of maps indicating the sensitive areas. The City has chosen to adopt the latter approach. Some relatively minor Code changes will be introduced at a later date accompanied by the adoption of local maps which will substantially refine Metro's maps and correct conflicts between the two. Mr. Knowles said Title 3 levels the playing field regionally as Portland has been way ahead of other jurisdictions in applying water quality and flood management standards.

Liz Callison, 6039 SW Knightsbridge, said Title 3 undercuts Portland's protection level which is much higher than what is allowed under this standard. She said it will allow fill in the Columbia Slough and all references to fish and wildlife protection have been deleted. She said while this is touted as a first step for protection, behind the scenes many streams and wetlands have been removed from such protections and there is no enforcement of water quality standards. Ms. Callison criticized Metro for bowing to the Homebuilders Association and agreeing to hold up Title 3 of the Functional Plan.

Amanda Fritz, Portland Planning Commission, said no one is completely happy with this but it does set a base line. She said the Planning Commission is still uncertain about how it is to be implemented and noted that the whole process has been very difficult and taken a lot

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longer than expected. She concurred that this deals only with water quality and flood management. The next step is fish and wildlife conservation, which needs to be done more quickly than the 18 months this portion took.

Douglas McCourt, Office of Transportation, supported passage of the resolution and thanked Planning staff.

Kermit Robinson, Bureau of Buildings, said the Bureau of Buildings has a big role in this as erosion control falls under its jurisdiction. He said the issue of site inspection remains to be resolved.

Commissioner Francesconi said all Council members need to think through regional and state strategies. He said Metro is in trouble and on the edge of losing a regional policy. Neither he nor Commissioner Hales, who serve on the Metro Policy Advisory Committee (MPAC), can adequately represent the City's interests without everyone else's help.

Commissioner Hales said regional policy making is a very slow process and the only thing worse is not doing anything at all.

Commissioner Sten said while this is terrific it is not nearly a big enough step. There is overwhelming support from the community to do something about the steelhead issue and the worst thing that could happen would be for Metro not to take action to protect the watersheds. This step is very important, even though a compromise.

Mayor Katz said Metro must strike a very delicate balance between its need to protect the environment and at the same time plan for growth. This is a beginning, even though it is a compromise.

Disposition: Substitute Resolution No. 35700. (Y-4)

Mayor Vera Katz

797 Hear appeal of Craig Zinser (#98-02) to the Police Internal Investigations Auditing Committee (PIIAC) per City Code 3.21.085(4)(d) (Return Agenda 531)

Disposition: Lisa Botsko, PIIAC staff person, noted that the appellant was not able to attend today.

Mayor Katz asked what Council's policy is about hearing cases when the appellant is not present.

Ms. Botsko said there is no set policy. In some cases, it is difficult for appellants to get off work so in the past the appeals have been heard.

Ms. Botsko described the case, which involved a complaint against the Police for unnecessary force through the use of pepper spray, destruction of personal property and use

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of foul language. She said the Advisors found both weaknesses and strengths in the investigation. Despite numerous contradictions in the testimony, the investigator was able to develop a lot of details and maintain a neutral and objective demeanor. He also determined that the appellant had not turned up for his court appearance even a year after the incident. Weaknesses in this case included a lack of timeliness and failure to follow up on some of the appellant's allegations during the investigation. Ms. Botsko said the Citizens Advisors noted these gaps but felt that sending the case back for further investigation was unlikely to develop anything of significance. Regarding the use of force charge, the advisors felt that because of appellant's intoxication and the contradictions in his testimony, that charge could not be sustained.

Commissioner Francesconi questioned whether the appellant's prior arrest record or the officers' complaint histories, as contained in the confidential exhibit (Attachment C), are relevant as he believes each case should be judged on its own merits. He questioned why some of this material was available.

Ms. Botsko said she tries to summarize everything in the Internal Affairs Division (IAD) files for the citizen advisors, whether or not it is relevant, because they believe that information may color the investigation. There is no way for the advisors to know what might have influenced the investigator unless they also see that information. She said in this case, the complainant's arrest record does help determine his credibility.

Commissioner Francesconi said if the officer had a history of complaints against him, however, then that would reduce his credibility. He suggested that the advisors make a recommendation to Council sometime in the future about this.

Commissioner Hales asked about the advisors' recommendations.

Ms. Botsko said two different commanders made separate findings regarding the complaints against two different officers. Commander Grubbs determined the complaint against Officer A, the officer who took the complainant into custody, was unfounded. Commander Foxworth made findings of unfounded with respect to conduct on the complaint against Officer B and insufficient evidence with respect to the communication.

Sgt. Jeff Barker, representing IAD, said he thought a good job was done in the investigation.

Mayor Katz said there were concerns about failure to follow up on questions.

Sgt. Barker said when the officer said he did not remember whether he used foul language, he does not know what one could ask him next. Because of the staffing problems and the fact that these investigations are months behind, people do not remember what they said.

Commissioner Hales moved to uphold the Citizen Advisors' recommendations.
Commissioner Francesconi seconded.

Disposition: Appeal denied. (Y-4)

- 798 Hear appeal of Arun Battan to the Police Internal Investigations Auditing Committee (#98-03) (Report)

Discussion: Ms. Botsko noted that after a preliminary investigation of this complaint, IAD declined it. While this is something that puzzles the advisors, they did not believe this complaint had any merit. The appellant alleged that the police domestic reduction unit deliberately lied in filling out a restraining order against him and had his wife sign it against her wishes. The appellant believes the Bureau had more responsibility to determine his character before taking this step. He charges that his wife and her boyfriend made four attempts on his life and that the police did not adequately investigate this. When Sergeant Barker accepted the complaint he delivered that allegation to the appropriate investigators for separate follow-up. For the advisors, the main complaint was how the officers handled the domestic violence allegation. They obtained the complaint filed by the wife and noted that the officers who responded observed evidence of injury. That in and of itself kicks in a mandatory arrest. There is no compelling evidence that the domestic violence officer did anything more than assist the wife in obtaining a restraining order, which was only part of the job. The advisors see no reason to pursue this complaint but do question IAD's issuance of a finding of declination when enough of an investigation had been conducted to make a real finding, i.e., unfounded or exonerated.

Sgt. Barker said there was a clear history of domestic violence in this case and the wife had asked for help in filing the restraining order. He said several months ago IAD was criticized for declining a case without looking into it and now they are criticized for a preliminary look. Getting rid of some unnecessary cases will help them get back to current status.

Commissioner Francesconi moved that Council affirm PIIAC's recommendation to dismiss this complaint. Commissioner Hales seconded.

Disposition: Appeal denied. (Y-4)

- *799 Provide Portland Police Data System services to Multnomah County Sheriff's Office (Ordinance)

Disposition: Ordinance No. 172348. (Y-4)

- *800 Apply for a \$3,390,947 grant from the U.S. Department of Justice Office of Community Policing Services for COPS MORE '98 program funding (Ordinance)

Discussion: Police Chief Charles Moose said with this grant money, the Bureau will be able to put lap top computers into police cars, allowing officers to do their reports electronically instead of by hand. They estimate that it will save two hours time per shift, freeing up officers for more community policing activities. He said the grant requires a \$1.1 million match.

Commissioner Hales suggested that the Police offer the old MDTs to other bureaus which might be able to use them.

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Mayor Katz noted the 10-year replacement policy the Bureau has.

Chief Moose said that policy needs to be adjusted as 10 years is too long for computer technology.

Disposition: Ordinance No. 172349. (Y-4)

- *801** Apply for a \$225,273 grant from the U.S. Department of Justice Office of Community Policing Services for COPS MORE '98 program funding (Ordinance)

Discussion: Police Chief Moose said this allows the redeployment of officers to community policing by deploying civilians into administrative jobs. The money will be used to pay for five administrative supervisors in the five precincts and while it will not create gigantic savings, it will put sworn officers on the streets to do community policing. The 25 percent match this requires will be taken from Bureau salary savings.

Mayor Katz asked if the City has requested a waiver on the match.

Chief Moose said not at this point.

Commissioner Francesconi said when the grant runs out, the City needs to find out if any savings resulted. But the idea of getting sergeants out of the precinct to supervise officers on the street is great.

Commissioner Sten said this does imply some future financial commitment but the City needs to take advantage of a good federal program.

Disposition: Ordinance No. 172350. (Y-4)

- *802** Authorize a contract with the Institute of Law and Justice Administration for consultation services at an amount not to exceed \$150,000 (Ordinance)

Discussion: Mayor Katz said this contract will help the City determine the next level for community policing and how to get there.

Police Chief Moose said the Institute has helped the Bureau in the past with its community policing efforts and has extensive knowledge about how it works.

Mayor Katz said Council can also identify issues that merit more attention.

Commissioner Hales said the Bureau, which is a recognized national leader in community policing, needs someone to prod it to innovate.

Disposition: Ordinance No. 172351. (Y-4)

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- 803** Authorize selection of an option as the method for collecting ad valorem taxes sufficient to pay indebtedness issued or incurred to carry out existing urban renewal plans, including: Airport Way, Central Eastside, Downtown Waterfront, Oregon Convention Center and South Park Blocks (Ordinance)

Discussion: Chris Scherer, Portland Development Commission, said Ballot Measure No. 50 gave the City three options to fund urban renewal. Option 3, the hybrid option, was selected for all the urban renewal plans except the Central Eastside, where Option 1 was selected.

Disposition: Passed to Second Reading June 17, 1998 at 9:30 a.m.

- 804** Adopt the 3rd Amendment to the South Park Blocks Urban Renewal Plan to establish a maximum amount of indebtedness (Second Reading Agenda 763)

Disposition: Ordinance No. 172352. (Y-4)

- 805** Adopt the 4th Amendment to the Central Eastside Urban Renewal Plan to establish a maximum amount of indebtedness (Second Reading Agenda 764)

Disposition: Ordinance No. 172353. (Y-4)

- 806** Adopt the 5th Amendment to the Airport Way Urban Renewal Plan to establish a maximum amount of indebtedness (Second Reading Agenda 765)

Disposition: Ordinance No. 172354. (Y-4)

- 807** Adopt the 7th Amendment to the Oregon Convention Center Urban Renewal Plan to establish a maximum amount of indebtedness (Second Reading Agenda 766)

Disposition: Ordinance No. 172355. (Y-4)

- 808** Adopt the 20th Amendment to the Downtown Waterfront Urban Renewal Plan to establish a maximum amount of indebtedness (Second Reading Agenda 767)

Disposition: Ordinance No. 172356 as amended. (Y-4)

Commissioner Charlie Hales

- *809** Authorize Intergovernmental Agreement with Oregon Department of Transportation's Transportation and Growth Management Program to accept a grant in the amount of \$49,211 to produce a streetscape plan and implementation strategy for Alberta Street between NE Martin Luther King Jr. Blvd. and NE 33rd Avenue (Ordinance)

Disposition: Ordinance No. 172357. (Y-4)

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Commissioner Erik Sten

- *810** Authorize a contract with the lowest responsible bidder for the Fanno Basin pump station and provide for payment (Ordinance)

Discussion: Steve Barrow, Bureau of Environmental Services, discussed this and the related items (810 through 814). He said the Bureau has determined that one new pump station could replace five aging ones and produce savings of \$1.5 million per year. The new pump station will be fully automated and also benefit the Unified Sewerage Agency by increasing capacity. Other benefits include a new trail in Washington County that connects Fanno Creek bridge with Oleson Road and a restored stream bank. He said agency coordination efforts have successfully resulted in the resolution of all issues and public involvement efforts have been extensive. Property for the new pump station will be purchased from the Portland Golf Club.

Commissioner Sten said he believes this will keep rates down. He complimented the Bureau for doing a great job working with the community and finding new ways to more efficiently staff the facility, reducing the number of staff from five to one.

Disposition: Ordinance No. 172358. (Y-4)

- *811** Authorize a contract with the lowest responsible bidder for the Fanno Basin pump station building site surcharge and provide for payment (Ordinance)

Disposition: Ordinance No. 172359. (Y-4)

- *812** Authorize a contract with the lowest responsible bidder for the Garden Home section pressure line of the Fanno Basin project and provide for payment (Ordinance)

Disposition: Ordinance No. 172360. (Y-4)

- *813** Authorize a contract with the lowest responsible bidder for the Multnomah section pressure line of the Fanno Basin project and provide for payment (Ordinance)

Disposition: Ordinance No. 172361. (Y-4)

- *814** Purchase property for the Fanno Basin pump station and pressure line from Portland Golf Club and authorize payment (Ordinance)

Disposition: Ordinance No. 172362. (Y-4)

City Auditor Barbara Clark

- 815** Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through May 8, 1998 (Hearing; Ordinance; Y1028)

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Disposition: Passed to Second Reading June 17, 1998 at 9:30 a.m.

FOUR-FIFTHS

815-1 Accept contract with Lorentz Bruun Company, Inc. for the Forest Park (High) 0.5 MG Reservoir as complete and authorize final payment (Report introduced by Commissioner Sten; Contract No. 29914)

Discussion: Jim Van Dyke, Deputy City Attorney, said this involves an uncontroversial release of retainage.

Disposition: Accepted. (Y-4)

At 11:15 a.m., Council recessed

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JUNE 10, 1998 AT 2:00 p.m.

Note: At 2:00 p.m., Council attended Tax Supervising and Conservation Commission hearings on the City of Portland's Spring Supplemental Budget and on the Approved FY 1998-00 Budget to be held in the Rose Room, City Hall, 1221 SW 4th Avenue. At the conclusion of the hearings, Council convened in Council Chambers.

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 10TH DAY OF JUNE, 1998 AT 2:45 P.M.

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

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

- *816** **TIME CERTAIN: 2:45 PM** - Adopt a Supplemental Budget for FY 1997-98 of \$587,922,700 and make budget adjustments in various funds (Ordinance introduced by Mayor Katz)

Discussion: Larry Nelson, Bureau of Financial Planning, said the majority of the actions in this ordinance are debt-related and described the four chief transactions.

Disposition: Ordinance No. 172363. (Y-4)

- *817** Adjust FY 1997-98 Adopted Budget for Spring Budget Adjustments (Period 2 FY 1997-98 (Ordinance introduced by Mayor Katz)

Discussion: Randy Webster, Bureau of Financial Planning noted that an amended Exhibit B had been distributed. The amendment adds three funds related to debt service that were inadvertently omitted.

Commissioner Sten moved the amendment. Commissioner Francesconi seconded and, hearing no objections, the Mayor so ordered.

Mr. Webster reviewed the adjustments covered in this ordinance, including authorization of four new positions in the Water Bureau, a request by Transportation for a transfer from North Macadam funds in the General Fund, distribution of approximately \$900,000 in compensation set-asides and a \$3.3 million carryover of which \$1.1 million is police-related.

Disposition: Ordinance No. 172364 as amended. (Y-4)

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Commissioner Charlie Hales

818 Adopt and implement the Creston Kenilworth Neighborhood Plan (Second Reading Agenda 773)

Disposition: Ordinance No. 172365. (Y-4)

819 Adopt and implement the Creston Kenilworth Neighborhood Plan (Resolution)

Disposition: Resolution No. 35701. (Y-4)

At 3:10 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 11TH DAY OF JUNE, 1998 AT 2:00 P.M.

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

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

820 TIME CERTAIN: 2:00 PM - Appeal of Forest Park Neighborhood Association against Hearings Officer's decision to approve with conditions the application of Nauru Phosphate Royalties (Portland), Inc. for a Major PUD Amendment in order to change previous conditions of approval in the original Forest Heights PUD located along NW Miller Road (Hearing; 98-00061 PU)

Discussion: Kathryn Beaumont, Senior Deputy City Attorney, outlined the rules of procedure for this evidentiary hearing.

Courtney Duke, Planning Bureau, said in April Council passed a comprehensive plan map amendment and zone change for the Forest Heights medium-density and commercial tracts. The six medium-density tracts were rezoned to R2 and the commercial tracts were rezoned to a combination of R2, CN2 and OS. Council took that action to resolve the conflict between the current Planned United Development (PUD) Code and the previous conditions of approval placed on development in Forest Heights. When Council passed the zone changes it removed a staff-recommended condition recommending a 38,000 square-foot cap on commercial development and added a condition that required residential development in the CN2 zone to be above ground-floor commercial. At the same time the zone change was processed, a major PUD amendment to Forest Heights was also being reviewed by the City to identify the relevant prior conditions of approval relevant and to continue application of the medium-density and commercial tracts. The PUD amendment culled some 200 approved conditions over the last 20 years down to just 17. During the PUD amendment hearing, the Hearings Officer approved the amendment but included a 38,000-square-foot cap on commercial development (Condition 4). This condition conflicts with the Council's zone change decision. Subsequently, the Forest Park Neighborhood Association appealed the PUD decision, at the request of the Planning Bureau, in order to resolve a conflict between the two decisions. The revised findings and conditions before Council today remove the 38,000 square-foot cap and add the condition requiring any residential development in the CN2 zone to be above-ground-floor commercial so that it conforms with the previously-approved zone change. She asked Council to uphold the Hearings Officer's decision as amended by the appeal and adopt the revised findings and conditions. With this decision it is hoped that development at Forest Heights can move more quickly and that there will be few appeals to Council.

Arnold Rochlin, Forest Park Neighborhood Association, said the Association agrees with the staff recommendation.

Steve Hultberg, attorney for the applicant, said they support the appeal and the revised findings.

Commissioner Hales moved approval of the Hearings Officer's recommendation with the revised findings. Commissioner Francesconi seconded.

Disposition: Appeal granted; findings adopted. (Y-4)

821 Appeal of BIT-TEL Investment, applicant, against Hearings Officer's decision to impose certain conditions in approving a Type III Major Land Division with concurrent environmental review for a six-lot industrial subdivision at NE Mason Street between 158th and Airport Way (Hearing; 97-00838 SU EN)

Discussion: Ms. Beaumont outlined the procedures which must be followed during an on-the-record hearing.

Eric Engstrom, Planning Bureau, said the zoning on this site allows general industrial development but with environmental conservation and protection overlays and a scenic designation. He noted the relevant approval criteria and said the proposed subdivision applies to six lots -- Lots 4, 6, 7, 8, 9 and 10. Lot 8 includes most of the southern portion of the site and a finger extending to NE Mason Street. The subdivision includes a connection of the two existing portions of NE Mason with a public street. Lots 1, 2, 3 and 5 have already been approved as part of Phase I of the subdivision and are not a part of this review. The triangular-shaped parcel on the site is a City of Portland stormwater facilities site, which is also not part of this review, although it is related through Condition A and some of the appeal issues. A drainage way crosses the site in an east/west direction and protecting a possible future street extension over the drainage way prompted Condition Q of the Hearings Officer's decision. The drainage way is within the environmental conservation zone. He said there are several potential development sites on the southern portion of Lot 8 and the only feasible way to get to them is by crossing the drainage way within the environmental zone.

Mr. Engstrom said the site includes several coldwater springs which feed into the Columbia South Shore system and are important resources in terms of making future improvements in water quality in the Columbia Slough system. The Hearings Officer recommended approval of the subdivision subject to conditions and the applicant has appealed Conditions A and Q. Condition A links final plat approval to the final platting of the related minor partition in order to create a public stormwater management tract. Condition Q imposes several special building setbacks on certain lots in order to reserve alignment options for a future street connection extending across the environmental zone.

Mr. Engstrom said the best way to envision Condition A is to image the site as a large box to be subdivided into smaller boxes. The Galitzki property box is the site of two applications to divide it. One would divide the large box into two separate medium-sized boxes. The other application, which is before Council today, is to further subdivide one of those boxes into a number of developable lots. It is not surprising that the medium-size boxes must first

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be created before they can be further subdivided. Legally platted lots are created by recording a final plat from the County after obtaining all relevant approvals from City agencies. The entire Galitzki site, including the stormwater tract, is currently one legally platted lot. If the minor partition application is not finalized prior to this subdivision, the present application would create that lot due to the fact that the plat lots all around it would in fact define the boundaries of that tract. That would nullify any conditions of approval associated with the stormwater tract approval for the minor partition. That is because the City enforces conditions of approval by not signing off on the final plat until those conditions are met.

Mr. Engstrom noted that 48 percent of the site, not including the stormwater tract, is within the environmental zone. If more than 50 percent of the site were within the environmental zone, a PUD review would be required. Removing Condition A could potentially circumvent that requirement if the site were considered as a whole as the stormwater tract includes more land within the environmental zone.

Regarding Condition Q, Mr. Engstrom said it imposes special setbacks to prevent buildings from being constructed in certain portions until the final location of the future street is determined or until it is deemed no longer necessary. Condition Q is based on the City's responsibility to maintain the possibility of connections to developable land and also relates to the environmental review criteria which must be addressed should a future street be extended along the southern portion of Lot 8. Such a street would have to meet specific approval criteria that require a finding of least detrimental environmental impact and a finding of adequate mitigation. Planning staff is concerned about the proximity of the applicant's preferred alignment (across Lot 8) to the adjacent coldwater springs and wetlands. Given the significant mitigation burden facing any proposal that might impact those water quality resources, staff recommends that at least one other option remain under consideration. He said applicant's tentative plat shows a railway easement for future extension of a railway along the boundary of Lots 9 and 10. Staff suggested, and the Hearings Officer agreed, that it is reasonable to conclude that one consolidated crossing might be less detrimental than two and that it is important to protect the viability of that crossing until a full environmental analysis can be completed. The Condition is not intended to replace the required future analysis or predetermine its outcome but only to protect the possibility that there will be at least one crossing location approved at the end of that analysis. The setbacks improve that likelihood by preserving two options for consideration in any environmental review that might occur. The applicant's appeal implies that the City is requiring the applicant to dedicate land as open space. This is not true as the escape clause (Condition Q.2) eliminates the setbacks in the event that the applicant chooses not to develop the southern portion of Lot 8. Mr. Engstrom said staff does not believe that the escape clause is a "taking" along the lines of the Dolan case, as the appellant has argued. Instead, Condition Q is written to protect the possibility for development of the southern portion of Lot 8, not prevent it.

Mr. Engstrom outlined Council's options in this matter. It could uphold the appellant's request for removal or modification of Conditions A and Q. Council may also uphold Conditions A and Q without modification and adopt the Hearings Officer's findings as its

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own. If Council chooses, it could also retain those conditions with some minor modifications to clarify intent. Staff has submitted supplementary findings and a suggestion for rewording Condition Q to clarify that the setbacks are for the buildings only, not for such things as landscaping, parking, plazas, etc. Council could also accept alternate wording for Condition A, as suggested by the applicant. Mr. Engstrom noted this is an on-the-record hearing and that applicant has not signed the 120-day waiver, forcing Council to make a decision today unless an extension is granted to draft additional findings if Council finds in the applicant's favor.

Ms. Beaumont asked Council if they had any conflicts of interest or ex parte conflicts to declare.

Council members indicated they had none to declare.

Dorothy Cofield, attorney for Bernard and Pearl Galitzi of BIT-TEL Investments, said applying Condition Q adds up to approximately three acres of special setbacks on the final plat. This will result in a lot of uncertainty for any potential purchase and a lot of unusable land until development plans are approved. She said the environmental review standard in Chapter 33.515.280 (d) (4) which the Hearings Officer states requires that alternative locations be preserved for future roads does not apply to this subdivision application. The environmental code applies when one seeks development approval or road improvement so there is no reason to preserve alternatives at this time. When Lots 8 or 9 are developed, staff will have the opportunity to make sure that alternatives and environmental overlays are preserved. The only authority the Hearings Officer has to impose these special setbacks is through 33.500.20 which states that special setbacks may be imposed for a large lot. First of all, Lots 9 and 10 are not large lots. These lots are three acres and the minimum lot in the IG2 zone is one acre. So for 33.500.20, Council does not have the discretion to impose the special setbacks. That leaves Lot 8 which, with 25 acres, is a large lot. To impose the setbacks on Lot 8 now is to protect any future redivision to preserve future rights-of-way. However, none of the properties to the east, west and south of the site need access into this subdivision. One has to believe the landowner would not landlock his own access to the southern portion of this property.

Ms. Cofield said the conditions requiring dedication of a conservation easement look at the future redivision of Lot 8 and states that if it is subdivided, access will have to be provided. That future redevelopment is not up for review right now and under Dolan vs. City of Tigard, one cannot look at future development impacts to impose a condition. For that reason, they ask that this condition be deleted.

Regarding the second condition, Ms. Cofield said that requires the City's stormwater parcel to be platted prior to recording the major land division plat. The City condemned 9.4 acres (the stormwater parcel) and was able to reach a sales agreement with the landowner in mediation in December, 1997. Under the conditions of that agreement, the City was to go ahead and partition that stormwater parcel. The City did submit that application until March and the landowner filed his subdivision application in January. Now the Hearings Officer says that because the deed has not yet been recorded, even though it was given to the City

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and the landowner has been paid, that land has to be considered as part of the rest of the subdivision because it has not been legally partitioned. This makes no sense. In the Code, land considered to be in common ownership must have the same owners. Here the City is the owner of the 9.4 acre parcel and could record the deed but chose not to because it had not obtained the legal partition yet. There is no reason to consider the 9.4 acre parcel a part of the subdivision and say that it cannot be recorded until the minor partition is recorded. Ms. Cofield noted that the minor partition has been approved and affirmed on appeal to the Hearings Officer. However, no one knows if there may be subsequent appeals to LUBA and the courts. If so, that minor partition could be delayed for several years. To tell BIT-TEL that it has to wait to record this subdivision so that the minor partition can be recorded will cause severe delays in recording the major subdivision. Legally it is the City, not the applicant, that needs to record the minor partition in order to use the property it bought. To make BIT-TEL wait because of a technicality in timing for the minor partition makes no sense. She requested that Condition A be lifted, allowing BIT-TEL to record its plat when it is ready without waiting for the minor partition to be recorded. Regarding staff contentions that the conditions of approval in the minor partition could then not be imposed, both the landowner and the City could agree to have those conditions apply when the minor partition is recorded.

Commissioner Hales asked if the City completed purchase of the parcel and if title has been recorded. He noted that Mr. Engstrom's staff report indicates that the entire parcel, including the portion that has been sold, is still a single lot of record.

Ms. Cofield said BIT-TEL gave a deed to the City which is in escrow. The City paid the landowner for the property. The property has not closed because they are waiting for the minor partition to be recorded. The City has the deed and it could be recorded.

Commissioner Hales asked how a deed could be recorded to a lot that does not exist.

Ms. Cofield said because the Multnomah County Assessor's Office accepts deeds to record. They do not look into whether they have been legally partitioned. When development is proposed, the Planning Bureau will not approve it if it is not a legal lot. But it can be recorded. The deed was delivered to the City into escrow.

Commissioner Hales asked if BIT-TEL would be forced into a PUD if Council lifted Condition A.

Ms. Cofield no, because the requirement for a PUD applies to land in common ownership where more than 50 percent is in environmental zones. BIT-TEL contends that the stormwater parcel is not in common ownership because the City has the deed and owns it. She said this is a confusing state of affairs and it would have been better if the minor partition had been final and recorded on April 3. But there has been an appeal and there might be a future appeal to LUBA on the minor partition application.

Bernard Galitzki, BIT-TEL, requested removal of Condition A, which requires platting of the City's stormwater parcel prior to recording the major land division, and Condition Q,

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which imposes special setbacks. He said the City condemned the 9.4 acres and, after mediation, a price was determined and money was paid for the property. The City now owns the property and has the deed. The fact that the technicalities of platting have not been completed should not hold BIT-TEL back from the major partition, which will allow them to market property it has held for 17 years. Regarding the setbacks on Lots 8 and 9, he said a lot of that property is already environmentally zoned. The properties offsite to the west and southeast will not be landlocked from any access that would be proposed later. To make the highest and best use of the property, BIT-TEL will develop it with an access that makes the most design sense and the environmental zoning already in place will protect the southern portion from any detrimental access. The drawings, prepared by the City, show the Mason Street setback and indicate that there is room on the west side of Lot 8 for a 60-foot-wide street that would not impact the environmental zone on the south. Right now the Planning Bureau has set aside 110 feet, which is very excessive, for a 60-foot wide right-of-way. Mason Street has a 60-foot wide right-of-way and, for a small street to the south, the City would probably not want it to be even that wide. To impact Lots 9 and 10 is entirely unnecessary and unwarranted. The City has offered to purchase the southern portion of their property although no price has been agreed upon. Requiring a conservation easement in order to lift the setbacks is tantamount to trying to get the property for free. It says if BIT-TEL gives up development on the southern portion of the property, the City will lift the special setback. Meanwhile, the special setbacks will severely reduce the value of Lots 8 and 9 and even 10 to a prospective purchaser. A potential purchaser for Lot 10 has already been lost because of these delays.

Commissioner Hales asked who is responsible for filing the plat with Multnomah County for the parcel purchased by the City.

Mr. Galitzski said, according to the purchase agreement, the City is responsible for filing the minor partition and doing the platting.

Bill Horning, Western Planning Associates, 4621 SW Kelly, said the Planning Bureau's view into the future unfairly constrains these properties with the requirement for additional right-of-way setbacks. The Galitzkis are providing a valuable asset to the City in the extension of NE Mason Street, which is the thrust behind getting these six lots platted. With three of the lots already encumbered, building about 1,100 feet of collector street may be an insurmountable financial burden. Of the 25 acres in Lot 8, 14 acres are in environmental or conservation zones. It is obvious that this zoning is a substantial encumbrance today and will remain so throughout the development of Lot 8. It is presumptuous to think that a public street must be granted in order to develop any of the developable portions as there are no adjoining parcels that need access. Financially impacting the ability to develop Mason goes against the vested interests of implementing a major segment of the Columbia South Shore Plan, which is the connection from Airport Way to 158th that Mason will make. The applicant has already made a substantial investment in resource analysis on the property south of the drainage district and also clearly shown that the environmental conservation zoning in that section is inconsistent with the actual resources in the field. He said there are many more considerations that have to be taken into account -- not just where the wetlands and buffers are but also the topography and archeological considerations which additionally

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constrain applicant's ability to respond to all the zoning requirements at one time. At this point in time the applicant is not proposing any impact to the environmental conservation or protection zones.

Lyn Mattei, representing Northwest Environmental Advocates (NWEA) and the Wilkes Community Group, said both groups have actively opposed this subdivision and the minor partition because of the high value of the environmental resources on the site and the need to protect them. She said yesterday the Hearings Officer approved the minor partition which Wilkes Community group had appealed. Therefore, they have many issues left to deal with in the subdivision appeal. They believe the bifurcated reviews of this one site should be eliminated and that this subdivision should be denied so that a PUD could be applied to both the subdivision and partition in one review. If that is not possible, they have three remaining issues on the subdivision. First, Lot 6 as configured is not appropriate as it presupposes elimination of a drainage way that is part of a wetland resource without relocating it.

Ms. Beaumont reminded Ms. Mattei that her testimony should be directed to the two conditions of approval.

Ms. Mattei said part of the quandary about what to do with the setbacks could be resolved in part by reversing the north/south configuration of Lots 8 and 9. Lot 8 is presently connected to the southern area and one would have to put a road through Lot 8, dealing with some very environmentally sensitive areas. She noted that Mr. Galitzki stated that is possible to put a 100-foot road on the western part of Lot 8 without impacting the environmental areas. That would be good news but it would be much easier, and eliminate the setback problem, if the continuation of the southern part of this site went from Lot 9. That would allow a clear continuation for the road and some development that does not impact the environmental zoning. She said Condition A should be retained as the subdivision enfolds the minor partition and if it fails, the subdivision would likely fail as the boundary lines are the same. The partition is not legally final yet and there is no legal plat. She said this issue will be resolved within 30 days unless there is an appeal to LUBA, which she believes is unlikely. She suggested that the applicant might consider a waiver of the 120-day rule to review the configuration of Lot 9.

In her rebuttal, Ms. Cofield said this is a subdivision application along with a fill permit for a ditch. The standards for review of the ditch permit did involve the environmental code in Title 33 but that does not apply to the subdivision approval criteria. She said the applicant could agree to the proposal by Ms. Mattei to flip Lots 8 and 9 so that Lot 9 would be 25 acres and Lot 8 would be three acres but she does not know how to do that procedurally at this point. She asked if a remand was possible.

Ms. Beaumont said a remand is one possibility if the applicants agree to waive the 120-day time limit. Or Council could set this over for a period of time to allow the applicant to submit a revised tentative plan. In that case, renotification and reopening of the record would be needed so that people could testify as to the proposed revised plat.

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Commissioner Hales said he is very wary of Council redrawing subdivision lines in an appeal hearing.

Ms. Cofield said special setbacks were imposed, which the applicant believes were in error. NWEA is saying if the lots are flipped, then the concern over having to protect the various accesses through the special setback mechanism is not needed because access will be on Lot 9. The applicant would like the access to be on the easterly side of Lot 9 but, if granted, that would take away the need for the special setback and it would no longer be an appeal issue. And if they knew the minor partition could be finalized, that issue could be dropped too.

Ms. Beaumont said it is possible that redrawing the lines may not eliminate the issue of special setbacks altogether. Planning staff may still recommend a setback on Lot 9 to preserve a future access opportunity.

Mayor Katz asked if the applicant is willing to waive the 120 days to see if something could be worked out.

Mr. Galitzki said waiving the 120-day period may prevent them from getting anything done this summer. He is reluctant to grant that open-ended time frame but is willing to switch lots if they can have a 60-foot setback on the east portion of Lot 9, removal of the rest of the setbacks and elimination of the platting of the minor partition. Is that possible?

Ms. Cofield said if they grant the 120-day waiver they would like some limit on the time extension.

Ms. Beaumont said she would recommend a 60-day extension of the 120 days.

Commissioner Hales asked the City Attorney to clarify who is to record the plat.

Jan Betz, Deputy City Attorney, said the City did agree to do all the processing required to apply for a minor partition and then record the plat when that process was completed. That has been held up by the 21-day appeal period which began yesterday after the Hearings Officer issued a decision in favor of the minor partition.

Commissioner Sten asked if the City legally needs Condition A to protect Bureau of Environmental Services (BES) interests. Would BES get its money back if the minor partition is not approved?

Ms. Betz said no, the stormwater parcel was purchased by the City and the deed is in escrow. The deed has a condition which states, "except that the real property is conveyed without an approved partition." If the City were to record the partition now it would be recording a deed to an illegal lot, which they are loath to do. If the minor partition is not approved BES would continue to own the lot but potentially would not be able to do its planned stormwater management development on the parcel. It would remain there in its natural state.

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Commissioner Sten asked if the execution of BES' plans on the partition is part of what lead to the acceptability of the development plans. Would Planning have approved without the stormwater development plan?

Ms. Betz said the minor partition was approved with the condition that it be used for this type of public facility.

Commissioner Sten asked if the Galitzkis' subdivision could be approved if the stormwater facility is not approved.

Mr. Engstrom said the BES stormwater facility proposal will be subject to environmental review for the development-specific plan. The partition was approved with a condition that limits uses on that site because of the lack of street access.

Commissioner Sten asked if failure to build the stormwater facility would affect the applicants' ability to develop their land.

Mr. Engstrom said Planning is concerned that if that parcel never became final, this application would potentially not be legal.

Commissioner Sten asked Mr. Engstrom if Planning believes there is reason to negotiate the proposed change that has been suggested.

Mr. Engstrom said Planning would still be concerned about maintaining several alternatives there because it does not have an environmental review at this point. If other options are closed off, there may not be an approvable route through the environmental zone, no matter which tract extends farther south. If the minor partition was platted at this point, staff would be happy to drop Condition A. Staff believes the Hearings Officer made the right decision regarding the setbacks in Condition Q which keep the options open. Even if the lots are flipped, there is no guarantee that buildings will not be built in a manner that will prevent all but one option.

Commissioner Hales asked why the City cares if there is only one option as long as it provides access.

Mr. Engstrom said if there is only one option, the City has no ability to do an environmental analysis and that option might later prove not to be approvable.

Commissioner Hales noted that the person who would be harmed would be the applicant who is proposing the change in the first place.

Mr. Engstrom said staff's interest is looking out for the environmental and subdivision codes and believes it has a responsibility to make sure lots and subdivisions are not platted in a manner that cuts off future street connections.

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Commissioner Sten noted that if this land had two percent more environmentally zoned land, reaching the 50 percent level, then the developer would have to go through the PUD process which would demand exactly that.

Mr. Engstrom said staff is not attached to the notion of a conservation easement trigger. That was put in so that if Lot 8 is never developed, the City would not keep holding those setbacks if it was determined that no one ever wanted to develop on the southern part of Lot 8.

Commissioner Hales asked if there was a substantive disagreement about the possible disposition of the southern portion of the property that would be reached by these street accesses.

Mr. Engstrom said there is no reason to believe development on the southern part of Lot 8 could not be approved. The question is whether at this point the City should hold onto some future options or whether those can be handled later, during the environmental review process. If the decision is made later, buildings could be built in a manner that could preclude all but one route through the environmental zone, making it unapprovable and denying access.

Mayor Katz asked who would be damaged.

Mr. Engstrom said the developer.

Mayor Katz said if they make the wrong decision, then perhaps none of the parcel could be developed.

Mr. Engstrom said Planning has some concerns about its liability in completely cutting off access to the site. The subdivision Code requires consideration of future street connectivity.

Commissioner Sten said he does not concur that only the developer is hurt. It is not hard to imagine a situation where the wrong road is approved later through the environmental zone because it is the only option. The NWEA says one lot is more environmentally sensitive than the other and is willing to put the road on the one they consider less sensitive. There may be room for compromise on those grounds.

Commissioner Hales said the City does not care if one location for the street is selected early if the right location is selected.

Mr. Engstrom said staff is concerned that a decision be properly made through the application of the environmental approval criteria when there is a specific plan and more detailed environmental inventory information is available.

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Ms. Beaumont said there is no way to prejudge the outcome of an environmental review.

Commissioner Francesconi asked what the odds are of the City not getting the minor partition platted right or getting the deed turned over.

Ms. Betz said they will know in 21 days if the minor partition is appealed. If not, then the City can record the plat.

Commissioner Francesconi said he has less interest in retaining Condition A and, while he leans towards the City's position on Condition Q, but he would like to see the parties get together during the 21-day appeal period to see if a legally-acceptable compromise can be worked out flipping the properties.

Ms. Beaumont said the applicant would have to extend the 120 days. If the parties are able to negotiate a revised tentative subdivision plan, that will trigger additional notification, reopening the record and an additional hearing. That could take another 70 days or so.

Ms. Cofield said Mr. Galitzki was hoping this could all be done in 25 days. They believe the City does not have the legal right to impose the special setbacks.

Commissioner Sten asked if it is true that one road could not be picked at this level.

Ms. Beaumont said Council could legally eliminate one of the setbacks the Hearings Officer has recommended at this point but the murky question is what the implications are for future development. Eliminating an option that the Hearings Officer felt should be preserved, without environmental review, might put the applicant, the City or both in an untenable position in the future by not having an alternative to consider. She disagreed with Ms. Cofield's statement regarding the legality of the setbacks.

Mr. Galitzki said they are unwilling to grant additional time.

Commissioner Hales moved to uphold the Hearings Officer's decision as modified by the June 11 memo to Council from Eric Engstrom, keeping Condition A and revising Condition Q as suggested in the memo and adopting the supplemental findings as submitted.

Regarding Condition A, Commissioner Sten said he does not see how the whole subdivision would be valid if the City's minor partition falls through.

Commissioner Francesconi asked if there is any harm to the developer if the City takes over ownership but leaves Condition A in.

Ms. Beaumont said no. Once the plat is recorded, condition A counts for nothing.

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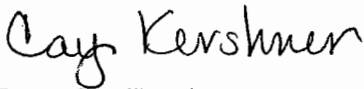
Commissioner Francesconi seconded Commissioner Hales' motion.

Mayor Katz said she is sorry applicant did not agree to the delay as she believes things could have been worked out.

Disposition: Appeal denied; findings adopted. (Y-4)

At 3:25 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By Cay Kershner
Clerk of the Council