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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 30TH DAY OF SEPTEMBER, 1998 AT 9:30 A.M.

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

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

Agenda No. 1435 was pulled from Consent. On a Y-4 roll call, the balance of the Consent  
Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 1433** Reject all bids for Fanno Basin pressure line - Multnomah section (amended Purchasing Report  
- Bid 99022)

**Disposition:** Accepted.

- 1434** Vacate a certain portion of N Macrum Avenue north of N Junction Street, under certain  
conditions (Second Reading Agenda 1392; C-9953)

**Disposition:** Ordinance No. 172727. (Y-4)

**Mayor Vera Katz**

- \*1436** Amend contract with Wells Fargo Bank, N.A. (Ordinance; amend Contract No. 50362)

**Disposition:** Ordinance No. 172728. (Y-4)

- \*1437** Authorize the Purchasing Agent to sign a Purchase Order as a contract with Software AG for  
annual software maintenance (Ordinance)

**Disposition:** Ordinance No. 172729. (Y-4)

- \*1438** Extend legal services agreement with Lehner, Mitchell, Rodrigues & Sears, LLP for outside  
counsel representation (Ordinance; amend Agreement No. 30567)

**Disposition:** Ordinance No. 172730. (Y-4)

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- \*1439** Pay claim of Richard Calef (Ordinance)

**Disposition:** Ordinance No. 172731. (Y-4)

**Commissioner Jim Francesconi**

- \*1440** Correct Parks SDC Code to be consistent with an inter-agency agreement with the Portland Development Commission (Ordinance; amend Code Section 17.13.070(a)(5))

**Disposition:** Ordinance No. 172732. (Y-4)

- \*1441** Accept ownership of two properties from Multnomah County for park and recreation purposes (Ordinance)

**Disposition:** Ordinance No. 172733. (Y-4)

- \*1442** Authorize agreement for acquisition of the Hassett property, east of SE 110th, south of Johnson Creek, in the Urban Waterways Local Share Target Area (Ordinance)

**Disposition:** Ordinance No. 172734. (Y-4)

- \*1443** Amend Purchase Order with DRK Parks and Environmental Consulting to include additional services in the amount of \$6,000 (Ordinance; amend Purchase Order No. 1021760)

**Disposition:** Ordinance No. 172735. (Y-4)

- \*1444** Authorize agreement for acquisition of the Shannon property, north of SE 159th, south of Johnson Creek, in the Urban Waterways Local Share Target Area (Ordinance)

**Disposition:** Ordinance No. 172736. (Y-4)

**Commissioner Charlie Hales**

- \*1445** Adopt the State of Oregon, 1998 Edition of the Structural Specialty Code (Ordinance; amend Title 24)

**Disposition:** Ordinance No. 172737. (Y-4)

- \*1446** Contract with two professional, technical and expert service firms for computer programming services as required to support projects within the Portland Office of Transportation (Ordinance)

**Disposition:** Ordinance No. 172738. (Y-4)

**Commissioner Gretchen Miller Kafoury**

- \*1447** Contract with Outside-In in the amount of \$33,700 to support the Transitional Housing Program for persons with HIV/AIDS and provide for payment (Ordinance)

**Disposition:** Ordinance No. 172739. (Y-4)

- \*1448** Contract with Christmas in April "Star" Portland for \$25,000 to carry out the housing repair and renovation program and provide for payment (Ordinance)

**Disposition:** Ordinance No. 172840. (Y-4)

**Commissioner Erik Sten**

- 1449** Appoint Robert Kreinberg to the Mount Hood Cable Regulatory Commission (Report)

**Disposition:** Confirmed.

- \*1450** Grant a temporary, revocable permit to Pacific Fiber Link, LLC and establish terms and conditions (Ordinance)

**Disposition:** Ordinance No. 172741. (Y-4)

- 1451** Contract with the U.S. Geological Survey for streamflow and water quality monitoring without advertising for bids (Ordinance)

**Disposition:** Passed to Second Reading October 7, 1998 at 9:30 a.m.

- \*1452** Authorize amendment to contract with ACE Consultants for \$60,000 to provide additional professional engineering services to accommodate increased scope of work (Ordinance; amend Contract No. 30440)

**Disposition:** Ordinance No. 172742. (Y-4)

- \*1453** Authorize contract to lowest responsible bidder for installation of the fuel cell power plant at Columbia Boulevard Wastewater Treatment Plant (Ordinance)

**Disposition:** Ordinance No. 172743. (Y-4)

- \*1454** Authorize agreements for the conveyance of property to the Bureau of Environmental Services, subject to certain conditions being fulfilled and authorize acceptance of deeds and payments of expenses (Ordinance)

**Disposition:** Ordinance No. 172744. (Y-4)

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- 1455** Authorize contract with the lowest responsible bidder to transport biosolids to the Madison Farms for land application (Ordinance)

**Disposition:** Passed to Second Reading October 7, 1998 at 9:30 a.m.

- 1456** Authorize an agreement with Portland General Electric for \$13,400 to assist owners of multifamily apartments with weatherization (Ordinance)

**Disposition:** Passed to Second Reading October 7, 1998 at 9:30 a.m.

**City Auditor Barbara Clark**

- \*1457** Assess system development charge contracts and Private Plumbing Loan Program contracts (Ordinance; Z0692, Z0693, T0014, P0037)

**Disposition:** Ordinance No. 172745. (Y-4)

**REGULAR AGENDA**

- \*1435** Accept a grant from the U.S. Department of Commerce, Economic Development Administration in the amount of \$65,000 (Ordinance)

**Discussion:** Mayor Katz said this grant will allow the City to partner with Portland Community College (PCC) and Marshall High School in developing a technology/manufacturing learning center in outer Southeast.

Rosie Williams, Mayor's liaison for workforce development, said this project will attempt to link the small manufacturing businesses in Outer Southeast with the community. Both youth and adults will be trained in a wide array of different manufacturing skills. At the same time, through PCC, small manufacturers will be assisted in upgrading their equipment and workforce.

Neil Nagus, Assistant to the President, Portland Community College, said they have been working with their community partners for over a year to develop the concept for the learning center. Both youth and adults will be trained to meet the standards identified by employers who are seeking new workers. The project will increase the economic self-sufficiency of Outer Southeast residents and assist the manufacturers as well. It will also assist students interested in pursuing engineering degrees.

Greg Wallach, Principal, Marshall High School, stressed the importance of this program in providing a viable option for those who traditionally have not gone beyond high school. The process involved here (two years at Marshall and two years at PCC with an option for two years at a four-year college) allows people to become involved in a program which naturally leads to higher education opportunities.

Mayor Katz asked if all the local manufacturers had been identified.

Mr. Nagus said while many manufacturers have already been identified, a survey will be conducted during the planning process to determine their needs and the standards students will have to complete.

Mayor Katz asked if there were standards for the Marshall High School technology program.

Mr. Wallach said they have standards for their current program which will be adapted based on what they learn from local manufacturers.

Mayor Katz said national standards have been set for manufacturing so one can look beyond the needs of local manufacturers. It may turn out that the standards of local manufacturers are lower than what the schools are currently providing. The schools, however, should not lower the standards.

Mr. Nagus noted that the team recently visited Cleveland to check out its program and found many other cities which operate manufacturing learning centers and which would be happy to help with this one.

Commissioner Francesconi said this is a critical piece in realization of the Lents Urban Renewal Plan. He noted that Marshall High School has improved its standards dramatically in the last year and will now be able to offer something of significant benefit to the citizens of Southeast.

Mayor Katz said at some point Council might want to establish an Enterprise Zone there if a new manufacturing opportunity presents itself.

**Disposition:** Ordinance No. 172746. (Y-4)

**Commissioner Jim Francesconi**

- \*1458** Authorize the Purchasing Agent to sign a Purchase Order with Gresham Ford under the State Price Agreement for 93 Police patrol sedans at the estimated amount of \$1,919,978 and provide for payment (Ordinance)

**Discussion:** Commissioner Francesconi said this is a big ticket item but it was agreed to as part of the plan when Council decided to extend the life cycle of police cars.

**Disposition:** Ordinance No. 172747. (Y-4)

- \*1459** Authorize a lease agreement with Winkler Development Corp. for non-park use of a portion of Portland Parks and Recreation property known as Madrona Park (Ordinance)

**Discussion:** Mayor Katz noted a request that this be returned to Commissioner Francesconi's office.

**Disposition:** Referred to Commissioner of Public Utilities.

**Commissioner Charlie Hales**

- \*1460** Accept a State Historic Preservation Office grant of \$38,750 to augment a program to consider creation of historic designations (Ordinance)

**Discussion:** Michael Harrison, Bureau of Planning, said this year the State Historic Preservation Office gave the City more than double what it gave last year and this is the first time it gave the City every dollar requested. Among the reasons for this unprecedented action are because of the City's success in gaining approval from the Department of Interior for creation of the South Portland National Register Historic District and the Eliot Neighborhood Multiple Resource Nomination Historic District. The Office is also very excited about the work the City is currently doing in Nob Hill on a National Historic District. In the coming year, staff will focus on three projects: 1) a small historic district around the Hollywood Theatre; 2) an upgrade of the Kenton neighborhood historic conservation district; and 3) creation of the Downtown Terra Cotta District. If creation of the Nob Hill District is successful it will be the largest historic district in the State, with 700 properties. He said the Office is also hopeful that the City will be able to allocate more to historic preservation projects in the future.

**Disposition:** Ordinance No. 172748. (Y-4)

- 1461** Appeal of TRP Homes, applicant, against Hearings Officer's decision to deny a five-lot PUD and subdivision with environmental review and adjustments, located at 12126 SW 64th Avenue (Previous Agenda 1420; 97-00373 SU PU EN AD)

**Discussion:** Kathryn Beaumont, Senior Deputy City Attorney, said last week Council held a continued hearing on this appeal after granting additional time to see if the parties could reach an agreement. Last week Council heard testimony on a revised set of recommended conditions and closed the public hearing. The record was held open until 4:30 p.m., September 29 and this matter was then to come to Council today for a tentative decision or further recommendations.

Bob Haley, Planning Bureau, said unfortunately there are issues regarding this application that will not be resolved to everyone's satisfaction regardless of what decision Council makes. Staff believes there are two distinct categories for Council to consider regarding this appeal. First, is whether the proposal can meet the technical requirements of the City's various development regulations. Second, is whether this meets the more nebulous definition of adequacy of public services. The technical requirements of concern, while reasonably satisfied fall into three categories: 1) storm water; 2) environmental review, particularly the accurate location of the conservation boundaries on the mitigation plan; and 3) off-street parking. Regarding storm water, Mr. Haley noted that the current plan includes relocation of the stormceptor, vegetated filter strip and overflow dissipater to the southern portion of the property, mostly outside the environmental conservation zone. He said with the more accurate site plan and relocation of the vegetated strip, mostly outside the resource area, plus conditions requiring mitigation plantings, construction management plans and conditions to ensure compliance, staff believes the environmental impacts can be mitigated. Regarding parking, he said with the provision of one on-street parking space, the actual Code interpretation is that when an off-street parking space is provided, Code criteria is no longer applicable. The Zoning Code requirement that each

dwelling unit provide one off-street parking space then applies. He described the proposed parking spaces that will be available, providing a total of the five required and an additional 11 that could be accommodated off the street, within the driveways and garages, creating a total of 16 potential off-street parking spaces.

Mr. Haley said the second issue for Council, and the one which gave the Hearings Officer the most trouble in making her findings, is whether the existing roads, SW Lesser Way and SW 64th, provide an adequate level of service for the proposed development. Adequacy is not clearly defined but staff believes it is unlikely that a single measure of adequacy can be defined. Many parts of the City are served by road systems very similar to this and requiring extensive off-street improvements is problematic under the current regulatory framework, especially for smaller projects such as this one. The record includes a response from the Office of Transportation stating that the City Engineer has determined that these roads, while less than current City standards, will continue to provide adequate access to the existing residents and those of the future subdivision. The Fire Bureau also concurs and with construction of a turnaround and water line upgrade, fire safety will be increased for all residents along these two roads.

Mayor Katz said one reason Council delayed this was to see if the parties could reach more agreement about the conditions. She asked for an update.

Mr. Haley said Transportation staff has not changed their opinion that the existing roads are adequate. While reluctant to approve sub-standard improvements to existing public streets, they believe the applicant's proposal will modestly increase the way the road handles traffic. This is a judgment call. The City has never imposed a standard on developers requiring streets leading up to a development to meet full City standards and he does not believe it is reasonable to go that far.

Commissioner Sten asked if major changes had been made in the proposal since last week.

Mr. Haley said the only changes were to indicate the accurate location of the environmental conservation zone on the mitigation and construction management plans and submission of a preliminary grading plan.

Commissioner Francesconi asked for clarification about the definition of adequacy.

Glen Pierce, Bureau of Transportation Engineering, said adequacy is not defined in the Code and there is a wide range of options for travelling to one's property. A dictionary definition would say it is "sufficient" and the way it has been determined in the past is based on whether one can get to the property. If it is not fully improved, staff then asks if the facility is sufficient to serve the property. That is where his recommendations falls in this case. Although this is a substandard facility, it currently serves a number of existing residences and can serve the proposed new residences at the same service level.

Mayor Katz asked the City Attorney whether Council should take public testimony on these minor changes.

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Ms. Beaumont said Council could reopen the record to respond to the revised site and grading plans.

Commissioner Sten said he does not need to hear more testimony about whether the environmental mapping is right or not or the other issues.

Mayor Katz asked about Council's options on this.

Mr. Haley said one frustration at last week's hearing was due to the flurry of new information submitted at that time. This proposal has been going on for 2-1/2 years and no one wants it to go on any longer but it is very difficult to make judgments on information submitted right up to the hearing time. He outlined a three-week process for review of the new information by the neighborhood, the applicant's written rebuttal and staff response. Another option for Council, however, is to simply uphold the Hearings Officer's decision of denial.

Ms. Beaumont said if Council granted the additional three weeks for review, it could request that people respond to the new site and grading plan in writing rather than taking any testimony today.

Commissioner Kafoury said Council has now heard from both sides and the objections are still strong and adamant, despite Mr. Haley's efforts to reach an agreement. She moved to uphold the Hearings Officer's denial and make a tentative decision today. Commissioner Sten seconded.

Commissioner Francesconi said if the ground for denial is adequacy of the streets, which staff has stated is the major issue, then he wonders how the City can meet its housing goals. For four units, he does not think denial is appropriate, given the fuzziness of the definition of adequacy and especially when all the City bureaus say the application meets the standards. He voted no.

Mayor Katz asked if there had been any changes in the conditions regarding storm water management and transportation that have improved the situation in those two areas.

Mr. Haley said the storm water issue has been much improved, compared to what the Hearings Officer found. The Hearings Officer looked at a stormceptor which clearly could not handle the phosphorus content to meet water quality standards. A pond was shown as an alternative before the Hearings Officer but there was no information to support evidence that it was feasible. Given that, the Hearings Officer found there was no reasonable certainty adverse impacts would not occur. The main change now is that a soils report has been done, the pond has been eliminated in favor of a vegetative strip and the Bureau of Buildings, BES and Planning staff are now satisfied that the proposed system will work. Regarding the adequacy of 64th and Lesser Road, the applicants had expressed a willingness to make minor improvements to that street but the Hearings Officer found that she could not make a finding of adequacy without a detailed plan. Since then a plan has been submitted which shows these minor improvements, specifically by providing some additional graveled areas for pullouts. It is up to Council to decide whether that amount of change is enough. There is also one less unit and the Hearings Officer added numerous conditions regarding the common parking bay requirement which are no longer applicable.



Mayor Katz said she could go either way as a lot of very legitimate concerns have been raised by the community and the City does not do a very good job of enforcing some of these requirements.

Commissioner Sten said this is a close call but he is not convinced this meets every aspect of the Code. He said he cannot keep refereeing this but believes it best to err on the side of caution, especially with environmental zones, and send this back for another round. He is not sure Council is the appropriate forum for reviewing line-item changes although he is also absolutely not convinced that four or five units on this site are unallowable.

Commissioner Kafoury noted the letter from Attorney Ed Sullivan stating the he and his client, Anne Radcliffe, have repeatedly tried to resolve their issue through this protracted process and denial was not their first choice. This seems a poor way to make land use policy.

Commissioner Francesconi said Council may need to reconsider its strategy for providing infrastructure in the neighborhoods. If Council says this is not adequate for storm water and transportation, then it ought to have a strategy to finance roads and stormwater in the neighborhoods or there will be no new housing there.

Commissioner Kafoury said she does not think the final appeal to Council is the time to be introducing additional new evidence and continuing to massage an application.

Commissioner Sten said there are many places to put housing in the City and he is concerned about unbuilt sites that are extremely environmentally sensitive. It is better to err on the side of being cautious in this case and given his uncertainty about whether the requirements have been met, he believes it prudent to vote yes and have the developer take another run at it.

Mayor Katz said the City has met 96 percent of its housing goals, based on a goal of 70,000 units. That does not account for redevelopment in the River District, North Macadam or the Central City and she predicts that the City will find, when the numbers are recalculated in February, that it has met or exceeded the goal. Commissioner Francesconi has a good point about the vague definition of adequacy but she too is frustrated with this process and will vote yes.

**Disposition:** Tentatively deny appeal and uphold Hearings Officer's Decision; prepare findings for October 21, 1998 at 2:00 p.m. (Y-3; N-1, Francesconi)

**Commissioner Gretchen Miller Kafoury**

**1462** Establish new City Code Title 30 Affordable Housing and Chapter 30.01 Affordable Housing Preservation and authorize implementing procedures (Second Reading Agenda 1423; add Code Title 30)

**Discussion:** Commissioner Francesconi said Council is trying to approach this on the basis of what is good for the City's most vulnerable citizens. Equality in housing opportunities needs to be balanced against private property rights and the need to offer incentives to private enterprise

to provide those opportunities. He believes the 60-year affordability requirement in most circumstances is appropriate. However, the Portland Development Commission also needs some flexibility to make sure there is private capital in this market and the effect of a strict, 60-year affordability requirement nationwide has been to dry up private capital. He finds it very reasonable to allow the City to bid on units that have received federal subsidies. With the added amendments, he is convinced that the price offered by the City will be fair and that arbitration can ensure a fair process. He said it would be helpful to hold a meeting among the private and public partners to focus on finding the money. He said getting a targeted tax abatement approved by the legislature and targeting the depreciation to the lowest-income citizens is the most appropriate use of abatement and more effective than any other alternative. The idea that the City can come up with \$22 million for Clay Towers is unlikely.

Commissioner Kafoury said she too is distressed by the polarization and misinformation on this issue. Three major actions need to follow passage: 1) devise a financing strategy to pay for this; 2) prepare a legislative strategy; and 3) build a better relationship with landlords who provide low-cost housing. However, today the City is taking a giant step forward in helping low-income people.

Commissioner Sten said while housing prices skyrocket because of the good economy, people on the lower end and those on disability and Social Security are not seeing their incomes rise accordingly. This ordinance will not save housing but simply give the City a chance to save it. There are 85 properties in the City in which the federal government basically pays all the rent and giving the City the right to buy them if the owner decides to sell and the City can pay top dollar for them is a reasonable approach. He said there is an overwhelming public need for the government to provide housing to the poorest of the poor and, at the same time, property owners have a right to use their property as they see fit. The test is whether one section of the public is unduly paying for a legitimate public need. In this case, he believes the two competing needs are fairly balanced but unless there is a unified strategy for finding the money, this effort will fail.

Mayor Katz said the City has tools such as property tax exemptions, waiver fees and tax increment financing and this is yet another one. This will probably be appealed and the issue of "taking" will be raised. She is interested to see how the courts view the \$30,000 replacement fee. More flexibility was built into that and while it can create a tremendous amount of insecurity, it is necessary. The flexibility will allow adjustments to be made if problems are identified by PDC and BHCD in the future. If the economy should worsen, the need to provide housing for the poor will be critical.

**Disposition:** Ordinance No. 172749 as amended. (Y-4)

**Commissioner Erik Sten**

**1463**

Declare intent to purchase Preservation Projects and direct the Office of Finance and Administration to research options and recommend a financial strategy to purchase Preservation Projects pursuant to City Code Chapter 30.01 (Previous Agenda 1425)

**Discussion:** Commissioner Sten said this resolution makes it clear to both property owners and

housing advocates that Council intends to come up with a strategy to purchase these properties when it needs to. The best thing to do, however, is keep the owners working with the federal government. On each of these 85 buildings all the rent is paid by the federal government and so, if the City acquired them, it would take far less money to buy a building that has income coming in than to replace those units. Perhaps a short term credit line could be used to save a building in jeopardy while a longer-term strategy is devised.

Ken Rust, Director, Bureau of Financial Management, said they hope the good economy right now will translate into some additional resources but it will still be a challenge for the City to do all it wants to do. Some tool to bridge the purchase of property until a different ownership arrangement is made is probably quite doable. Ideally, some legislative action will be taken to bring in additional resources so the City does not have to redirect existing resources. Regarding tax abatement, that is an expenditure of resources the City would otherwise receive and under Measure 50 it does cost money.

Susan Emmons, Director, Northwest Pilot Project, 1137 SW Broadway, said it became clear to her in talking with opponents that they understand the need and would like now to be part of the solution.

Mayor Katz said there is a need to fund all housing needs, including preservation housing, housing along the potential south/north transit lines and affordable housing in general.

**Disposition:** Resolution No. 35732. (Y-4)

1464 Grant a franchise to WCI Cable, Inc. for a period of ten years (Second Reading Agenda 1426)

**Disposition:** Ordinance No. 172750. (Y-4)

### Communications

1465 Request of Marty Kehoe, The Kehoe Company, to address Council regarding the Parks System Development Charge (Communication)

**Discussion:** Mayor Katz noted that Mr. Kehoe was not present to address Council.

**Disposition:** Placed on file for no further consideration.

1466 Request of Lewis Marcus to address Council regarding the resolution placing a moratorium on sale of park lands (Communication)

**Discussion:** Mayor Katz noted that Mr. Marcus was not present.

**Disposition:** Placed on file for no further consideration.

1467

Request of E. Neil Van Horn to address Council regarding petition of Mt. Tabor residents for a change in the Comprehensive Plan designation for property at 5841 SE Yamhill  
(Communication)

**Discussion:** E. Neil Van Horn noted that the property owner at 5841 SE Yamhill has requested rezoning from R5 to R2 in compliance with the Comprehensive Plan designation for that property, which was applied by the Planning Commission in 1980. However, he and the other 150 nearby residents he has contacted believe that request should be denied and that the comprehensive plan map should be amended because the requested rezone on this property no longer complies with the way the community exists today. They believe this property should remain R5. The Planning Commission to date has ignored the comprehensive plan other than to say that since it allows R2 and there are adequate police, fire and sewer services, the zone change will be approved. It has neglected several issues within the plan, including Policy 2.9, which calls for a range of housing types to allow increased population and growth while improving and protecting the City's residential neighborhoods. In this instance, a potentially historic house will be torn down to build row houses which in no way will improve the integrity of Mt. Tabor. He formally asked that Council initiate a plan amendment, which is allowed under the comprehensive plan at any time, regarding his request to maintain the current R5 base zoning on this property and remove the R2 designation allowed under the comprehensive plan. He said any citizen, affected property owner or group can petition Council or the Planning Commission to have a plan map zone amendment.

Mayor Katz said she understands that the Mt. Tabor Neighborhood Association is meeting with the neighbors and developer to discuss this issue so Council will wait to see what happens there.

Mr. Van Horn said part of his request is that the Hearings Officer stay any decision about the zoning map request until this is addressed by Council.

Commissioner Sten said this must go through the Hearings Officer first.

Mr. Van Horn said asking Council to reverse the Hearings Officer's decision, if the R2 zone change goes through, is not the same as changing the comprehensive plan map, which is what he is requesting.

Kathryn Beaumont, Senior Deputy City Attorney, said there is a quasi judicial request before the Hearings Officer to upzone this property to R2, consistent with its comprehensive plan designation. That decision is potentially appealable to Council. Admittedly, the criteria for a zone change are quite narrow and focus on adequacy of services and whether the change goes to the maximum plan designation. Mr. Van Horn is correct in that this decision will not change the comprehensive plan designation, which is what he is asking Council to have the Planning Commission review for a single piece of property. However, while Council has the power to do that, it is a power it has very rarely exercised. She said in those instances, it has been on the basis of an obvious and egregious error and she has no information to suggest that is the case here.

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Commissioner Francesconi asked if a citizen can attempt to make a comprehensive plan amendment change.

Ms. Beaumont said the citizen could ask the Planning Bureau or the Planning Commission to do that but typically Council does not do it.

Mr. Van Horn said he has requested both the Planning Bureau and Planning Commission to make such a change.

Mayor Katz said she wants to wait for the response of the neighborhood association and then forward this request formally to the Commissioner-in-Charge of Planning. She said Council cannot interfere with the Hearings Officer's procedure. She asked Planning Bureau staff for a memo explaining the situation.

**Disposition:** Placed on file.

At 11:15 p.m., Council recessed.

**SEPTEMBER 30, 1998**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 30TH DAY OF SEPTEMBER, 1998 AT 2:00 P.M.

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

- 1468**      **TIME CERTAIN: 2:00 PM** - Present awards for Safety Recognition Day (Presentation by Mayor Katz)

**Discussion:** Mayor Katz said this is the fourth year the City has recognized the efforts of employees to ensure safety in the work place. The Mayor and Commissioners made awards to various individuals and bureau safety committees for their efforts in a number of categories, including ergonomic improvement and creative solutions.

**Disposition:** Placed on File.

- 1470**      Apply the Central Employment designation and EXd zone and Urban Commercial designation and CM zone to selected properties in the Lents Urban Renewal District (Second Reading Agenda 1429)

**Disposition:** Ordinance No. 172751. (Y-4)

**Commissioner Charlie Hales**

- \*1469**      Amend Section 34.30.030.B.7 of Title 34, Subdivision and Partitioning Regulations to be consistent with Title 33 to allow land divisions creating lots less than 50 feet wide (Ordinance; amend Title 34)

**Discussion:** Sarah Bradley, Planning Bureau, said this amendment will correct Code conflicts between Titles 34, the land division Code, and 33, the Planning Code. She said in Title 33 the creation of new lots less than 50-feet wide in the R5 zone is allowed if they meet certain specifications, including having an area of at least 4,000 square feet, measuring at least 40-feet wide and having an average lot size of 5,000 square feet.

Duncan Brown, Planning Bureau, said the purpose of this regulation in Title 33 is to encourage infill development while retaining the existing housing stock and neighborhood character. It allows land division and development on oversized lots where the existing development would otherwise have to be removed because it is located towards the center of the site.

Commissioner Francesconi asked how it retained the existing neighborhood character.

Mr. Brown said by encouraging the retention of the existing housing. It does that by allowing

land divisions which continue to meet the same density requirements of the base zone. Usually these are in R5 zones, where the average lot size is 5,000 square feet while at the same time allowing additional housing to be placed within the neighborhood. When this situation has arisen, about 90 percent of the time its purpose is to retain existing housing on the site.

Commissioner Francesconi said some concern was relayed to him that this could remove historic homes present on the site.

Mr. Brown said the purpose of this is the exact opposite.

Ms. Bradley said the lots must be vacant and newly created. The problem in this case is that development that is allowed in Title 33 must under Title 34, have a 40 by 40 foot buildable area outside the required setbacks. If the lots are allowed to be as narrow as 40 feet wide, a 40 by 40 foot area could not be contained within the width of the site outside the required setbacks. A similar situation occurs in the A-overlay zoning designation in R5, R7, R10 and R20 zones. Attached housing is allowed in certain cases, in Title 33, if the lots must have minimum widths of 16 feet, minimum depths of 40 feet and a minimum area of 1,600 square feet with average lot sizes of 2,500 square feet. The new lots must be vacant.

Mr. Brown said because the lots must be vacant to take advantage of the "a" overlay provision, no encouragement is given to the removal of any homes.

Ms. Bradley said again there is a conflict with Title 34's requirement for a 40 by 40 foot buildable area outside the required setbacks. If a lot is less than 50 feet wide it cannot contain the 40 by 40 foot area outside the setbacks as required by Title 34. The original intent of the 40x40 requirement was to ensure that there are buildable areas on new lots, in environmental zones, land hazard areas and land in the flood plains. This section was adopted in response to a LUBA remand requiring the City to address land hazards and further protect environmentally sensitive areas. The proposed amendment essentially pulls out land within the environmental areas, landslide hazard areas or flood plains which would need to show a 40 by 40 foot buildable area outside the required setbacks. Adoption of the amendment will allow land divisions resulting in narrower lots in the R5 zone as promoted and allowed in Title 33. It will also allow land divisions resulting in narrower lots in the "a" overlay zone and will continue to require a 1,600 square foot buildable area with minimum dimensions of 40 by 40 feet in environmental zones, landslide hazard areas and flood plains.

Mr. Brown said the proposed amendment applies only to minor partitions. Major land divisions and subdivisions would be required to go through environmental review.

Ms. Bradley said passage of the amendment will promote consistency between the two titles and result in more infill development while protecting land in environmentally sensitive areas. This is not a shift in policy but conforms to policy implemented in Title 33 and adopted in the early 1990s. Both Planning Bureau staff and the Planning Commission recommend adoption of the amendment.

Barry Daigle, Irvington Neighborhood Association, said Irvington has a problem with 16-foot

wide lots with attached row houses. He said this proposed change creates additional conflicts between Titles 33 and 34. The original intent of Section 34.30.030.B-7 is to ensure there are buildable areas on new lots in environmentally sensitive areas. The State's definition of an environmentally sensitive area includes historic districts and the proposed change to B.7 eliminates any application to such districts. In Title 33, under the section dealing with development standards in the "a" overlay zone, it states that its purpose is to encourage the provision of well-designed housing that is attractive and compatible with an area's established character. Some will argue that the Type II design review sometimes required for development in historic districts ensures continuity with that character. Attached multi-dwelling units in Irvington were always restricted to block corners and the proposed change to Title 34 will effectively eliminate that restriction. In Irvington land division has never been necessary to increase density as they have duplexes and internal conversions but in every case these reflect the character of the historic district. Title 33 requires the proposed attached residential development be on a lot of record created at least five years ago. Most Irvington properties that consist of oversized lots in fact contain two lots that were recorded years ago. Approval of the amendment will allow row houses throughout the neighborhood and negatively impact its character. He asked that this amendment be delayed.

Commissioner Sten asked what would happen on the lot (on NE 19th) where a house has been torn down.

Mr. Daigle said because it is an interior lot, new building would be restricted to a single-family residence or one with internal conversion but it would not be an attached row house. Under this rule, because one can use exceptions found in Title 33, you can get to Title 34 and build an attached row house on an interior lot. Before, it was restricted to corner lots.

Commissioner Francesconi asked if the primary concern is that existing houses will be demolished and replaced with rowhouses. Will this amendment be limited to vacant lots?

Mr. Daigle said his concern is the vacant lots. If economic pressures increase and homes age, there is a push to fully depreciate the value of homes in such areas as Sabin. At that point, someone might come in and replace it with an attached row house.

Commissioner Francesconi asked if Irvington is asking for an exception to historic districts.

Mr. Daigle said they are asking that historic districts be counted as environmentally sensitive areas.

Mayor Katz said the concern seems to be with the character of what is built on a vacant lot, with no protection through design review.

Mr. Daigle said design review does not protect them because it only covers superficial items such as the type of dormers.

Danny Ralston, builder, said he builds primarily on infill lots in tax abatement areas. The 40 by 40 rule definitely prevents him from building on vacant land because of the setbacks on each



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side. Also, regarding the flood plain areas, he currently has proposed building a house on a lot where the house had been condemned for four years. Since it took one year more to demolish the house, it technically has not been vacant for five years and that is creating a problem. Most lots in the Johnson Creek area are oversized and he would like to create more affordable houses there.

Sarah King, land-use consultant, supported the proposed changes, which support current City policy and will make Titles 33 and 34 consistent. She said the Title 34 40 by 40 foot building pad is not a requirement of subdivisions or major partitions but only of minor partitions, resulting in an equity issue. The other inequity is that staff has been very liberal with adjustments to the 40 by 40 requirement in order to allow people to develop on lots that meet the requirements of Title 34. However, when such approvals have been appealed, the Hearings Officer has been denying them, ruling in favor of the appellants. That creates an inequity between those whose adjustment approvals have been appealed versus those who have not. The proposed change will eliminate that.

John Walls, Chair, Land-use Committee, Irvington Neighborhood Association, said if this is rejected the community associations will have time to work with the planners over the next month until the entire Title 34 process comes back for Council review. Then changes can be made that ensure the character of the historic neighborhoods is retained.

Tim Tetum, Portland-area builder, said each variance is granted on a case-by-case basis and there is a requirement to post public notice on areas to be changed. That gives neighborhoods plenty of opportunity to go to the Planning Commission if they have any objections. Where this conflict really hurts is in the southeast Johnson Creek area because of the inferior housing stock. He said in his case he has a lot that is 1-1/2 feet too narrow to allow them to tear down an old dilapidated house and build two new houses, leaving all the existing landscaping.

Mayor Katz said there were some questions about allowing attached housing in the R5 through R20 zones. Also, she wonders why this could not wait until all the Title 34 rewrite is ready.

Mr. Brown said the Title 34 rewrite will not be before Council until next year at the earliest and in the meantime there are many builders who have requested variances in order to build these affordable houses. When the variances were denied by the Hearings Officer, staff felt that presented enough of a problem that it needed to be taken care of as soon as possible so that these minor partitions could continue. The Hearings Officer denied the variances because there was no showing of hardship. There has to be a physical reason on the ground. In pancake-flat areas in southeast or northeast Portland there is no physical reason why a hardship would be created by the inability to build more than one house on the site.

Commissioner Sten said this makes sense in many parts of town but how does this affect 50 by 100 foot lots in Irvington.

Mr. Brown said in order to build on vacant lots within an A-overlay zone at R2.5 densities in the R5 zone, the lots must be vacant for five years. He said the "a" zone was meant to encourage people to build on oversize lots next to a large house and provide additional housing. The term

"environmentally sensitive areas" specifically refers to natural resource areas that have environmental zones applied to them. That was a requirement of the Land Conservation and Development Commission and does not apply to historic areas. Historic character is determined as part of an historic designation and in many historic areas, i.e. Northwest, Woodlawn and Eliot, the lots are small and odd-shaped. Irvington has some 40-foot-wide lots and narrower than normal lots do occur throughout the City.

Commissioner Kafoury asked if this was discussed by the Planning Commission.

Mr. Brown said there was some discussion of it. The intent of the Title 34 requirement they are trying to amend is to apply that to natural resource areas, landslide hazard and flood plain areas.

Commissioner Francesconi said the problem seems to be that the Planning Bureau would recommend adjustments but, if the application was appealed, the Hearings Officer would deny it. Did the Bureau continue to issue the variances issued once the Hearings Officer ruled like that?

Ms. Bradley said no, they began this amendment process to clear this up.

Commissioner Francesconi asked what percentage of housing stock is in historic districts.

Mr. Brown said about 10 percent.

Commissioner Francesconi said he will vote aye to clean up this discrepancy but would like to direct the Planning Bureau to see what effect this has on historic districts.

Mr. Brown agreed. He said if lot size and configuration is a historic element it is listed as such within the historic district. In Woodlawn, for instance, the odd-shaped lots are noted. Other historic districts are silent on lot sizes but they are addressed during the historic review.

Commissioner Francesconi said the other alternative is to remove the historic neighborhoods and then proceed.

Mayor Katz said that would be her preference.

Commissioner Sten expressed concern about differentiating historic districts by zoning requirements. Instead they are differentiated based on design guidelines and keeping the historic character intact. It makes him nervous to approve ad hoc a zoning difference between historic districts and others. Although this needs a little more work, the Code needs to be cleaned up as in the vast majority of cases it is causing a problem on a lot where a developer ought to be building.

Ms. Bradley said one problem is that Title 34 has not been rewritten for a very long time so as changes occur in Title 33 they get caught up with Title 34. When the rewrite of Title 34 is ready, amendments will be proposed to Title 33 at the same time so the two will be consistent. This is more of an interim measure until that rewrite is adopted.

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Commissioner Kafoury asked if the Irvington Community participated in the Planning Commission process.

Mr. Brown said the Commission recognized the original intent of the Title 34 requirement, mainly its application to environmental zones, flood plains and land slide areas. Its recommendation to Council is based on that.

Ms. Bradley said the Planning Commission's primary concern was the continued protection of those areas as the intent of the 40 by 40 regulation is to keep development out of them.

Commissioner Francesconi said there was no real discussion, however, about historic districts.

Mayor Katz asked if Council wanted to take a further look at the implications for historic districts.

Commissioner Kafoury said she would rather continue this one week. While she hears the concern from Irvington, she does not see that this will have a great effect on historic districts. Is this really relevant to Irvington?

Mr. Brown said this is being blown out of proportion. There are land divisions within historic districts, most of them subdivisions, so this regulation does not apply but when it does the result is small lots that are within the character of the area. Staff has not really worked with the neighborhoods on this issue.

Ms. Bradley said staff has not received any letters about this issue, only one call the day of the Planning Commission hearing.

Commissioner Kafoury moved to hold this over one week and let staff work with the neighborhood to clear up the misconceptions.

Commissioner Francesconi seconded.

Commissioner Kafoury said she believes there is a misunderstanding here.

Commissioner Sten said he does not personally believe this will affect historic districts but perhaps a week's review would help.

Commissioner Francesconi said he needs to find out if it is inappropriate to zone historic districts differently.

Mayor Katz said while Council does not want to set two different standards for historic and non-historic districts, the implications for historic districts need to be understood.

Commissioner Sten said he does not necessarily buy the argument that more density messes up the character of a historic neighborhood.

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Commissioner Kafoury said she would like to know the magnitude of this.

Mr. Brown said there were two denials but about a dozen applicants have variances pending that they believe would be denied, given the current Code conflicts.

Mayor Katz said Council agrees to set this over one week. She said it is not the additional density that is of concern, it is design review that protects the historic character of a neighborhood.

**Disposition:** Continued to October 7, 1998 at 2:00 p.m.

At 3:20 p.m., Council recessed.

OCTOBER 1, 1998

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON  
WAS HELD THIS 1ST DAY OF OCTOBER, 1998 AT 2:00 P.M.

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

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

### REGULAR AGENDA

- 1471** Appeal of Northwest District Association of Hearing Officer's decision to approve with  
conditions the request of Ellen J. Lippman, applicant, for a zone change, minor partition and  
environmental review for property located on NW Belgrave near NW Aspen and NW Thurman  
(Hearing; 98-00336 ZC MP EN)

**Disposition:** Rescheduled to October 22, 1998 at 2:00 p.m.

### Commissioner Jim Francesconi

- 1472** Tentatively deny appeal of Arlington Heights Neighborhood Association and others and uphold  
Commissioner of Public Utilities' decision to approve application of the Oregon Holocaust  
Memorial Coalition to place a memorial in Washington Park (Findings; Previous Agenda 1345)

**Discussion:** Mayor Katz said as soon as Council acts on these findings, copies will available to  
the public. There being no discussion, she called for the roll.

**Disposition:** Findings adopted. (Y-4)

At 2:05 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

By Cay Kershner  
Clerk of the Council