



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF JULY, 1999 AT 9:30 A.M.

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

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

Agenda No. 1062 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

1034 Cash investment balances May 27 through June 30, 1999 (Report; Treasurer)

Disposition: Placed on File.

1035 Accept bid of Portland Excavating, Inc. to furnish NE Martin Luther King Jr. Blvd., NE Portland Blvd. to Dekum, sidewalks for \$122,552 (Purchasing Report - Bid 99174 SMP)

Disposition: Accepted; prepare contract.

1036 Accept bid of John L. Jersey & Son, Inc. to furnish SW 10th-11th, Main and Clay Streets, sewer reconstruction for \$94,121 (Purchasing Report - Bid 99213)

Disposition: Accepted; prepare contract.

1037 Accept bid of G.T.E. Metal Erectors, Inc. to furnish Bull Run bridges maintenance and seismic strengthening for \$1,282,302 (Return Agenda Item 996; Purchasing Report - Bid 99225)

Disposition: Accepted; prepare contract.

1038 Accept bid of Wallace & Associates General Contractors, Inc. to furnish NE Martin Luther King Jr. Blvd. sidewalks from NE Fremont to NE Beech for \$85,123 (Purchasing Report - Bid 99238 SMP)

Disposition: Accepted; prepare contract.

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Mayor Vera Katz

- 1039** Recommend organizations eligible to participate in the City's 1999 Charitable Campaign (Resolution)
Disposition: Resolution No. 35806. (Y-5)
- *1040** Pay claim of Trueman Dieter (Ordinance)
Disposition: Ordinance No. 173575. (Y-5)
- *1041** Pay claim of Peggy Blaisdell (Ordinance)
Disposition: Ordinance No. 173576. (Y-5)
- *1042** Pay claim of Angela Worley (Ordinance)
Disposition: Ordinance No. 173577. (Y-5)
- *1043** Pay claim of Linnton Plywood Association (Ordinance)
Disposition: Ordinance No. 173578. (Y-5)
- *1044** Amend Intergovernment Agreement with the Regional Arts and Culture Council to increase the number of board members (Ordinance; amend Contract No. 51181)
Disposition: Ordinance No. 173579. (Y-5)

Commissioner Jim Francesconi

- 1045** Accept completion of Willamette boat launch and parking lot improvements by J.P. Contractors, Inc., make final payment and release retainage (Report; Contract No. 31251)
Disposition: Accepted.
- 1046** Accept Peninsula and Montavilla Parks pools and community centers construction manager/general contractor contract as complete, approve Change Order Nos. 4 and 5, release retainage and make final payment to Pacific Coast Construction (Report; Contract No. 31388)
Disposition: Accepted.
- 1047** Accept partial completion of Southwest Community Center by Nielsen Dillingham Builders, Inc. and authorize partial release of retainage (Report; Contract No. 31431)
Disposition: Accepted.

- *1048** Authorize acceptance of a 25-foot recreational trail easement on the Columbia South Shore Slough (Ordinance)

Disposition: Ordinance No. 173580. (Y-5)

- *1049** Contract with Schneider Equipment, Inc. for \$89,090 to perform irrigation well drilling construction at Cathedral and Sellwood Parks (Ordinance)

Disposition: Ordinance No. 173581. (Y-5)

- *1050** Call for bids for construction of trail between Palmblat Road and Rugg Road on the Springwater Corridor and award a contract to the lowest responsible bidder (Ordinance)

Disposition: Ordinance No. 173582. (Y-5)

- *1051** Authorize a contract with Bell and Howell to lease an inserting system for \$37,670 per year for five years (Ordinance; repeal Ordinance No. 173539)

Disposition: Ordinance No. 173583. (Y-5)

Commissioner Charlie Hales

- *1052** Accept, designate and assign property granted by Portland Traction Company (Ordinance)

Disposition: Ordinance No. 173584. (Y-5)

Commissioner Dan Saltzman

- 1053** Accept completion of the NE 59th Place temporary pump station, Project No. 6415, and authorize final payment to Cherokee General Corporation (Report; Contract No. 32049)

Disposition: Accepted.

- *1054** Authorize a contract and provide for payment for the construction of the NE 162nd Avenue pollution facility, Project No. 5563 (Ordinance)

Disposition: Ordinance No. 173585. (Y-5)

- 1055** Consent to the transfer of Argay Disposal Service solid waste and recycling franchise to Argay Disposal LLC (Second Reading Agenda 1019)

Disposition: Ordinance No. 173586. (Y-5)

- 1056** Authorize a contract with the lowest responsible bidder for the Columbia Slough consolidation conduit, construction segment 6, Interstate 5 ventilation facility, and provide for payment, Project No. 6186 (Second Reading Agenda 1020)

Disposition: Ordinance No. 173587. (Y-5)

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Commissioner Erik Sten

1057 Accept completion of Parkrose supply mains project by S-2 Contractors, Inc., release retainage and authorize final payment (Report; Contract No. 30971)

Disposition: Accepted.

***1058** Contract with Community Energy Project for \$104,977 for the Weatherization Workshop and Senior Weatherization programs and provide for payment (Ordinance)

Disposition: Ordinance No. 173588. (Y-5)

***1059** Contract with Ecumenical Ministries of Oregon for \$30,540 for the Shared Housing Program and provide for payment (Ordinance)

Disposition: Ordinance No. 173589. (Y-5)

***1060** Contract with the Senior Job Center for \$139,939 for the Senior Home Repair and Maintenance program and provide for payment (Ordinance)

Disposition: Ordinance No. 173590. (Y-5)

City Auditor Gary Blackmer

***1061** Assess system development charge contracts and Private Plumbing Loan Program contracts (Ordinance; Z0708, Z0709, Z0710, T0025, T0026, K0009, P0044)

Disposition: Ordinance No. 173591. (Y-5)

REGULAR AGENDA

1062 Access benefited properties for the cost of constructing street and storm sewer improvements in the NE 55th Avenue/Ainsworth Local Improvement District (Hearing; Ordinance; C-9979)

Discussion: Commissioner Hales moved to overrule the remonstrances and pass this to Second Reading.

Disposition: Remonstrances overruled; passed to Second Reading July 28, 1999 at 9:30a.m. (See below for reconsideration)

1033 **TIME CERTAIN: 9:30 AM** – Direct Bureau of Environmental Services to begin implementation of changes to recycling program that allows mixing of certain recyclable materials (Resolution introduced by Commissioner Saltzman)

Discussion: Commissioner Saltzman said the Bureau of Environmental Services (BES) brought this to Council 18 months ago and now a new recommendation is being presented that he believes will help raise the percentage of recycled materials. Over the last 10 years new technologies have arrived, including development of a sophisticated secondary

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materials recovery industry. There is also new technology for sorting recyclables. These proposals are designed to increase the amount Portlanders recycle by making it simpler, contain program costs by reducing the amount of sorting done by haulers at the curb and reduce potential contamination issues by separating glass from other materials. The glass issue was of most concern and the recommendation is that it be kept in a separate container, although not separated by color. During the rule-making process BES will explore whether a third yellow bin or possibly a bucket will be issued. He noted that similar changes are being made by other governments in the metropolitan region. The changes will be monitored closely and evaluated to make sure the program is meeting City policies and objectives.

Susan Keil, Manager, Industrial and Solid Waste Group, BES, said currently they estimate that over 90 percent of residents regularly use the curbside recycling program and 53 percent of the City's waste, both residential and commercial, is diverted through recycling and waste reduction. The goal for 2000 is 54 percent and they are well on the way to reaching that. Also, waste generation has been reduced and the goal for 2005 is 60 percent reduction. She noted that 78 percent of waste comes from the commercial sector and this resolution deals with the 22 percent that comes from residential households. She said Portland is well above the national average in recycling pounds and yard debris per household and also well below average in the number of pounds of solid waste disposal per year. If Council approves this, the Bureau will implement the new commingling regulations this fall, continue exploring the best methods for diverting commercial organic waste and try new outreach programs for areas with lower recycling rates.

Bruce Walker, Solid Waste and Recycling Program, BES, said since the onset of curbside recycling, customers have set out more materials than haulers had compartments on their trucks. So there has always been some degree of mixing. While BES is not recommending it, other cities have gone to a completely mixed recycling stream where all recyclables are mixed in one large cart. He said the Bureau believes that more commingling will help keep costs down and make recycling simpler so that recycling levels will increase. Finally, they want to take advantage of technological sorting advances. When this came to Council last year issues were raised, primarily about how to handle glass, and an extensive public process involving several advisory groups was conducted, resulting in a variety of opinions. He said over 80 percent of what is collected is paper while glass represents about nine percent. About 60 percent of the glass is collected through the bottle bill system and 27 percent is collected curbside. He said a recent study also shows that there are many positive environmental benefits to using glass in other industries and not as recycled glass. Another study showed that fewer sorting requirements reduced the cost to ratepayers because of increased hauler productivity. A local consultant conducted focus groups which also supported reducing the sorting requirements and seeing that all recyclables are made into useful products. They do not support, however, requiring that all materials be made into the same product.

Ms. Keil said they found that people especially hate to squash cans.

Mr. Walker and Ms. Keil reviewed a range of options, from mixing everything in one container to complete separation, considering such factors as customer convenience, cost and residuals. Staff is recommending a third option, which calls for putting all paper in one bin, plastic and metal in the second, and mixed glass in a third. With three sorts, the convenience and improvement are not as good as with the first two options, but the residual

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is the lowest of all the options tested. The current system, which calls for sorting all recyclables into separate bags, is inconvenient, the cost is higher and the residual is very low. If Council approves the recommended option, BES will implement it in October and report back to Council after the first six months. The public will be informed through materials left by the haulers, radio announcements and bus placards.

Dave Hasson, Utilities Review Team (URT) and Office of Finance and Administration (OFA), read a statement from Doug Morgan, chair of the Public Utilities Review Board (PURB), noting the PURB's comments on BES' increased commingling proposal. At a July 14 meeting, those attending expressed differences in opinion on various aspects of the proposal. Members agreed the rate impacts would not be particularly large and they unanimously endorsed the rate reduction opportunities this proposal seems to provide.

Mayor Katz asked if URT had done a rate analysis.

Mr. Hasson said OFA did an analysis that indicated there would be a very minor rate reduction opportunity and URT concurred. They support the proposal.

Ms. Keil said in two years they have seen about a 10 percent reduction in the recycling collection cost through productivity improvements. The purchase of new trucks masks some productivity improvements.

Lynne Storz, Solid Waste and Recycling Program Manager, Washington County, supported the recommendation. She said this makes it easier for citizens to participate, calls for separate collection of glass on trucks and allows haulers to take advantage of changing markets and mix recyclables on their trucks according to market demand. Because haulers cross jurisdictional boundaries, local government staffs have worked diligently to reach regional consensus for a consistent program for commingling of materials and are preparing similar recommendations for approval.

Bill Findlay, 2358 NW Pettygrove, 97210, spoke in support of a simpler system for recycling cans and paper and suggested that that Council approve Option 3.

The following individuals testified against allowing the commingling of clear (or flint) glass and colored glass on the haulers' trucks:

Rob Guttridge, Recycling Advocates
Gene R. Lindhom, employee, Owens-Brockway Glass Containers, PO Box 20067
Sherrie Raab, employee, Owens-Brockway Glass Containers
Bob Dolphin, employee, Owens-Brockway Glass Containers
Tom Carnaham, employee, Owens-Brockway Glass Containers
Phill Colombo, employee, Owens-Brockway Glass Containers
Jon Shelley, 8044 SW 10th Avenue, a member of Recycling Advocates
Paul Barton, 8624 NE Halsey, a member of Recycling Advocates
Harry Shaich, 2001 SW Primrose Street, 97219
Ann Holznagel, 4935 SW 37th Avenue, 97219

Supporters of color separation stressed the importance of continuing to reuse resources in the local area, especially where such a market already exists, and expressed their belief that glass should not be used for gravel or insulation. Color mixing does not preserve the

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versatility and restricts where glass can be recycled. Employees of Owens-Brockway said the commingling of colors of glass could have a devastating effect on the company's ability to compete in the marketplace. The company cannot use colored glass mixed beyond a certain degree and has spent millions of dollars to comply with the demands put upon them, including construction of a recycling center that processes and reuses millions of pounds of glass. They said Oregonians are accustomed to sorting colored glass and if they no longer do so, all of it will end up in landfills because separation seems to no longer matter. They said the current system is simple and works and should be retained.

Xander Patterson, 1331 SE 32nd Ave., 97214, questioned whether the goal is to enrich the haulers and processors or to simply boost the amount of material collected. The real purpose of source separation is to develop a sustainable economy and source separation must occur if that is to be accomplished. Recycling's ecological benefits are fairly marginal but it does educate people about the environment and their material relation to it. Source separation teaches people about the materials they buy, throw away and recycle and moves them towards the next step, reusing and reducing what they purchase. The more recyclables are treated like garbage, the more garbage one will get.

David White, Chair, Tri-County Council, an association of local haulers, described the Council's preference which is still to hand sort glass from the mixed container bin. They believe this is more convenient to the customer, reduces the cost to implement the change and allows the hauler to more easily sort the glass by color when market conditions warrant. The Council believes this resolution should be adopted today, keeping in place the requirement that haulers keep glass separate on the truck.

Gaylon Kiltow, 4810 NE 40th Ave., a hauler since 1950, said there should be consistency among the jurisdictions about the collection vessels used. Right now nearly everyone is using a bin system and those work better than buckets.

Jeff Murray, representing Far West Fibres, owner of three recycling plants in the metropolitan area, said this will encourage greater customer convenience and lead to greater participation and more recyclables set out at the curb. This will also increase collection efficiencies without increasing residual levels and without harming the marketability of the recycled materials. Far West recommends that this be approved, despite its concerns with the glass issue and they ask that BES continue to monitor that.

Commissioner Francesconi asked if market conditions for colored glass were high enough then the haulers themselves would sort them out. Why not let the market work that out, even though there is one company the City would like to protect.

Mr. Murray said if there are markets for mixed glass, haulers will more likely leave it mixed because it is easier to handle. The markets for mixed glass come and go. Owens Brockway needs the material separated but it is difficult for haulers to process to the level of separation it needs. He said his own company has mixed feelings about receiving mixed glass as they want to strike a balance between hauling, processing and maintaining marketability of materials. Separating the glass away from the other containers was their biggest concern.

Jeanne Roy, Recycling Advocates, said for years residents have been taught to separate materials and because the City set no standards for keeping materials separate on the trucks,

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haulers are now mixing them together, causing many residents to lose their trust in the system. She presented a petition from over 300 citizens requesting that haulers keep certain materials separate. These petitioners expect their recycled glass bottles to go back into glass bottles, not road aggregate. She said this resolution only requires that glass be kept separate from other recyclables and allows haulers to mix everything else on their trucks. This matters because mixed materials do not have value in the marketplace and whether they are sorted depends on the whims of the processor, who is often the hauler and perhaps even the land-fill operator. Glass that is broken and mixed cannot be sold to glass manufacturers for glass bottles. Ms. Roy said the City will lose control of its recycling system and citizens will no longer have the assurance that the main purpose of recycling, to save resources, will be achieved. She called for Council to amend this resolution to state that haulers should separate colored glass from clear glass and separate newspapers from scrap paper.

Betty Shelley, 8044 SW 10th Ave., a master recycler, said the co-mingling work group of 1998 recommended that clear and colored glass be kept separate and more recently, more citizens voted for keeping colored glass separate than the other two options presented. Recently in a meeting with Strategic Materials, the predominant national glass processor, they learned that most mixed glass would be used as road aggregate if it is not used by Owens Brockway.

Brian Engleson, General Manager, Eastside Recycling and Oregon Recycling Systems, said they collect for 53,000 households in the City and process recyclables for over 130,000 households in the Metro area. He said they have been commingling on the trucks since the program started and have been processing commingled recyclables for the last two years. They support this resolution and think keeping the glass separate is a good compromise, recognizing that their charge is to get the most recycling at the least cost. Regarding processing, he has received calls from four companies in the last month seeking the comingled product. He said they have a three-year contract with Strategic Materials to supply glass and are very careful not to landfill the material or use it for road aggregate. As a member of the Task Force, he believes there is some confusion about what really was decided and would like BES to clarify that.

Regarding marketability, Ms. Keil said clearly the material has to be prepared in a way that meets market standards. In no way is there an expectation that Owens can use the mixed color glass. She noted the haulers have been mixing materials since the outset simply because there are not enough compartments on the truck to handle all 15 of the 16 materials that are recycled. The haulers care a great deal about the importance of not landfilling the recycled materials. The system being proposed has a very low residual but the market drives where the material will be taken. She said BES will check on the separation of the glass on the truck and she is unaware that any hauling company is mixing glass with paper as it makes no economic sense. She said garbage rates have stayed virtually flat since 1992 and are now only 10 cents more. She also noted that recycling instructions are produced in 12 languages.

Mr. Walker said they are expanding that language outreach program this summer.

Commissioner Saltzman said nothing prevents the hauler from sorting the glass once it is on the truck if the value is there.

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Commissioner Francesconi asked if she would recommend any future prevention of comingling as Ms. Roy has proposed.

Ms. Keil said no.

Mr. Walker said the study that monitored the pilot project found that the lowest residual went to Farwest Fibres which does more mixing than what the City is recommending. To state that the recycling system is being threatened because the products are not being marketed adequately is not borne out by the facts. The lowest residual is the one recommended by Commissioner Saltzman.

Ms. Keil said 89 percent of those surveyed indicated they would like to mix some materials rather than separate them and that was corroborated strongly in the focus groups.

Commissioner Francesconi asked if there is educational value in separating glass, helping to develop the sustainability ethos.

Ms. Keil said recycling is the number one response that people give when asked what they are doing to help the environment. They believe that upwards of 92 percent are regularly recycling.

Mr. Walker said a fair amount of sorting will remain in the system and everything will not be thrown together.

Commissioner Sten said he thought the Task Force recommended sorting glass by color. He noted that after the last hearing on this matter he appointed the Task Force expressly to make a recommendation on that.

Ms. Keil said there was some confusion about whether people were voting for a three, four or five sort. That led staff to take another look but the Task Force never forwarded a recommendation.

Mayor Katz asked for a clarification of the PURB discussion.

Mr. Hasson said the PURB had two concerns about the proposal. Opinion was divided about whether to separate glass. The other issue centered around the type of container used as some were concerned that buckets, when emptied, would be blown around in stormy weather.

Commissioner Francesconi asked if less recycling is done if separation is required.

Ms. Keil said yes but they are not anticipating huge increases in recycling with this change. About 92 percent of residents recycle now and they estimate that will increase by several percentage points and that tonnage will increase by one percent. People in the focus groups said they would set out more recyclables more frequently.

Commissioner Francesconi asked if most haulers are mixing the glass now.

Ms. Keil said yes, because there are not enough compartments on the truck.

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Commissioner Francesconi said this is cheaper for the taxpayer and aligns the existing practice of the haulers with the customers. The purpose of the change is not to increase the percentage of those who already recycle but to get that 92 percent to recycle even more. This allows more convenience at less cost. He said a lot of people have looked at this issue for a very long time and he cannot say they have not come to the right decision, despite some unanswered questions. Also, the environmental ethic of BES and Commissioner Saltzman carries some weight and he does not believe it is a good idea to make public policy focused on one employer.

Commissioner Hales said this is a solid proposal that deserves support. He said more often than not Portland is a leader which sometimes makes it easy to coast and take the safe course. This takes a good program and makes it more effective.

Commissioner Saltzman said this is a compromise approach and all the concerns raised are legitimate. But this will help the City do a better job than it is doing now. He said BES will be monitoring this to see what the effect is.

Commissioner Sten said this is an improvement. He noted that over a year ago BES made a proposal to allow much more commingling which he thought was an excellent idea because he has observed that people will recycle more if it is a little easier. This is a good middle ground as it does retain the separation of glass. However, to really innovate, the City must move ahead and recycle food waste.

Mayor Katz agreed that the City needs to separate wet from dry waste as that would be a major leap forward. Customers will be upset if they spend time separating recyclables and then see the haulers dumping all the bins in the truck. If the haulers are re-sorting later, they should let their customers know that. Regarding Owens-Brockway, she would like to see if some link can be made with the haulers to see if that problem can be solved.

Disposition: Resolution No. 35807. (Y-5)

Cay Kershner, Clerk of the Council, noted that a citizen would like to testify on 1062, which Council has already passed.

Council pulled the item from Consent and agreed to reconsider it.

- 1062** Assess benefited properties for the cost of constructing street and storm sewer improvements in the NE 55th Avenue/Ainsworth Local Improvement District (Hearing; Ordinance; C-9929)

Discussion: Tiffany Stevenson, 5964 NE 55th Avenue, said her driveway is out of alignment with the driveways on the rest of the street and she would like to get that fixed. She said her communication with staff has not been good

Commissioner Hales asked if she had talked with staff.

Ms. Stevenson said she talked to staff today and they are trying to work on a plan but suggested she testify today to protect her rights.

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Commissioner Hales said he will make sure that staff meets with her to try to resolve the design question.

Disposition: Remonstrances overruled; Passed to Second Reading July 28, 1999 at 9:30 a.m.

Mayor Vera Katz

- *1063** Accept a modified grant agreement for an additional \$375,000 from Federal Emergency Management Agency through Oregon Emergency Management for the Johnson Creek floodway hazard mitigation program (Ordinance)

Disposition: Ordinance No. 173592. (Y-5)

- *1064** Accept an additional award from the US Department of Justice, Office of Community Oriented Policing Services, COPS MORE '98 program (Ordinance)

Discussion: Mayor Katz said she would like to return this to her office to see if a better solution can be found to match those funds. She said the Police Bureau did not set aside money for this so if it is taken now it leaves a big hole in their budget.

Disposition: Referred to Commissioner of Finance and Administration.

- 1065** Amend the Zoning Code to add development standards aimed at improving how development fits into neighborhoods; apply standards to houses, attached houses and duplexes in all base zones that allow household living (Second Reading Agenda 1032; amend Title 33)

Discussion: Commissioner Francesconi said he has come to believe design guidelines are good for the neighborhood, will not affect affordability, especially for first-time homebuyers, or substantially harm small builders. He said the goal is to increase the stability and diversity of neighborhoods while allowing for increased density. These pared down regulations will help provide the kind of design guidelines that have been so good for downtown and the end result will be communities less dominated by the automobile and more concerned with the public realm. He said he struggled with these regulations because does not think Council should impose additional burdens on first-time homebuyers. He was also concerned about creating a tremendous livable community with diverse neighborhoods that young people, unfortunately, can never afford to buy into. However, after further analysis and the lack of any evidence that costs would be driven up, he has concluded that the benefits outweigh the risks and believes these pared down regulations, which permit the use of more model plans from Livable Oregon, is the right way to go. He fears that small builders are being taken over by the large ones and the more that can be done with stock plans and an awards program, the better off the City will be. Whether the process can be expedited, he will leave to Commissioner Hales.

Commissioner Hales thanked a long-suffering staff for crafting a proposal that tries to balance some very strong conflicting forces – the right to use one's property as one sees fit versus the desire to have a livable community. He said a hundred different and sometimes small things are what make Portland neighborhoods great and this will add one more item on that list. Neighborhood activists in this case have come forward with a very reasonable proposition. They have said they will accept change and new construction if the City does

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just a little bit to assure that what gets built is not obnoxious and in keeping with the character of the neighborhood.

Commissioner Saltzman said he started out as one of the biggest skeptics about the need for base zone design standards. The question for him was how far government intrudes into basic aesthetic issues such as design. He noted that he and Commissioner Sten had outlined a voluntary program with a common set of buildable plans that everyone could agree were good designs. He is pleased that, because the amendment (extending the front door setback from six to eight feet) more of the Livable Oregon designs will be approvable. Initially, the words base zone design standards made him think of Joseph Stalin and he questioned whether proponents wanted to see the kind of design conformity one would see in Moscow. However, he has overcome that concern and is now ready to support this. He hopes the level of acrimony can be reduced but thinks it is a stretch to take an issue like this and try to tie it to goals like ending hunger and poverty, making streets safer and building strong families. Bringing everything under the sun in as a reason to support something can only add to the acrimony. However, as a candidate he committed to developing an approach where neighborhood leaders could sit down with developers and, perhaps on a neighborhood-by-neighborhood basis, agree on pre-approved design plans. He has concluded that the toned-down base zone design standards will achieve that goal more quickly and help all parties achieve a greater level of harmony about design and density questions.

Commissioner Sten said this is a time when he would like to vote "maybe." He has strong apprehensions about this as there are several arguments that have been made that he does not think are valid. For instance, he does not think a 50 by 100-foot lot is analogous to a downtown city street. He also does not believe these standards will promote good design but only stop certain types of bad design. One can build all sorts of ugly stuff under these regulations, just as one can under the old ones. On the other hand, concerns about orientation to the street and public safety are valid, although he is not sure this approach is the appropriate response. He cannot come up with any reason why it is unreasonable to say that a garage should not dominate the front of a house so much that one cannot see the front door. On the other hand, he just visited a gorgeous home where the front door was 10 feet back and, therefore, out of compliance with these regulations. Any regulation is arbitrary and it is hard to figure out where the right line should be drawn. He supports these for several reasons, especially since Commissioner Hales and Mayor Katz, the champions of this effort, were willing to pare this down from the initial 22 requirements. It is not an attempt to regulate design but to take on the fundamental standards people are worried about. He looks forward to a review of possible unintended consequences but believes this proposal is as close to a middle ground as one can get when the two sides are so polarized. He voted a reluctant aye.

Mayor Katz said over the years the mantra for many Council members has been the need to maintain the character of the neighborhoods, especially when the neighborhoods are being asked to protect the Urban Growth Boundary and accept growth. If neighborhoods are to accept the added density, then Council has to at least consider the design of these new buildings and that is what this proposal does. This is much too narrow a step to suit her, or probably Commissioner Hales, because they remember seeing Council Chambers filled with citizens asking for design overlays in their neighborhoods. Mayor Katz said the City has stronger design guidelines, not only for downtown, but also for certain neighborhoods that have been able to convince the City to protect their communities with design overlays. She

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is also convinced that good designs do not necessarily cost more and hopes some additional standards will be brought forward, making sure that designs are available to builders to show them how this can be done. She thinks this goes in the right direction, but not far enough, and the unintended consequence may be that no one is satisfied. But she will continue to work on this as she believes the public really wants the City to do something about it.

Disposition: Ordinance No. 173593 as amended. (Y-5)

Commissioner Dan Saltzman

- *1066** Amend contract with Montgomery Watson Americas by \$1,620,000 to provide additional professional engineering services for the Willamette River CSO predesign project and to extend the contract end date to December 31, 2000 (Ordinance; amend Contract No. 31039)

Disposition: Ordinance No. 173594. (Y-5)

Communications

- 1067** Request of Mick Wagner to address Council regarding a proposed development at SE 162nd Avenue and Clatsop Street plus concerns about enforcement of Johnson Creek flood control plan regulations (Communication)

Disposition: Placed on File.

At 11:20 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF JULY, 1999 AT 6:00 P.M.

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

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

- 1068 TIME CERTAIN: 6:00 PM** – Appeal of the Forest Park Neighborhood Association against Hearings Officer's decision to approve the application of Eric Lee, Camelot Estates, for a planned unit development and subdivision with an adjustment and environmental review, located at NW Skyline and NW Ash (Hearing; 99-00149 SU PU EN AD)

Discussion: Ruth Spetter, Senior Deputy City Attorney, and the Mayor outlined the procedures to be followed in this on-the-record appeal.

Duncan Brown, Office of Planning and Development Review, said this is a proposal for a 45-unit Planned Unit Development (PUD) on a 100-acre site on the northwest edge of the City, adjacent to the Urban Growth Boundary (UGB). He said the site has a large amount of environmental zoning, steep slopes and drainage ways across the site. The proposal calls for two access points and two public streets. There are no public sewers available so individual disposal systems are required on each lot. He outlined the applicable approval criteria and made a computer presentation showing the site in detail. The existence of drainage ways on the site makes it problematic to connect NW Ash Street on the north with Skyview Drive on the south in a loop fashion. As a result, the applicant is proposing two cul-de-sac streets, both of which are extensions of existing streets. Lot sizes range from 17,000 to 91,000 square feet and are sized to accommodate on-site sanitary disposal. Lot 45 gains direct access to Skyline Boulevard and the property owner of Tax Lot 29 had asked for access across Lot 45. The Hearings Officer determined that providing access to both Lot 45 and Tax Lot 29 represented too great a risk for traffic accidents and denied the access to Lot 29. Also supporting that decision was the fact that Tax Lot 29 was created by deed transfer from Tax Lot 1 without any land-use review and is not, therefore, recognized by the City as a separate and buildable lot apart from Tax Lot 1. Thus, the Hearings Officer felt the City was under no obligation to provide access. He said Lot 45 is in the Scenic Zone and the code requirements are development related and not particularly applicable to lot division. Those standards will be met during development. He said there are two road extensions, generally along the ridge line. NW Ash Street is unimproved and would require construction by the applicant of a 20-foot paved street with partial improvements, including some storm drainage, street lighting and extension of a 12-inch water main along its entire length. The second extension is off Skyview Drive, a part of the recently-created Park Ridge Estates. It is a 20-foot wide fully improved road that would serve as access for 37 lots to the south.

Mr. Brown said the applicant tried to focus as much of the development as possible outside the environmental zones although about half the sites will have some development within the Environmental Conservation zone, most of it as open space for septic tanks and drain fields. He said the streets will be 28-feet wide in front of the developable areas, narrowing

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down to 20 feet between those areas in order to minimize the impact on the environmental resources and stormwater run-off.

Mr. Brown said the applicant is proposing lot coverage of 4,000 square feet per lot, representing less than five percent of the net site area and less than half of what the lot coverage could be if this were a normal subdivision in a Rural Farm (RF) zone. He said staff initially recommended denial based on the lack of mitigation efforts for elk habitat. The applicant then submitted additional evidence addressing those concerns and staff changed its recommendation to approval with conditions. The Hearings Officer also granted approval and this decision was then appealed by the Neighborhood Association. Mr. Brown showed pictures of the site and surrounding area to indicate the proposed location of the main entrance, the street connections and access points. He said the elk herd associated with this and the surrounding area is a major resource in the Goal 5 analysis.

Mr. Brown said the major appeal issues center around environmental, stormwater, subsurface sewage disposal and land suitability issues. The environmental issues raised concern the area of disturbance and an incomplete alternatives analysis. He said as far as the area of disturbance is concerned, the applicant has located the disturbance areas, to the greatest degree possible, outside or on the edge of the environmental zone. Mr. Brown noted that a prior application was withdrawn after some of these problems were identified. Regarding stormwater disposal and water quality issues, the appellant is also claiming there is insufficient analysis and insufficient capacity. Generally, the proposed improvements include a water quality pond and extensive use of in-street detention systems. Regarding subsurface sewage disposal, there are concerns that the soils are incapable of allowing on-site systems and that springs and groundwater may interfere with the disposal backup drainfields outside the disturbance areas. The appeal also claims that the location of the primary drainfields are conceptual and subject to change. The applicant committed to locating drainfields within the identified disturbance areas and fixed those in the application. The Bureau of Buildings has reviewed the proposed subsurface sewage disposal plans and can discuss those further. The Hearings Officer determined that the information submitted by the applicant is sufficient for preliminary approval. Prior to final plat approval, plans for each individual lot will have to be submitted and each lot tested. Regarding land suitability, concern was raised that slide potential and soil instability would make some lots unbuildable. The applicant has submitted a geotechnical study that deals with those issues and with springs and groundwater. The Bureau of Buildings reviewed the study and concluded that it is sufficient to determine that the area is buildable.

Ms. Spetter reminded those attending that this is an on-the-record hearing and that no new issues or evidence can be presented.

Arnold Rochlin, Forest Park Neighborhood Association, said he found the Hearings Officer's decision in this case offensive because it was copied from the applicant's floppy disk without checking for accuracy. As an example, he said a private street tract was requested for two lots. This was denied but five out of the 29 conditions at the end of the decision concern that private street, conditionally allowing it even though the text of the decision says there will be no private street. He said the adjustment criterion the applicant had to meet to get the 4,000 square-foot building coverage on each lot concerns consistency with scenic resources on the property. The Hearings Officer in her decision copied a statement directly from the developer's application which said the site does not contain any City-designated scenic resources. However, Mr. Brown has noted the existence of a scenic

resource on Lot 45 and that this criterion had to be addressed. The Hearings Officer also misquoted Environmental Zone regulation 33.430.250 (A) (1) (a) and her finding hinges on an error in the developer's quotation of the regulation. The actual criterion says development will have the "least significant detrimental impact" to identified resources. However, her finding stated: "the criterion does not limit development to the scenario with the least impact on the environment. The Code requires less impact than other practicable alternatives. This proposal has less impacts than originally proposed which constitute other practicable and significant alternatives." The Hearings Officer's statement on that criterion is a restatement of the applicant's argument in his June 7 testimony. Mr. Rochlin said this was a major point of dispute because the applicant's attorney accused him of misstating the regulation, even though the attorney himself did it. The Hearings Officer resolved this hotly disputed issue by assuming that a lawyer could not be wrong. Instead, she was wrong and all she had to do was check the Code. He said there is no compliance with the code requirement that the proposal have the least impact compared to practicable alternatives. Obvious alternatives are disturbance areas of less than 10,000 to 15,000 square feet per lot, houses covering less than 4,000 square feet of building coverage and fewer lots. Those alternatives were never considered. The burden of proof for that criterion was never met by the applicant.

Mr. Rochlin said a similar environmental regulation is 33.430.250(A)(4)(c) which requires designated building areas and vehicle accesses that are less detrimental to resources than alternatives. The Hearings Officer's finding that this was met cannot be right because building areas and driveways are not shown and are not in the record. The Hearings Officer granted the developer's wish to have those areas designated later. Neither the application nor the decision address how some of the environmental standards are met and others are proposed to be modified. The criteria needs to be addressed for each modification of each standard, as required by the Code. There is no demonstration that any modification satisfies the "least" or "less" impact test. The Code requires reasonable certainty that the development and service standards will be met and the Hearings Officer ignored that criterion, concluding that it was enough that the developer supplied "the usual information" and promised to comply later. Concerning stormwater, Mr. Rochlin said he provided documentation that sidewalks were omitted from the runoff calculations, which included only 4,000 feet of impermeable surface per lot. What the applicant requested, and was granted, was 4,000 square feet of building coverage. That is a big difference because driveways are a part of lot coverage while building coverage is just what is under a roof. The applicant got 4,000 square feet of building coverage on each lot by stating that the economics of development required that. Since he had 4,000 square feet calculated for the runoff and 4,000 square feet of building coverage, then he has to have submitted the driveways, pathways and any other impermeable surface that would provide 100 percent runoff. The disturbance areas are 10,000 to 15,000 square feet on each lot and even lawns and gardens create more runoff than the forest that was there before and that has to be considered in calculating the runoff and stormwater facilities that are needed. The City requires that post-development runoff equal predevelopment runoff but these omissions from the calculations, which are not based on rainfall quantity near the site, mean that compliance falls far short of the reasonable certainty required by the code. Comprehensive Plan Policy 11.22 requires that septic sewage disposals be discouraged on lots under two acres. The Hearings Officer and the Bureau of Environmental Services (BES) ignored that and approved lots one-fifth that size. This is a 45-lot urban scale development without sewers and is not what Portland needs. No one contemplated urban developments like these without sewers. Most lots are too small to provide reasonable certainty that there are

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adequate areas with suitable soil for septic disposal that meets the DEQ drainfield setback requirements. The Hearings Officer said this criterion can be met with a condition that prior to final plat approval subsurface sewage disposal suitability be verified on each lot. She admits reasonable certainty does not exist now or otherwise that condition is unneeded. Bureau of Buildings staff recommended preliminary approval for septic disposal without a site visit or any independent information, relying entirely on the applicant's expert, Mr. Smits, who relied on prior work in the neighborhood. He used a topographic map without inspection of actual lots. Test pits dug for an abandoned community septic system proposed in 1997 had standing water long after any rainfall, according to the observations of a neighbor (Mrs. Burkhart). Mr. Smits addresses that by saying that DEQ no longer requires a percolation test and then stating that the neighbor does not say how high the water was, which is significant to him because "velocity of the soil profile is important in the upper 18 to 36 inches." The developer submitted that comment on June 1, when the record was not open. They knew of the neighbor's observations on May 17 and knew the height of the standing water was critical so the question is why did they not ask her. It was the developer's responsibility to determine the height of the water and put it in the record. The lack of evidence widens the gap of reasonable certainty.

Les Blaize, 9630 NW Skyline Blvd. 97231, speaking for the Forest Park Neighborhood Association Environmental Committee, read from a letter submitted by Larry Epstein in July, 1982, when he was a County employee regarding a proposed development very similar to this one. In that letter he strenuously objects to the development based on the need to provide appropriate environmental protection and raises concerns about erosion problems, the negative effects of reduced tree cover and increased pavement on the stream, and possible subsurface seepage of pollutants from septic fields and drainfields. The letter also calls attention to the severe limitations the soils will place on the septic tank drainfields and the effect of placing a drainfield on top of a hard layer of soil. Mr. Blaize said consultants usually say what they are paid to say and he had hoped staff would look more closely at what was submitted. Instead, City staff was clueless about many aspects and ignored factual concerns when they were raised. He said no one is watching the store for the neighborhood.

Dennis Burkhart, 14735 NW Ash, 97231, noted that this entire site was logged prior to the present owner's purchase. That significantly affected the environmental nature of the area and the mitigation proposed by developer covers only nine percent, the area he claims will be impacted by the development as it exists today. He said if one person can log an area and then pass it on to someone else without any redress that goes against the need for continuing responsibility for such areas. He said a larger area ought to be mitigated.

Elaine Greif, 10275 NW Skyline Blvd., 97231, objected to the density in this area as it violates the spirit of the two-acre minimum zoning. This allows them to factor in the 75 acres that are environmentally protected, divide by two, and then stuff all the houses into the buildable 23 acres. This is a basically rural area with no public transportation, roads at overcapacity and lack of adequate fire service. She said traffic access to Lot 45 is too dangerous because of poor site distances. She added that the Hearings Officer's decision regarding access on Lot 45 from more than one lot is confusing and should be clarified. She said the applicant's response included a careless use of statistics regarding the traffic study, applying national averages to a very specific site.

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Seth Tane, 13700 NW Newberry Rd., 97231, said the neighborhood is relying on the City to protect this area. He said the core issue here is Code Section 33.50.090 that calls for the land to be found suitable for this level of development. The applicant has failed to prove this adequately and has taken a cheap shot instead of spending what was required to address the criteria. A clear example of some of the objectionable things done by the developer is illustrated by his siting of the septic systems identically with no regard to the reality of the topography or DEQ-mandated features that require setbacks, such as for spring and other surface groundwater. In response to the neighborhood's concerns, the applicant's consultant simply waves them away by calling for technical solutions such as a retaining wall or groundwater interceptor. There are no provisions, however, in the DEQ rules for these kind of technical fixes. He said density cannot be increased uniformly throughout the City as though it were a single homogenous community. This is difficult terrain that poses tremendous difficulties for development, difficulties which cannot be taken care of later. The criteria must be met now.

Jane Burkhart, 14735 NW Ash, said the Hearings Officer added a condition calling for Ash Street to be improved and the neighborhood would like the developer to sign a binding agreement confirming that the cost to improve that street is his responsibility, not the residents of Ash Street. She said the existing homes live under zoning which calls for one house for every two acres. She noted the existence of an elk herd within this site and said the applicant has failed to show that it will be protected with the least impact possible. There has been no site inspection or habitat study on the elk herd. She said over the years the herd has been pushed farther away from urban development and this 100 acres is its last stand inside the City limits. She said 35 enormous homes, 90 plus additional vehicles, noise and light pollution and blocked elk pathways are negative impacts. She called for additional study and additional approval criteria.

Jennifer Allen, 464 NW Skyline Crest Road, 97229, said this case has not been handled with proper respect to environmental science and public policy. She said the geotech experts agree there are creeping soils, small slides and the likelihood of uncharted springs on the site. She said DEQ requires a drainfield setback of 50 feet from an up-sloped spring and 100 feet from a down-sloped spring. Mr. Smits drew in the drainfield locations without knowing where the springs are, with little room for relocation on most lots. In response to the neighbors' concerns, he said if a spring is discovered construction techniques are available to deal with it. A cutoff fence and drainage system can be engineered to intercept groundwater and divert it around the septic area. Mr. Smits suggests locating the drainfields without regard for the setback standards and then diverting any water. She said even if that could comply for an up-sloped spring it does nothing for a down-sloped one or one in a proscribed drainfield area. She also asked about the unstable soil not yet mapped on each lot. The code requirement of reasonable certainty that the sewer standards will be met is not met.

Nancy Rosenlund, 5830 NW Cornell Road, 97210, said houses down hill from this development may suffer from a sand filter system that fails, and from stormwater drainage and little ponds that will silt up. She said all the wonderful things the developer has planned are not going to work as the springs will move from one place to another. This is also an unstable area subject to slides and the whole project should be scrapped.

Scott Rosenlund, 5900 NW Cornell Road, 97210, said this site is unsuitable for building because of the soil, which makes it prone to slides. He said the City has to take

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responsibility for problems within the UGB that will affect property outside the boundary, such as the failure of septic systems.

Clark Hansen, 3200 NW Skyline Blvd., 97229, said he thought the City's vision for Skyline was that it would be a recreational corridor rather than major traffic corridor, which is what it will be if this development is approved. His other concern is the lack of access to fire protection.

Don Bryan, 15926 NW Country Woods Lane, 97231, a professional forester, said he believes the soils on this site are similar to those on his lot in Park Ridge Estates. He said there have been four slides within 200 feet of his house within three years. He said unstable soils are not just a theoretical matter as when slides occur, soils up to six feet deep come off the hill and drop to the bottom. He questioned what will happen to the owners when their septic systems are wiped out and what liability the City will assume by allowing construction on such sites. He said the applicant states that lot coverage will be five percent. However, 4,000 square feet divided by 17,000 is not five percent and the 4,000 square feet is not the entire covered area as there will also typically be at least 2,000 square feet more in concrete sidewalks and driveways. Adding that in would bring lot coverage up to about 35 percent. He said the people who designated this area as suitable for two-acre lots knew what they were doing as this site is not suitable for this kind of subdivision.

Robert Simmons, 14515 NW Germantown Rd., 97231, said his major concern is with the septic tanks and water runoff. In one of Mr. Epstein's letters he states that any prudent man can tell when there is a septic tank problem and that there will be problems if one takes a septic tank that has been modified because the soil cannot handle the sewage and places it on a six degree slope, with five others ten feet apart up a hill, a 4,000 square-foot roof above them and a drainage system in the road that is at a higher elevation than the house.

Mayor Katz asked Mr. Epstein if he was the same Larry Epstein who wrote the letter cited above.

Larry Epstein, representing the applicant, said yes but it was written when the issue was what the zoning of the property should be and where the UGB should be, not whether a project of this kind should be approved. He identified eight broad issues the appellants have raised to dispute the Hearings Officer's decision. The first are alleged errors, including a missed citation. He said that is easy to fix as the finding is to the correct standard. The second issue has to do with the Hearings Officer's inconsistency in the manner in which she addressed private streets. He said if the applicant provides access across Lot 45 to the neighbor to the west it becomes a private street. If they just provide access to Lot 45 it is a driveway. The Hearings Officer prohibited them from providing that access to the west and only a driveway can be built. Therefore, the conditions that relate to the private street can be pulled and the findings can be amended to be consistent with the Hearings Officer's decision. He said the appellants argue that the Hearings Officer shifted the burden of proof but that is incorrect. The applicant presented substantial evidence to support every finding needed to support approval of the project. That shifts the burden of proof to the opponents as they must rebut the evidence the applicant provided and for the most part they have not submitted anything of a substantial nature and did not rebut the evidence the applicant submitted. Regarding land and septic suitability and lot size, there is ample substantial evidence as to suitability. Two geological engineers independently studied the site and concluded that it is suitable for the intended use. The opponents hired an engineering

geologist to refute their findings but she did not. She never said the site was unsuitable but only that it would be nice to have more information. Mr. Epstein said that information will be provided before approval of the public improvement plan and before building permits are issued on individual lots. He said Policy 11.22 does not apply as it is not an approval criteria in the subdivision code and cannot be applied under State law. Even if the City could do so, the policy calls for discouraging, not prohibiting, lots of less than two acres that are served by septic systems. Regarding the septic systems, Mr. Epstein noted that the septic system designer has more than 20 years of experience in this area and dug test pits on the site, analyzed the soil and the DEQ requirements and went lot by lot to identify where the drainfields and septic systems will be placed. They propose to provide a pressurized sand filter system and the water coming out of that system is so pure DEQ is having trouble regulating it as an effluent. There is evidence in the record to show the reliability of these systems and their efficacy and there is no evidence to the contrary other than the fears of the neighbors that something will go wrong. Those fears are not evidence. Regarding cul-de-sac length, the development does exceed the generally-permitted length. However, there is no other means of access to the property. If this property is going to be used this is the only way to provide access.

Regarding drainage, Mr. Epstein said the opponents dispute the basis for the calculations in the preliminary drainage plans but those calculations are adequate, relying on local rain data, not airport data. They also rely on building coverage, or impervious area, that exceeds what is average in this region. He said the United Sewage Agency (USA) determined that the average impervious area for a lot in the suburban area is about 2,640 square feet. They assumed impervious area of 4,000 square feet, substantially more than average. Mr. Epstein said the opponents also dispute whether natural resources can be preserved on the site. He said this is a 100-acre site and 91 acres will be remain in open space, with 75 acres in common open space. All the drainage ways and areas of most functional value to elk or other habitat will be retained as open space, with no development except for stormwater dissipaters. Regarding the adjustments, they are required to show that they equally or better fulfill the purpose of the regulation regarding lot coverage. By having 91 acres of open space, they certainly achieve the goal of that standard by reducing the built-up appearance on the whole site. Only one adjustment is requested to the coverage standard. The Hearings Officer did err in failing to acknowledge the existence of the scenic zone on Lot 45 but that can be remedied by adopting findings that show that the development standards will ensure its protection. Regarding the environmental zones, Mr. Rochlin argues that the applicant must comply with the general development standards. Mr. Epstein said they subjected all the project to a more stringent environmental review but if the general standards need to be addressed, they are happy to do so and have provided findings for that. The appellant disputes that there is adequate information in the record but they believe there is adequate information to make all the necessary findings for the environmental zone. The dispute about the words "less" and "least" is not much of a dispute as different Code sections use different words. The real question is whether there are any practical, significantly different alternatives. He said they have tried to put all the homes and development area they can outside the environmental zone. The only other alternative is reducing development on the property and that is not practicable as they cannot then pay for the infrastructure necessary to do any development on this site. For example, building 1,000 feet of Ash Street off-site is going to be expensive and they cannot start willy-nilly to chop lots out of the project. He showed the area where the mitigation is to be provided and, while he agreed that the previous owner illegally removed trees, said the applicant cannot be held

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responsible for that. The environmental zone looks to mitigation for proposed development, not past illegal actions by third parties.

Commissioner Francesconi asked Mr. Epstein which of the opponents' allegations he believes are the most difficult to overcome.

Mr. Epstein said land suitability weaves through many of the issues. They vary in difficulty. The environmental standards in 33.250 are relatively subjective. What is a practicable alternative? What is a significantly different alternative? It is hard to know how to respond to those. Land suitability is more easily addressed by expert testimony and the engineering geologists who testified in writing and orally that the site is suitable.

Commissioner Francesconi asked what he concluded from reading the testimony of the opponents' expert on the issue of the septic systems on each lot.

Mr. Epstein said his impression was that additional information would be nice to have about everything and about septic systems as well. However, their septic system designer was on site, dug a number of test pits, analyzed the soil and has many years of experience siting these kinds of systems.

Commissioner Sten said an argument was made that the septic systems were not sited specifically for each lot.

Mr. Epstein said that is not correct. Mr. Smits's testimony in the record states that he individually sited each septic system on each lot. While it has been claimed that those systems do not meet DEQ setback requirements, that is simply a fallacious reading of the material. The applicant was required to identify disturbance areas and those areas go out to the edge of the lot but the drainfields are set back at least 10 feet from the edge of each lot.

Commissioner Saltzman said the opponents said that in making the stormwater calculations, building coverage instead of lot coverage was used and that driveways and sidewalks were not taken into account.

Mr. Epstein said the applicant requested lot coverage of as much as 4,000 square feet but does not expect that will be needed on every lot, if at all. In trying to calculate stormwater runoff they had to figure out what the impervious area was going to be. To do that the engineers talked to the United Sewage Agency (USA) which undertook a study to determine how much impervious area is typical for suburban single-family homes. The average was 2,640 square feet. If they assumed 4,000 square feet of coverage for the building and another 4,000 square feet of lot coverage for other things, impervious areas of 8,000 square feet would be so far out of what is common that it would not be reliable. After talking to BES staff, it was agreed to use the 4,000 square-foot figure for the purpose of calculating stormwater runoff from these lots. That was acceptable to the City Engineer and they relied on him to tell them what is required. Mr. Epstein pointed out that the City originally told them to design for a two, five and ten-year storm event. Then, just before the hearing, staff told them they also had to comply with a 25-year storm event. However, their preliminary drainage calculations did not address that as they were told they did not have to. Nevertheless, the system they are designing consists of pipes, vaults and a pond, all features that can be enlarged to accommodate additional stormwater flow. That will mean

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oversizing these facilities from their original design but that will also enable the system to accommodate additional stormwater if there is more than anticipated.

Commissioner Saltzman asked if the USA average is based on homes connected to a sewage system.

Mr. Epstein said no, it was only a question of how much impervious area there was as it was done in the context of a drainage study, not a septic study.

Paul Norr, attorney representing Dan Leis, owner of Tax Lot 29, said at one time Tax Lots 1 and 29 were one lot. They were illegally divided without the proper partitioning and at some time both need to be made legal lots. He asked Council not to prejudge that case, which has not been developed or filed. The Hearings Officer said that under no circumstances can Tax Lot 29 gain access through proposed Lot 45. That would eliminate one potential means of access for some kind of future action for Tax Lots 1 and 29, something he believes Council does not need to do that at this time. He asked Council to take a neutral stand now and neither prohibit or allow it. If Council wants to lean more towards prohibiting it, they ask that the words "unless approved by the City Engineer" be added. He said they do not yet know how access will be laid out on Tax Lot 29 and in the context of this case it is premature and inappropriate to simply prohibit it through Lot 45. At some time the City Engineer may agree that if there is already a driveway on Lot 45, that is the best place to allow access for another home.

Mr. Rochlin, in rebuttal, said the applicant made a point of saying the neighborhood did not provide any rebuttal evidence. However, it does not have to present much evidence as this case rests on applicant's failure to show to a reasonable certainty that the standards have been met. Regarding the Murbach Geotechnical report, he did not disagree with any of the factual findings of the applicant's geotech report but recommended that more detailed studies be done before it could be determined that the land was suitable for development. On Policy 11.22, which requires that sewage systems be discouraged on lots under two acres, they do not claim that is an approval criterion. It is lawful to find that a lot less than two acres is suitable but the Hearings Officer had complete discretion in deciding what the minimum lot size is in a PUD. Discretion, however, does not mean one has the right to be arbitrary and City policy 11.22 should have guided that discretion. On the issue of whether there are lot-by-lot septic systems, of course they are lot by lot. But Mr. Smits' own testimony was that he used a topographical map at two-foot intervals to place these septic systems on the lots. They were lot-by-lot on a map, not on the site. Regarding setbacks, Mr. Epstein said they did not violate the setbacks because the circle around the primary drainfield is the disturbance area for the field. Mr. Rochlin said he measured the setbacks and found many of them are less than eight feet from the boundaries and some are right on the lot boundaries. About half the lots had drainfields that did not meet the requirement. That may seem unfair because they were, in fact, not drawn in that carefully. The drawings were meant to be conceptual and then when the Hearings Officer indicated that specific disturbance areas needed to be shown, the applicant accepted that map as the actual disturbance area. As a consequence, there is no real evidence in the record showing that the requirements for septic setbacks are met. Regarding the 4,000 square-foot issue, the applicant said he must have 4,000 square feet of building coverage on every lot because otherwise this project is not economically feasible. However, now he is saying he can deal with 2,600 square feet of impermeable surface which includes the building, sidewalks, patios, etc. Mr. Rochlin said he cannot have it both ways. Other houses in the area have

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footprints of about 3,500 to 4,000 square feet, or even larger, and the calculations for impermeable surface are roughly about half of what the impermeable surfaces are. The developer says he can just build bigger pipes or detention areas but these are in environmental zones and one cannot make them bigger without having more impacts. If these are changed there needs to be a new environmental zone evaluation. The developer is asking Council to approve a plan that is not before it. Regarding the difference between the words "less" and "least," the point is the Hearings Officer said there is a difference and made her decision hinged on her belief that he had misused the word. On the issue of practicality, the developer says they cannot reduce the size of the lots or disturbance areas because the development would then not be economically practicable. However, there is no evidence in the record to support that.

Mayor Katz asked Mr. Rochlin what he would recommend here.

Mr. Rochlin said this is private, developable property but it should not be built out to the maximum. This is a vital area as the elk herd is the only one within the City limits. One has to respect the environment and there should probably be no more than 15 lots here. With fewer lots, less infrastructure would be needed. The applicants may not make a lot of money doing that but that is the way to show respect for the unique environment here. Remediation would also help reforest the logged-off area and the applicant should restore the area outside the developable areas to what it was. He said it would be improper for the neighborhood to simply say this cannot be developed.

Commissioner Sten said the Hearings Officer essentially argues that many of the final decisions are made when the building permits are granted. Mr. Rochlin seems to be arguing that there needs to be a reasonable certainty those permits can be issued and there are certain areas where there is no reasonable certainty those standards can be met. He asked Mr. Rochlin to outline the key areas where there is no reasonable certainty.

Mr. Rochlin said the reasonable certainty required is that, overall, the development can proceed as planned because all the required development standards can be met. The principle uncertainty lies with the septic systems. The lots are so small that the prospective systems do not fit, or at least barely fit. No one could say with certainty that they do fit as, if the developer finds anything, such as a big boulder, it will upset the plan. With terrain like this, there can be unknown springs or slides that are not visible until every lot has been checked. That is why property like this demands more effort than usual to achieve reasonable certainty. Mr. Rochlin said he estimates that the applicant did not include about half the additional runoff, has no plan to accommodate it and used the wrong rainfall figures. That means there is a risk of ending up with a system that is only about one third the size of what is needed. Reasonable certainty also is not found in the environmental area, the other issue.

Commissioner Sten asked him how he came to the conclusion that fewer lots would be possible, but not 45.

Mr. Rochlin said with regard to the septic system, there would be much more area to work with on two-acre lots. Also, the additional runoff created on a two-acre lot will be infinitesimal compared with the reduction in runoff going into the stormwater system that you would have from 45 lots. With 45 lots and an environmental zone, you have very little choice about where you can put the houses.

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Commissioner Saltzman asked him if it is not preferable to put the houses close to the road.

Mr. Rochlin said perhaps, but with 45 lots there will be more roads. With 15 lots you might get by with just one road.

Commissioner Saltzman asked about the methodology of taking 100 acres and dividing it by the two-acre minimum to come up with 50 lots.

Mr. Rochlin said maximum density is determined by taking the gross area, less streets, and dividing it by the density allowed. But there is also a minimum density requirement which is 90 percent of the maximum except you subtract the environmental zones. The minimum density on this area is about 13. Because of the environmental zones, 13 is practicable, not 45.

Commissioner Sten asked BES staff how it determined that 45 septic tanks would work.

Steve Fancher, BES, deferred that question to the Bureau of Buildings.

Mike Ebeling, City Sanitarian, said he has evaluated most of the subdivisions in that area over the last 15 years and the soils are pretty consistent with most soils in the West Hills. Each lot will be evaluated before final platting with two or more test pits and if they do not meet the DEQ criteria they will not be platted.

Commissioner Sten said the consultant for the Neighborhood Association argues that with this many lots there is no way of knowing if there are specific geotechnical problems and that it is dangerous to take a lot-by-lot look after the development has already been approved. The report concludes that the end result might be 45 different consultants working on 45 different lots. He asked Mr. Ebeling to respond.

Mr. Ebeling said it is not uncommon to approve a plan and then evaluate it after the fact. He said when he worked for Washington County it had the resources to do these preliminary checks on subdivisions. He said the State requires that the City evaluate each lot and approve or deny it based on the DEQ criteria.

Commissioner Sten asked if he had worked on past subdivisions with similar soil conditions where there have been 45 units in this tight an area.

Mr. Ebeling said he cannot say for sure. He would have to look at the Street of Dreams subdivision just to the east where he believes the lots are a little larger. The question is whether, if the system fails, the soils will be able to take up the slack of treating the final effluent.

Commissioner Sten said he is more concerned with the argument that it may not be possible to place those systems because of unforeseen things under the ground.

Mr. Ebeling said there are many springs and unstable land forms there but each lot will be evaluated to decide if the site is suitable prior to platting. If they have to move or provide easements on adjacent lots, that can be done then. And they may find that a lot is unsuitable at that time, also.

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Commissioner Saltzman said according to the record two previous PUDs were approved but final platting never occurred and the approval expired. He asked Mr. Ebeling if he knew why there was a failure to plat.

Mr. Ebeling said the reason the applicant took it back was because it was going to be subject to the State Water Pollution Control Facility permit requirements but subdivisions cannot have such permits, which involve community piping. It is a technical issue and that is why they withdrew the application and came back with individual lot treatment.

Commissioner Sten asked BES how it concluded that the stormwater system was adequate.

Mr. Fancher said he reviewed the preliminary stormwater report and found that it had some errors. However, with further analysis BES determined that underground retention pipes could be enlarged or other methods could be used, such as having each lot provide its own private detention system. He said BES has adopted a stormwater manual effective July 1 and this project will be required to meet the new and much more stringent requirements in the manual.

Mayor Katz asked if the new requirements would be met.

Mr. Fancher said the project was not reviewed against the new manual requirements, particularly the requirement that water equal to the two-year storm event be released at half the predeveloped rate. That could significantly increase the size of retention required.

Ms. Spetter said she believes this goes beyond what is in the record as Mr. Fancher is talking about a document not in the record.

Commissioner Sten asked if this approval is based on reasonable certainty that the regulations in place at the time can be met but it will then still have to meet the new regulations when they come in for a building permit.

Mr. Brown said yes.

Commissioner Sten said legally he needs to determine if this could meet lesser regulations that no longer apply. The reality is that this has a much higher standard to meet before it can get a building permit but whether or not the PUD can be permitted relies on whether it can meet the old standard.

Mr. Brown said prior to final plat approval, the lots must meet all City standards, not only for sanitary waste disposal and DEQ, but also stormwater system requirements. It will have to be designed to meet the new standards.

Commissioner Francesconi said he needs some clarification about how far the developer has to go to prove land suitability before meeting the higher standard later on.

Ms. Spetter said the developer will have to comply with the standards in effect at the time.

Commissioner Francesconi asked if Council has to decide now if there is a reasonable likelihood that the developer will comply with the standards in existence at the time.

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Ms. Spetter said today Council needs to look at the standards in place when the application was deemed complete and follow what the code says the standard was at that time.

Mayor Katz said the land may be suitable for development under the old Code but when this is ready to be platted it will be under the new code and may not be suitable for development at that time.

Ms. Spetter said she believes that is correct.

Commissioner Francesconi asked why the City has a second check-off system which requires yet more information. It seems to him there is another fail safe with DEQ to make sure it is adequate.

Ms. Spetter said it is not uncommon to make a general determination and then have a specific review later with more particular regulations rather than requiring an applicant to spend a lot of money doing engineering reports and so forth prior to approval.

Commissioner Sten asked if Council needs to be reasonably certain that all 45 proposed lots can meet the requirements.

Mr. Brown said yes.

Commissioner Francesconi said the appellant seems to be saying the developer must have this detailed information now but he is also hearing that this is provided in the second phase.

Mr. Brown said to come up with the next level of design is a tremendously expensive and time-consuming process. The purpose of the preliminary subdivision approval is to give the applicant some certainty that the number of lots and configuration meets City requirements before he proceeds with the next big step in development, the technical one. During the next step, the City takes a much closer look to ensure that the lots go beyond just reasonable certainty for development.

Commissioner Francesconi asked staff if they believe the septic and stormwater systems can be built to a reasonable degree of probability.

Mr. Ebeling said yes, regarding the septic system.

Mr. Fancher said he believes it is reasonably certain the applicant can meet the stormwater system requirements based on the old standards. It is hard to say about the new standards.

Ms. Spetter said Council's decision should be based on the old standard.

Mr. Rochlin said some statements were made outside the record.

Ms. Spetter said those objections should have been raised at the time.

Mayor Katz asked him to state which issues he thought were not in the record. She noted that they were in response to questions Council had asked.

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Mr. Rochlin said Mr. Ebling made a statement regarding the Street of Dreams and subdivision to the south which were not part of his testimony in the record.

Mayor Katz asked Ms. Spetter if it makes a difference who makes that kind of statement, whether it is Mr. Ebeling or someone else.

Ms. Spetter said it is probably a harmless error, if it is an error at all, unless Council thought that because it heard it from Mr. Ebeling it made all the difference in the world. She said she does not know who made the statement.

Mayor Katz asked Council if that statement had any impact on them.

Council indicated it had no effect on them.

Mr. Rochlin said the BES representative said he saw errors in the original proposal but concluded that with certain modifications, i.e. enlargement of facilities, the current standards could be met. That is new information and was not in the record before.

Ms. Spetter said the rules suggest that individuals bring up these issues when the testimony is given and she assumes that if people want to raise those issues, they will have to bring them up on appeal. She does not know what was said or not said at the earlier hearing but unless Council found the statement by the BES representative incredibly persuasive she did not feel he made any determinative statements or that it was largely outside the record.

Commissioner Sten moved to uphold the appeal and reverse the Hearings Officer's decision.

Mayor Katz asked about Tax Lot 29.

Commissioner Sten said he would be open to changing the words to make access subject to the City Engineer's report rather than prohibiting it outright.

Commissioner Saltzman seconded.

Commissioner Sten said this is a very difficult case and he hopes the two parties can have some discussions outside this forum because he believes this is a buildable area and a remarkably good thing to keep 75 acres in open space, although he thinks they will be hard to develop and he would love to see the neighborhood help reforest it. His reasoning, however, is fairly technical. He believes 45 units are allowed but does not believe there is reasonable certainty on the septic tanks. When 45 units are placed on that very small site, there is very little room left to move the septic tanks around. He believes it is highly likely, as the Bureau of Buildings testified, that something underground on at least one or more lots will make it impossible to site septic tanks there. Therefore, it is reasonably certain to assume that not all 45 lots are buildable. If the criterion is that there must be reasonable certainty that all the lots are buildable then he does not believe this can be approved. Because of the density of the 45 lots, a much stricter look at the geotechnical issues is required than would typically be necessary. As he understands the testimony from both sides, there are required buffers and there is no room to be wrong on the septic tanks. Common sense says they will be wrong on at least one.

Commissioner Saltzman said he was also swayed by the stormwater issue and the fact that if

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a larger facility is required that kicks in a whole different minimum density calculation.

Commissioner Francesconi said he has to vote no for two reasons. First, BES says this level of development can be done, as do the engineers for the applicant. In addition, the engineering report from the appellant does not say it cannot be done on any of these lots. When he adds all that up, given the standards, the evidence does not support a yes vote. Second, because of the rigorous review that will be required in the future, he does not believe the harm the neighborhood is worried about will happen. Given the expertise of the City's own bureaus and the record and given the backup system in place, he has to vote no.

Both Commissioners Saltzman and Sten voted yes.

Mayor Katz said she had to decide whether there is reasonable certainty that the land would be suitable for 45 units. She voted yes.

Mr. Brown noted that the City must make a final decision and can not go beyond the 120 day deadline. He said he will prepare findings for Council consideration tomorrow at the 2:00 p.m. session.

Disposition: Tentatively grant appeal and overrule Hearings Officer's approval; prepare findings for June 22, 1999 at 2:00 p.m. (Y-3; N-1, Francesconi)

At 8:15 p.m., Council recessed.

JULY 22, 1999

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 22ND DAY OF JULY, 1999 AT 2:00 P.M.

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

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

REGULAR AGENDA

- 1068** Tentatively grant appeal of the Forest Park Neighborhood Association against Hearings Officer's decision to approve the application of Eric Lee, Camelot Estates, for a planned unit development and subdivision with an adjustment and environmental review, located at NW Skyline and NW Ash (Findings; 99-00149 SU PU EN AD)

Discussion: Ruth Spetter, Senior Deputy City Attorney, said findings have been prepared and, in addition, she understands the applicant has submitted a letter requesting that Council reconsider the tentative decision it made last night, which Council may do under the Charter, and send the matter back to the Hearings Officer. The grounds for that are laid out in Larry Epstein's letter. One benefit might be consideration of the code for storm drainage that will go into effect July 1.

Mayor Katz said she has some procedural difficulty with that. The neighborhood is probably not aware of this request and if Council grants the request she believes that some public notice requirements would be violated.

Ms. Spetter said the neighborhood would certainly have an opportunity to come before the Hearings Officer.

Mayor Katz said she is concerned about public notice about the request for reconsideration. There has been no 24-hour notice to the neighborhood on this.

Ms. Spetter said this is an unusual circumstance but she understands Council has remanded cases before.

Mayor Katz said it is not the substantive but the procedural issue she is concerned about.

Ms. Spetter said she does not know of any rule that says this would be illegal noticewise although generally the City does like to give notice. The neighborhood will have a full opportunity to comment on the application, which they oppose, at the remand.

Linda Meng, Chief Deputy City Attorney, said the Code allows the Council to reconsider before a session is adjourned and technically it continues through today. That makes it legally possible to do this if a Council member on the prevailing side moves to reconsider.

Mayor Katz asked what Council thought.

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Commissioner Francesconi said even though he was not on the prevailing side, he does not think it should be done today because of the lack of notice although he is substantively in favor of it.

Commissioner Saltzman said he is also concerned about taking an action to reconsider based on this letter.

Commissioner Sten said the 120 days has not been waived and Council has to act today. To waive that only to do what one side wants does not seem right.

Mayor Katz said there does not seem to be any interest in doing this today among those on the prevailing side.

Larry Epstein, attorney representing Camelot Estates LLC, said in their opinion what Council did last night was to change the way it construes an existing approval standard. Council did that during its discussion and vote. The applicant never had an opportunity to respond to that change in the interpretation of the standard. That is a big change because it means instead of doing a consultant's study that looks generally at the site, the applicant will have to go out, survey the site, dig test pits and do everything up to getting a permit. It obligates them to do a lot more work and they are willing to waive the 120-day limit, as they stated in the letter. They do not think it prejudices the neighborhood to do this because they can apply again tomorrow in which case it will go to the Hearings Officer and there will be notice. If Council does not remand this, the applicant will be forced to appeal to LUBA, alleging that their rights were substantially prejudiced by not giving them an opportunity to respond to the new policy. They believe they will get a remand anyway and are trying to save the cost of the remand and move ahead. That is their motivation.

Commissioner Francesconi asked if the applicants are willing to waive the 120-day deadline now. He said if the 120 days is waived, the Council may or may not be interested in entertaining this request after procedural notice.

Mr. Epstein said yes.

Commissioner Sten said he finds the findings accurate on both the septic and stormwater issues that were discussed last night. The final paragraph says this does not imply that Council has approved all the other conditions. He said on those two specific issues he was absolutely convinced there was not a reasonable certainty all 45 lots could meet the standards. There may have been merits to the other issues raised by the appellant but he does not think it is his job to judge each and every point that was raised. Is there a need for Council to debate the other points?

Ms. Spetter said she believes all the relevant Code sections had to be met and, if Council finds that several are not, that provides sufficient reason for denial.

Commissioner Sten asked if there one set standard of approval for Planned Unit Developments (PUDs) or is it different depending on the situation. Is there a set amount of evidence required for every single PUD and is this radically different or does Council try to take into account the fact that on different sites it may need to know more to be reasonably certain?

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Mr. Brown said each PUD is judged on its own merits and varying levels of evidence are required, depending on the site, size, etc.

Mayor Katz said this issue is probably going to end up at LUBA no matter what.

Commissioner Saltzman moved to adopt the findings. Commissioner Sten seconded.

Commissioner Hales said he would abstain as he was not present at the hearing.

Disposition: Findings adopted. (Y-3; N-1) (Francesconi); Abstention-1 (Hales).

Commissioner Charlie Hales

1069 Consider vacating SW 62nd Avenue south of SW Pomona Street, as initiated by Resolution No. 35788, in connection with the consolidation of property owned by the Oregon Department of Transportation (Previous Agenda 956; C-9957)

Discussion: Commissioner Hales said this was held over for several weeks for a review of right-of-way issues generally.

Marcia Wilder, Office of Transportation, said the Oregon Department of Transportation has requested the vacation and the City Engineer and Office of Transportation have reviewed it and approve it, subject to certain conditions.

Disposition: Approved; City Engineer prepare ordinance.

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

GARY BLACKMER
Auditor of the City of Portland

Cay Kershner
By Cay Kershner
Clerk of the Council