



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON
WAS HELD THIS 21ST DAY OF OCTOBER, 1998 AT 9:30 A.M.

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

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

Agenda No. 1550 was pulled from Consent. On a Y-5 roll call, the balance of the Consent
Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 1536** Accept bid of U.S. Filter to furnish an annual supply of gate, tapping and butterfly valves for
\$190,615 (Purchasing Report - Bid 99042)

Disposition: Accepted; prepare contract.

- 1537** Accept bid of Portland Motorcycle Co., Inc. to furnish police motorcycles for an estimated
annual amount of \$82,957 (Purchasing Report - Bid 99048)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

- 1538** Approve amendment of the Resolution titled "Approve the Application of Hazelwood Group
LLC for a ten year property tax exemption for a transit-oriented development project that
includes 119 units of multi-family housing located near NE Glisan Street and NE 122nd
Avenue, known as the Hazelwood Apartments" (Resolution; amend Resolution No. 35652)

Disposition: Resolution No. 35735. (Y-5)

- *1539** Establish one Police Clerical Assistant in the Bureau of Police in accordance with the
Personnel Rules adopted by the City Council (Ordinance)

Disposition: Ordinance No. 172789. (Y-5)

OCTOBER 21, 1998

- *1540** Agreement with Oregon Department of Transportation for police enforcement of High Occupancy Vehicle lanes on the I-5 freeway (Ordinance)

Disposition: Ordinance No. 172790. (Y-5)

- *1541** Ratify action by the Portland Development Commission to accept a Natural Resources Conservation Service grant in the amount of \$448,500 on behalf of the City and authorize the Office of Finance and Administration to track and report this funding as part of the City's Federal and State Grants Fund (Ordinance)

Disposition: Ordinance No. 172791. (Y-5)

Commissioner Jim Francesconi

- *1542** Increase contract with B.J. Cummings Co. for the Water Bureau 5th floor remodel (Ordinance; amend Contract No. 31634)

Disposition: Ordinance No. 172792. (Y-5)

- *1543** Agreement with MuniCom, Inc. for consultant services on standardized methodology for telecommunications providers' use of City property in an amount not to exceed \$15,500 (Ordinance)

Disposition: Ordinance No. 172793. (Y-5)

- *1544** Contract with Multnomah County providing City funds for Aging Services Division's district senior centers (Ordinance)

Disposition: Ordinance No. 172794. (Y-5)

Commissioner Charlie Hales

- 1545** Accept contract with Brent Construction, Inc. for Lents Park improvements as substantially complete, authorize payment and release of retainage (Report; Contract No. 31071)

Disposition: Accepted.

- 1546** Accept contract with Silco Construction Company for Laurelhurst Park improvements as substantially complete, authorize payment and release of retainage (Amended Report; Contract No. 31139)

Disposition: Accepted.

OCTOBER 21, 1998

- *1547** Authorize a contract with Walker Macy Landscape Architects for an amount not to exceed \$200,000 to provide landscape architectural design services for Mt. Tabor Park (Ordinance)

Disposition: Ordinance No. 172795. (Y-5)

- *1548** Authorize Mayor to sign Memorandum of Understanding amending Urban Planning Area Agreement with Multnomah County (Ordinance; amend Agreement No. 51022)

Disposition: Ordinance No. 172796. (Y-5)

Commissioner Gretchen Miller Kafoury

- *1549** Intergovernmental agreement with the Department of State Police, Oregon Emergency Management, for Portland to provide training to local emergency management and disaster services personnel (Ordinance)

Disposition: Ordinance No. 172797. (Y-5)

- *1551** Contract with Sabin Community Development Corporation for \$115,000 to support affordable housing development and provide for payment (Ordinance)

Disposition: Ordinance No. 172798. (Y-5)

Commissioner Erik Sten

- 1552** Accept completion of Columbia Boulevard Wastewater Treatment Plant dragchain housing replacement (Report; Contract No. 31716)

Disposition: Accepted.

- 1553** Accept contract with Advanced American Diving Services, Inc. for the Bull Run Lake fish habitat structures, Phase I, as complete and authorize final payment (Report; Contract No. 31898)

Disposition: Accepted.

- *1554** Authorize agreements for the conveyance of four properties from Richard Hilts, Gary L. King and the Charles L. McSorley Trust to the Bureau of Environmental Services, subject to certain conditions being fulfilled, and authorize acceptance of deeds and payment of expenses (Ordinance)

Disposition: Ordinance No. 172799. (Y-5)

- *1555** Amend contract with James W. Fowler Co. and provide for payment of Change Order No. 5 for the Alder Basin Phase 2 Unit 3, Project No. 9288 (Ordinance; amend Contract No. 31674)

Disposition: Ordinance No. 172800. (Y-5)

OCTOBER 21, 1998

- 1556** Authorize contract and provide for payment for construction of the Columbia Boulevard wet weather treatment facility outfall pipeline (Ordinance)
- Disposition:** Passed to Second Reading October 28, 1998 at 9:30 a.m.
- 1557** Authorize a contract with the lowest responsible bidder for the Tryon Creek wastewater treatment plant primary effluent pump replacement (Ordinance)
- Disposition:** Passed to Second Reading October 28, 1998 at 9:30 a.m.
- *1558** Contract with Micro Computer Consultation to convert Bureau of Environmental Services Windows for Workgroups workstations to Windows NT (Ordinance)
- Disposition:** Ordinance No. 172801. (Y-5)
- *1559** Authorize a contract with U.S. West Communications for reimbursement of utility relocation costs (Ordinance)
- Disposition:** Ordinance No. 172802. (Y-5)
- *1560** Accept an easement for water facilities on the property of David Harrington and Judith Catterall (Ordinance)
- Disposition:** Ordinance No. 172803. (Y-5)
- *1561** Contract with Squier Associates to explore the groundwater resource development potential in the Bull Run watershed and to install a production well at the Bear Creek House at a cost not to exceed \$260,000 (Ordinance)
- Disposition:** Ordinance No. 172804. (Y-5)

REGULAR AGENDA

- *1550** Contract with the Workforce Development Board for \$997,255 to provide workforce development activities and provide for payment (Ordinance)
- Discussion:** John Ball, Workforce Development Board, said the Bureau of Housing and Community Development has been extremely cooperative in helping the Board develop a new community-based planning process for allocating workforce resources. Council requested that the Board return in December to report on how the dollars will be expended and they expect to have the planning process well-defined by then. Final decisions about exactly which programs get funded will depend on the community planning process that takes place through the winter and early spring.
- Disposition:** Ordinance No. 172805. (Y-5)

OCTOBER 21, 1998

1535 TIME CERTAIN: 9:30 AM - Approve the Tanner Creek Park and Water Feature Steering Committee Recommendations to develop four parks in the River District and direct City Bureaus to undertake activities to implement the parks (Resolution introduced by Mayor Katz and Commissioner Sten)

Discussion: Mayor Katz said when Council endorsed the River District Plan in 1994 it discussed having Hoyt Street Properties donate several blocks for parks and how to provide other opportunities for City parks along the waterfront. A Tanner Creek Park and Water Feature Steering Committee was appointed to finalize some design concepts for those park projects and return to Council with recommendations. Today Council is being asked to approve the Committee's recommendations for parks locations and consider the next steps that need to be taken. The first green space for consideration will be development of the South Park block. The resolution also reaffirms Council's desire to purchase riverfront property for phase one and authorizes the Bureau of Environmental Services (BES) and the Portland Development Commission (PDC) to pursue purchase of Greenway and waterfront properties.

Dean Marriott, BES Director and Chair, Tanner Creek Park Steering Committee, said the committee's charge was to develop and recommend design alternatives for the Tanner Creek Park areas, the water features and the riverfront. He said first they did a background study and technical analysis of previous studies and then developed a list of options, coupled with extensive public involvement efforts. Finally, the committee defined possible solutions, refined the concepts and prepared this report. The Parks Bureau did an Open Space needs assessment to determine how much space and what kind of parks would be needed. Basically, the vision has always been to tie the river to this part of the City and they hope to do that by linking the riverfront with neighborhood parks and smaller park squares.

Gary Papers, American Institute of Architects, described the urban design themes the committee explored throughout the 25-block study area. Key goals were to maintain the 200 square-foot blocks typical of downtown and to integrate all the transportation systems. The area is envisioned as a high-density, pedestrian-oriented neighborhood so pedestrian linkages to the river are especially important. Another goal is to strengthen the identity of the district itself, especially in terms of the river, its history and its emerging identity as an arts center. Highlighting green space in a fairly park-deficient area is also important throughout the entire District where they hope to visually link the park components with each other and to the river itself, creating a gateway to the River and the district. The gateway would be focused at 9th Avenue in the short term with the hope of eventually linking to the existing North Park Blocks to the east and tying into the established Northwest neighborhoods to the west. Another important goal is to provide safety in the open spaces by surrounding them, as much as possible, by active uses. He described some of the themes the committee had explored, including water, green spaces, history and art, and gave some examples of ideas the committee had explored which need further consideration during the detailed design phase. He said even if Tanner Creek is not daylighted, the neighborhood would like to see it evoked through water features, eventually tying across the railroad tracks to the River itself, if possible.

Bob Murase, Murase and Associates, discussed the proposed master plan recommendations for the park squares. He said the squares are seen as serving more passive, contemplative

OCTOBER 21, 1998

recreational needs and would include green spaces and water features. In addition to the squares, a neighborhood park is proposed on 10th and 11th between Overton and Quimby which would provide more flexible open space and play areas. The goals for the riverfront park are to serve a larger community and provide both active and passive recreation with physical and visual access to the River. He discussed the four phases of development for Riverfront Park and a number of the conceptual schemes that have been designed.

David Judd, Deputy Director, Bureau of Parks, said phase one of the plan involves acquisition of a series of properties, both donated and purchased. Hoyt Street Properties will donate the South Park Square while the North Park Square will be partially donated and partially purchased.

Alan Beard, GBD Architects, committee member, said the committee wrestled with many challenges and considered diverse opinions, which were incorporated when appropriate. They carefully considered the appropriate mix of parks and their design and size. The riverfront remains a major challenge but provides an opportunity to build on the City's maritime heritage, particularly around Centennial Mill. He urged adoption of the committee's recommendations.

Emily House, Port of Portland and committee member, said these recommendations accurately reflect the consensus of the committee, particularly with respect to the parks' location, size, uses and design concepts.

Neilson Abeel, President, Pearl District Neighborhood Association and committee member, said the Pearl District has been very well represented and was an active participant in this process. Many of their original concerns have been dealt with and a number of major innovations and improvements have resulted from the cooperation of the developer and the neighborhood association. There have been some compromises, including reconsideration of the daylighting of Tanner Creek. Commemorating the Creek may be appropriate, but doing so at the outfall into the River may be the best solution. Council should adopt this report and move ahead with implementation of the next phase.

Homer Williams, Hoyt Street Properties (HSP), said HSP is very happy with the results of this process and is prepared to donate the South Park block to the City. He also shared the results of his survey of residents moving into the condominium he recently built in the Pearl District. Once the Lovejoy ramps come down developers will be able to integrate a diverse neighborhood.

Commissioner Francesconi asked how the development of the South Parks Blocks can be speeded up.

Bruce Allen, Portland Development Commission, said the first step is to adopt the urban renewal plan. Even though the cash generated from it technically will not be available for over a year, the City can borrow against it and start construction as early as year 2000.

Commissioner Francesconi said, without financing and the land donation, great design does not count for much and he thanked PDC and Mr. Williams for their help with those aspects. He said the neighborhood park is greatly needed in this diverse neighborhood and the South Parks

OCTOBER 21, 1998

connection provides a tremendous opportunity to link the whole length of the Parks Blocks. Also, the proposed connections to the River may be a forerunner of what could happen in the whole Central City which also needs more connections to the River. Finally, citizen involvement needs to be ramped up as this moves forward.

Commissioner Hales said this is a good report but the City does need to consider creation of a community center here. He said there could be a conflict between the affordable housing agenda and parks design if parks are available only for passive activities. The City will need to figure out how to provide places where people can play as well as enjoy green spaces and casual gathering places.

Commissioner Kafoury agreed with Commissioner Hales about providing active recreational areas. She said that will be challenge as it can result in conflicts between uses.

Commissioner Sten said he believes the River District will be a success thanks to all the hard work but, without the urban renewal district, the City will be unable to deliver either the depth of affordable housing everyone desires or the open space. Without those elements, the district could be successful but it would not be the complete neighborhood it should be. He thinks this is a great plan and believes there is a middle ground between active and green spaces that can be met with an urban, green, multi-use park with buffers and ponds to temper the impact on the River. He said in the past he had a hard time justifying the use of sewer funds for certain elements, but this new plan, plus the work done by PDC on the urban renewal district, gives the City an opportunity to work with BES and get the pump station built and get some other dollars to round the plan out.

Mayor Katz said this moves the vision of the River District into reality and is an example of an exemplary public/private partnership. It is also an example of Council's obsession with community participation and demonstrates what can result when a number of bureaus collaborate. She suggested that the committee consider planting double trees and consider this for one of the millennium projects. Mayor Katz said connections must also be made to the east side and that should be kept in mind as planners design the green and open spaces. She warned, also, that sometimes design by consensus leads to mediocrity and that aspect must be monitored. She is glad to see that most people moving into the District are Portland residents and not, as some have said, from California (God forbid!) or other places outside the area. Northwest Portland has the highest density of any neighborhood, a fact that should be taken into account when considering a new community center.

Disposition: Resolution No. 35736. (Y-5)

Mayor Vera Katz

S- 1562 Authorize submission of FY 1998-99 Fall Supplemental Budget to the Multnomah County Tax Supervising and Conservation Commission (Resolution)

Discussion: Cay Kershner, Clerk of the Council, noted that a Substitute had been filed. Commissioner Kafoury moved the Substitute. Commissioner Hales seconded and, hearing no objections, the Mayor so ordered.

OCTOBER 21, 1998

Larry Nelson, Financial Planning Division, Office of Finance and Administration (OFA), said this supplemental budget is a request for \$31 million and affects 21 different funds. The budget contains four major actions. The first increases the ending fund balances within seven funds totaling \$17 million and reflects a higher than anticipated ending fund balance from the previous fiscal year as well as lower than projected expenses in several categories. The second major action involves the carryover of approximately \$6.7 million in grant funds within the Housing and Community Development Fund, the majority of which is obligated carryover for projects approved last year but not completed. The third action involves cash transfers between various funds totaling \$4 million and, finally, the general fund recognizes \$2 million in miscellaneous revenues and expenditures to provide a refund to business licensees to correct an error in the business license return.

Mayor Katz asked if any basic changes in policy direction are reflected in this document.

Mark Murray, OFA, said no, these are very technical changes even though they add up to \$31 million.

Disposition: Substitute Resolution No. 35737. (Y-5)

***1563** Accept a grant from the Federal Mediation and Conciliation Service in the amount of \$94,786 (Ordinance)

Disposition: Ordinance No. 172806. (Y-5)

At 10:40 a.m. Council recessed.

OCTOBER 21, 1998

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF OCTOBER, 1998 AT 2:00 P.M.

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

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

Mayor Vera Katz

- 1564** Approve the Fourth Amendment to the South Park Blocks Urban Renewal Plan (Second Reading Agenda 1533)

Disposition: Ordinance No. 172807. (Y-5)

- 1565** Approve the River District Urban Renewal Plan (Second Reading Agenda 1534)

Discussion: Commissioner Sten said this is the best proposal he has seen from the Portland Development Commission in eight years. It will allow the City to do two things here -- provide a full range of housing and add sufficient green space.

Disposition: Ordinance No. 172808. (Y-5)

Commissioner Charlie Hales

- 1566** Tentatively deny appeal of TRP Homes, applicant, and uphold Hearings Officer's decision to deny a five-lot PUD and subdivision with environmental review and adjustments, located at 12126 SW 64th Avenue (Findings; Previous Agenda 1461; 97-00373 SU PU EN AD)

Discussion: Commissioner Hales moved adoption of the findings which support denial of this appeal.

Commissioner Francesconi voted no as he believes there is adequate road and stormwater infrastructure for four houses. He said he is concerned about the effect of this decision on housing goals and about the disproportionate impact it will have on other neighborhoods that have adequate roads and do not have stormwater issues. In cases like this where mediation does not work, Council has to put that aside, assume the role of judge and adhere to standards. He is not sure that has occurred in this case.

OCTOBER 21, 1998

Commissioner Kafoury said while she too is concerned, she believes this is the best Council can do in this case. She said she would like to work with the Planning Bureau to avoid such situations in the future but believes that it is best to deny this appeal because there was so much confusion about this case.

Commissioner Sten said the Hearings Office turned this down first and, even with the changes, there are still many questions about whether this meets all the criteria. He said because mediation did not work he tried to act as a judge and found more evidence to indicate the Code had not been met than the other way around.

Mayor Katz said while there is pressure on Council to do infill, that does not mean it should be done without considering environmental and infrastructure standards. At times the City must say no because important livability issues have not been addressed. She voted aye because of the disagreements between the parties and the fact that there were unresolved Code issues.

Commissioner Kafoury said Council is not saying to developers that they cannot get through the process if mediation does not succeed.

Commissioner Sten said the proposal Council considered was radically different from what the Hearings Officer heard. While it is Council's role to uphold or overturn a Hearings Officer's decision, it is not its role to, in effect, have a brand-new hearing on a brand new proposal for four, instead of five houses, and a completely different storm system. Council has to decide if the new proposal meets Code and while he is concerned about how long this took, the current application did not go through the usual process.

Commissioner Francesconi said he would have felt better remanding this to the Hearings Officer but since that is not possible, Council is stuck making the decision. He noted that all the expert testimony said it met the Code standards.

Commissioner Hales said the Planning Commission is very close to acting on the Title 34 revisions, the Subdivision Code, which might make the process more discernible and smoother for land division cases.

Mayor Katz asked the City Attorney if Council had remanded another appeal to the Hearings Officer recently.

Kathryn Beaumont, Senior Deputy City Attorney, said as a practical matter, with the 120-day requirement, there often is not enough time to remand an appeal to the Hearings Officer, even if Council wanted to. The Code could be changed to give Council that option when the applicants have signed a waiver on the time limit. That is really a policy issue.

Commissioner Hales said in the past Council has sometimes allowed people to reapply without paying a new application fee.

Mayor Katz said this is worth further discussion.

OCTOBER 21, 1998

Ms. Beaumont said Council might consider categories and circumstances in which it might offer that option.

Commissioner Francesconi said he would also like a clearer definition of "adequate" as it relates to sewers and transportation services.

Disposition: Findings Adopted. (Y-4; N-1, Francesconi)

At 2:15 p.m., Council recessed.

OCTOBER 22, 1998

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON
WAS HELD THIS 22ND DAY OF OCTOBER, 1998 AT 9:30 A.M.

THOSE PRESENT WERE: Commissioner Kafoury, Presiding; Commissioners Francesconi,
Hales and Sten, 4.

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

- 1567** **TIME CERTAIN: 2:00 PM** - Appeal of Northwest District Association of Hearings 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; Previous Agenda 1471; 98-00336 ZC MP EN)

Discussion: Duncan Brown, Planning Bureau, reviewed the three requests for: 1) a zone
change to remove a 1984 condition limiting the site to one home; 2) a minor partition to create
two lots; and 3) environmental review for the partition, extending the stormwater outfall into an
abutting water body. He cited the applicable approval criteria and noted that the Hearings
Officer approved the zone change and removal of the prior condition with one additional
condition calling for a second off-street parking space. She also approved the requests for a
minor partition and environmental review with six conditions each.

Mr. Brown said the Northwest District Association (NWDA) appealed the approval based on
its belief that the decision failed to take into account an already existing agreement signed by
the applicant and local area residents. That agreement limited the applicant to one house on
that lot. Mr. Brown showed slides and described the area. The property is zoned R5, adjoined
by R5 and R10 properties, but with a Comprehensive Plan designation of R5 which allows
5,000 square foot lots. It is surrounded by park land on the west and south sides and further to
the north. The applicant proposes creation of two 5,000 square-foot lots on the existing parcel
with two five-foot wide utility lanes that would go down Aspen Street. The houses would be
located close to Belgrave, with very small setbacks from the street because of the steep slope
and the environmental conservation zoning covering the entire site. Mr. Brown indicated the
location of adjoining houses and the drainageway which provides drainage for the surrounding
area. The applicant proposes to extend the stormwater outfall from the gutters to connect that
drainage way and the Bureau of Environmental Services (BES) will require a detention facility
so that the stormwater runoff rate does not exceed predevelopment flow.

Mr. Brown said the appeal issue is whether the City should respect the signed agreement made
earlier between the neighbors and the applicant. The Hearings Officer found that there is no
basis to deny the request to delete the condition as the fact that a private agreement exists to
build only one house does not allow the City to impose conditions not required by the
applicable approval criteria. The Planning Bureau recommends that the Hearings Officer's
decision be upheld and the appeal be denied.

OCTOBER 22, 1998

Commissioner Sten asked why a zone change is needed to get rid of the condition limiting the site to one house but the Hearings Officer says the City is honoring it.

Mr. Brown said in order to modify a land-use decision and remove a condition of approval one has to go back through the same original process. A condition limiting the number of houses was placed on this property in the 1984 decision and at that time Council accepted the agreement between the developer and the neighborhood association in exchange for withdrawal of the appeal. The Council findings at that time stated that services were available for three or four lots (which were subsequently partitioned into three sites) even though Belgrave was unpaved at that time. Since then Belgrave has been paved, although not up to City standards.

Linda Meng, Chief Deputy City Auditor, outlined the guidelines to be followed in today's on-the-record hearing, where new evidence cannot be considered. Regarding ex parte contacts, Commissioner Francesconi said a staff member from his office had been contacted by a member of the NWDA.

John Bradley, Vice President, NWDA and Chair of the NWDA Planning Committee, said in 1984 Council granted a zone change for a roughly 40,000 square-foot property located between Aspen and Belgrave. Along with the zone change came a set of conditions which were given force of law by Ordinance No. 156329. These conditions arose from a series of agreements between the neighbors and the developer, Rob Phillips, and Council at that time directed that a condition reflecting the intent of the compromise agreement be attached to those recommended by the Hearings Officer. Today Council is being asked to undo those conditions and abrogate the compromise agreement the developer freely signed. That agreement clearly stated that the large Belgrave property could be divided into only three lots and that they may be covered only to a maximum of 70 percent of the R10 zoning requirements. The compromise agreement directed outcome of the ordinance itself but also the actions taken after its enactment. The Hearings Officer argues that the compromise agreement is a private one but NWDA believes that because Council reviewed and deliberated on it, it became a public one which must be upheld by this Council. NWDA believes it is imperative that neighborhood agreements such as this one be able to stand the test of time and continue to be backed by the City. Those who argue that things have changed on Belgrave ignore the fact that the issues which drove the original compromise in 1984 are the same ones that exist today. For that reason the City must continue to honor the agreement. Failure to do so will raise grave doubts about the City's willingness to stand by such agreements in the future.

Commissioner Hales said the City applied a Comprehensive Plan designation of R5 on this property in 1980 on the basis that if adequate services became available one could apply for a zone change in compliance with the Comprehensive Plan. What was substantively wrong with going to R5 zoning in 1984 or today, other than this agreement?

Mr. Bradley said NWDA never had a problem with that. Rather, it is appealing because in 1984 this conditional use was specifically added to the property. Because of the nature of the area, including environmental overlays, heavy forestation and steep slopes, neighbors felt

OCTOBER 22, 1998

additional protection was needed. That is one of the neighborhood's arguments, as well as its belief that the City must stand behind such agreements or otherwise there is no point to them.

Jason Laub, 2335 NW Aspen, 97210, said the agreement made in one decade was seen by the Hearings Officer as just a technical glitch that can be reversed in the next. The major issue is not just the unpaved road but also the density and the environmental impact. Neighbors in 1984 agreed to waive their rights to appeal the zone change if the developer agreed to allow only one home on the lot facing Belgrave. Mr. Phillips was one of the four people who signed this agreement and the original conditions of approval were based on this private agreement, which is explicitly included in the ordinance that changed the zoning. Without this agreement, the request would have been appealed and overturned.

Mary Jo Kalberer, Northwest Portland resident, said 12 years ago the neighborhood reached an agreement with a developer, Rob Phillips, who has now run out of developable lots in Northwest and wants to renege on his earlier agreement. She said over the past few years building in Willamette Heights has occurred on unstable lots resulting in slides. She said in 1984 Mr. Phillips said if neighbors allowed him three building lots he would agree to build only one house on the lot in question. The neighbors agreed and that agreement is in writing and part of the record. A deal should be a deal and Mr. Phillips should stand by his written promise.

Gary Westbrook, 4030 NW Thurman, 97210, said the issue is whether anything has changed in the 13 years since the agreement was made. The paving occurred as the result of a grass-roots effort for the three houses at the end of the street and the actual road in front of this lot is very narrow and cuts into the bank. The cut made to improve the surface of the road has actually made the lot less stable. Paving does not constitute a major change to justify overturning the earlier agreement.

In response to questions from Commissioners Francesconi and Sten, Mr. Westbrook said the density cannot be supported. A normal car cannot turn around at end of street and there will be a significant access problem on Belgrave if more cars are added.

Scott Birdsall, 2329 NW Aspen, 97210, read a letter from Thomas MacKenzie, one of the neighbors who originally signed the agreement with Mr. Phillips, calling for him to be held to it. All bases for the original agreement still exist and although NW Belgrave is now paved, it is still narrow with very limited parking. The proposed development will further limit parking. The letter states that paving Belgrave has increased stream flow and potential erosion on this sensitive property. Mr. Birdsall, speaking for himself, said the original agreement should remain in force unless there is a significant change in the stance on zoning in the City.

Thane Tienison, 2067 NW Irving, 97209, said as a lawyer he believes that if Council does not honor this publicly adopted and voluntary agreement, it will have enormous consequences. Failure to do so undermines the whole concept of mediation efforts.

Commissioner Hales asked how long such an agreement should be good for.

OCTOBER 22, 1998

Mr. Tienson said this agreement was intended to be permanent. Council can grant the zone change if, after looking at all the information used to make the original agreement, it finds that circumstances have changed enough to justify that change. The fact that paving has occurred does not justify ending the agreement as this is a very congested area because of its closeness to Forest Park.

Commissioner Francesconi asked what the legal basis or precedent would be for denying the request.

Mr. Tienson said Council has to look at the City's overall broad policies but there is no entitlement to a zone change. It is still a matter of applying the criteria. In this case the question is whether the applicant has a right to remove a condition if nothing has significantly changed.

Andy Olshin, 3728 NW Thurman, 97210, criticized the developer for making an agreement which he now totally disregards. If Council rejects this agreement, what is the point of getting the community involved in making such agreements in the future?

Commissioner Hales said he is struggling with the argument that a deal is a deal. What if that gave the developer the right to do bad zoning?

Mr. Olshin said he personally had no problem with the developer putting two attached homes there, as he thought that was the original plan. That is what was proposed at the NWDA meeting. But when the neighborhood reaches consensus, Council should uphold it.

Commissioner Sten asked Mr. Olshin why he liked attached but not detached houses there.

Mr. Olshin said the lot is on an incredibly steep slope with many trees and one structure rather than two would have much less impact. The developer could also then build up from Belgrave rather from Aspen.

Peter Fry, 2153 SW Main, #104, 97205, said the reason this was appealed is because the original agreement was public and acceptance was an act of Council. The hook for the developer is the first criterion which calls for the zoning to be in conformance with the Comprehensive Plan and all its elements. In 1984, Council said in order to approve this a condition will be attached and to change it the applicant will have to go through the process again. He noted that the Hearings Officer states that adequate services existed then and now so the question is why did Council add that condition in 1984. One has to look at Council's intent and what may or may not have changed since then. Approval of this request will change the percentage of undisturbed area from 67 to 35 percent, a substantial increase in the amount of area to be disturbed.

Rick Michaelson, 906 NW 23rd Avenue, representing the applicant and optional purchaser of this property, Rob Phillips, said the question here is whether the lot will have one large house or two much smaller ones. He said part of their proposal was to add strict conditions on the size of those houses because they felt two small units would be better than one huge house. He

OCTOBER 22, 1998

said there is no access for construction from Aspen that would be affected as the sewer will go down Aspen whether there are one or two houses there. He said Council must differentiate between an agreement and a condition. The agreement was between Mr. Phillips and a number of other residents and neither the NWDA nor Council were parties to it. However, Council did impose a condition of approval which paralleled that agreement and is existing land-use law on that site. Mr. Phillips is now going back through the City's legal processes to try to get that condition changed. The Hearings Officer found that the application met all the criteria for changing that condition and demonstrated what had changed since that time, including the character of the street and changing the way the environment is protected.

Mr. Michaelson said if he had known about this earlier agreement, he would not have represented Mr. Phillips. However, this application would still be before Council as the property owner as well as developer both believe two houses is better on this site. Council should focus on the merits of the case, not the status of the agreement, and whether a good case has been made for changing that condition. They believe they have and everything in the record indicates they have. Mr. Phillips originally agreed to reduce his application from four houses to three if the neighbors agreed to drop their appeal. Later he sold one of the lots to the neighbors so they could preserve it. People who believe that Mr. Phillips is returning now for a second bite of the apple should know that he sold the lot after this decision and it went through three separate owners. Mr. Phillips had no idea that this agreement would bind him forever or otherwise he would not have made this application. It is clear this agreement is not binding on future owners of the property and the existing owner has every right to do with the property what they want. What is binding is the condition of approval that Council put on that lot and in order to change that and add the other house, the applicants have to demonstrate now that they meet all the criteria for the original zone change and that conditions have changed. The dispute is all about the agreement.

Mr. Michaelson said earlier testimony mentioned a preference for common wall houses to shrink the disturbance area. They were open to doing that but that did not satisfy everyone as others felt it was more appropriate to have two small houses with the same space in between. They also attempted to compromise with the next door neighbor, Jordan Laub, and agreed to add details to the house to make it fit the character of the houses around it, to strictly control construction impacts and even to locate the garages and parking where he wanted. The negotiations fell apart, however, when the appellant wanted them to negotiate with another developer down the street and solve Mr. Laub's problems with that case. He said while this is awkward for Council, the merits must be based on the Comprehensive Plan and the strength of the land-use planning policies, not personalities. Good public policy calls for reevaluating circumstances like this after 15 years to determine if earlier conditions are still valid. A solid case has been made here that the zone change is appropriate with the proper conditions.

Commissioner Hales said he thought the NWDA was the appellant.

Mr. Michaelson said they were told that if Mr. Laub, the most affected party, was satisfied, the neighborhood association would be satisfied as well.

Commissioner Sten asked how conditions have changed over the last 14 years?

OCTOBER 22, 1998

Mr. Michaelson said there is no condition on the size of the house today. They are proposing that each house be limited to 1,000 square feet, thereby substituting the condition limiting the number of houses for one restricting building area. The paved road makes a difference because it has taken care of the problem of sliding gravel. Establishment of the environmental conservation zone imposes stricter standards and the way stormwater is handled has changed substantially. Less water will be put into the stream with these two houses than with one house because of recent advances in erosion control. Overall, the impact of two houses will be less than the impact one large house would have had. The transportation system has always been adequate for two houses but they will provide two off-street parking spaces per house so that people will not park on the street.

Commissioner Francesconi asked if the parties had agreed to allow two units.

Mr. Michaelson said the developer asked for two houses but the neighborhood association asked that they consider building attached units. The neighbor has always wanted one house only and they seemed to be making progress regarding the design until the request to deal with the other developer was made.

Commissioner Francesconi said he does not believe this was a ploy on the part of the developer and also feels the services are adequate. However, he is struggling on the agreement issue as he recalls voting to honor agreements made in the 1980s on the River District and Pioneer Square, where the sky bridge was an issue. The issue of consistency is important to him unless it can be shown that this would be bad public policy. This does not seem to be a case of bad public policy, just a matter of what is appropriate.

Mr. Michaelson said if Council's intent had been that no one should ever again apply for a zone change on this site, then Council should have spelled that out. Agreements that are supposed to last forever would be drafted differently than this one.

Commissioner Francesconi said one of the conditions, regarding the three residences, is pretty clear. What Mr. Michaelson and the Hearings Officer contend is that while Council crafted a condition that reflected the agreement, it was not actually the agreement so it can be changed.

Mr. Michaelson said it is a condition, not a contract, that Council felt was appropriate at that time and in those circumstances. Council can still decide that only three houses go there but that decision has to be on the basis that this zone change request does not meet some of the criteria. The applicant has clearly demonstrated that all the criteria have been met to justify this change. He said if he had known about the agreement prior to his involvement in this project, he would have recommended to the property owner that she hire another consultant and developer so that the merits of the case would not be confused with the personalities involved. Neither he or Mr. Phillips should be the issue.

Commissioner Sten asked about the limits on the houses.

OCTOBER 22, 1998

Mr. Michaelson said they propose that each house be limited to 1,000 square feet, which is significantly less than what would be allowed in an R10 zone.

Steve Rosenberg, representing the property owner, Ellen Lippman, said when Ms. Lippman bought the property there were no restrictions on the property deed and no way to know about this unrecorded condition. When Mr. Phillips was hired they did not know the previous history on this property.

In rebuttal, Mr. Bradley stressed that NWDA is not representing any one neighbor but is focusing on the agreement, which goes right to the heart of what neighborhoods are all about. Also, NWDA never heard from the property owner prior to this so he is not sure that testimony is relevant. The argument has been over how long this agreement should hold. NWDA believes it should hold until there are substantial changes that invalidate it. The actual changes in the area since 1984, including new environmental regulations, only strengthen the agreement. This land started out R10 according to the Comprehensive Plan and then the property owner petitioned for a change to R5 and conditions were placed on that zoning. This is not an argument based on the people involved but rather an argument for honoring neighborhood agreements.

Commissioner Sten said he does not believe the neighborhood would like a precedent that would never allow anyone to ask for a change. Times and standards change and people have a right to ask for change. But the neighborhood association does have a strong argument that if nothing has changed, then an agreement is an agreement. However, he has heard from the applicant that substantial changes have occurred and that conditions have changed in a way that supports this zone change request.

Mr. Bailey said he agrees that people have a right to ask for change but in this case the changes, in terms of environmental overlays and added protections to a unique neighborhood, have reinforced the need for this agreement.

Commissioner Sten asked him if, faced with the choice of paving over 4500 square feet of this lot or 2000 square feet, which he believes is better.

Mr. Bailey said this is currently R5c with a Skyline District Plan overlay and he is not sure how the conservation zoning affects the buildability. These one or two lots have incredibly steep slopes so there is a substantially smaller lot size anyway. Regarding the earlier negotiations, NWDA looked at everything presented and suggested that everyone go back and look at a shared common wall dwelling. But NWDA also said the most important element was the agreement and that there was room to renegotiate it. For whatever reason, negotiations about the single wall fell through but he was not involved.

Commissioner Francesconi asked if there is a legal basis for denying the request to delete the condition limiting development to one unit.

Ms. Meng said Council's decision needs to be made on the approval criteria because when one asks for a condition to be removed the approval criteria for that action have to be met.

OCTOBER 22, 1998

Basically, the City Attorney's answer is the same as the Hearings Officer's as they believe the agreement is not legally binding. The legal conclusion is that the Code provides what has to be done when someone requests a change in condition. The approval criteria in the code do not include private agreements and although Council recognized the private agreement, it imposed its own condition. When you are asked to remove that condition, then you go back and apply the approval criteria just as if it were a condition that had been imposed without an agreement.

Commissioner Francesconi asked how Council could legally give force to the agreement itself.

Ms. Meng said there are some difficulties having land-use processes governed by private agreements and that is why the City Council has to make those decisions and why there are Code criteria that have to be applied.

Commissioner Francesconi asked if the City tells people such private agreements may not be legally binding down the road.

Mr. Brown said staff tries to make it clear that they make their decisions based on the approval criteria in the Code. Private agreements may parallel the City's agreements but are separate and can be changed for different reasons. Anyone, at any time, can ask for a change of conditions.

Commissioner Francesconi said the City needs to be clear in telling people that.

Commissioner Hales moved to uphold the Hearings Officer's decision and deny the appeal. Commissioner Sten seconded.

Commissioner Hales said what matters most about the agreement is not the "what" of the agreement but the "why". Why would Council put a private agreement into a set of conditions. They might have been thinking this is a sensitive site and while they were willing to change the zoning to R5, they did not want it developed thoughtlessly. What the Hearings Officer has done now is to substitute another regimen of conditions that does the same thing. Last time Council said you get three lots instead of four and you have to be careful about cutting down trees. The new conditions lift the number of lots but add much more specific mitigation requirements about trees, vegetation and impact on the land. In terms of the environmental impact, the new regimen will probably do a better job than the one created in 1984. Therefore, he sees no basis to overturn the Hearings Officer's decision as she has reflected the prior Council decision in new conditions, which will work better.

Commissioner Francesconi said he will vote yes but believes this is a mess. If these agreements are not legally binding, how does the City build a trust relationship with the neighborhoods. Council will have to be clear about stating that it is not interested in these agreements or else figure out a way to enforce them. He is troubled by this but believes he has to follow the law in this case.

Commissioner Kafoury said the way to change the agreement is to do exactly what the applicants have done here which is to come through the process again, meet the criteria for the underlying zone, and make their case. Her vote is based on her belief that significant changes

OCTOBER 22, 1998

have been made in the environmental regulations since the agreement was made 15 years ago. Council must also consider the 2040 Plan which forces it to look at things through different lens. These conditions seem far more appropriate than what were agreed to before.

Commissioner Sten said the condition imposed pretty clearly reflects the private agreement. However, it is sloppy to zone property for a certain number of houses, in this case four, but then say you cannot put them there. The applicant has every right to ask for a change in conditions and ask the City to review what has changed since then. He believes the two conditions that have changed since then are the parking and road conditions. The road has been paved and the 1,000-square foot cap on the home sizes is significant and the six environmental conditions the Hearings Officer has imposed are dramatically better than what was there in 1984. He would prefer having two small houses than one very large one so does not believe the environmental damage is worse through this approach. The burden was heavily on the applicants to show that the changes have been met and, given the restrictions they have agreed to and the environmental covenants imposed by the Hearings Officer, they have met that burden.

Disposition: Appeal denied. (Y-4)

At 3:15 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner
By Cay Kershner
Clerk of the Council