



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 27TH DAY OF OCTOBER, 1999 AT 9:30 A.M.

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

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

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

CONSENT AGENDA - NO DISCUSSION

1499 Reject bid for Tryon Creek wastewater treatment plant automation Phase II (Purchasing Report - Bid 99269)

Disposition: Accepted.

1500 Accept bid of Brooks Tree Farm, Inc. to furnish annual supply of bare root/seedling plants for \$216,500 annually for three years (Purchasing Report - Bid 99505)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

1501 Confirm appointment of Marilyn Webber to Central City Concern Board (Report)

Disposition: Confirmed.

***1502** Extend legal services agreement with Miller & Van Eaton for outside litigation representation (Ordinance; amend Agreement No. 32159)

Disposition: Ordinance No. 173861. (Y-4)

***1503** Establish one Clerical Specialist position in the Office of Planning and Development Review in accordance with the Personnel Rules adopted by the City Council (Ordinance)

Disposition: Ordinance No. 173862. (Y-4)

***1504** Authorize a temporary loan from the Water Fund to the Golf Fund to provide financing for golf renovation projects (Ordinance)

Disposition: Ordinance No. 173863. (Y-4)

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*1505 Accept a grant from the U.S. Department of Commerce, Economic Development Administration, in the amount of \$50,000 (Ordinance)

Disposition: Ordinance No. 173864. (Y-4)

*1506 Authorize refunding of Bond Anticipation Notes for Airport Way Urban Renewal Area (Ordinance)

Disposition: Ordinance No. 173865. (Y-4)

Commissioner Jim Francesconi

1507 Accept contract with Western Waterproofing Co., Inc. to waterproof the south and north windows of the Portland Building as complete, authorize the final payment and release retainage (Report; Contract No. 31836)

Disposition: Accepted.

1508 Accept contract with J.P. Contractors, Inc. for Wellington Park improvements as substantially complete and authorize the final payment (Report; Contract No. 32023)

Disposition: Accepted.

1509 Accept contract with Schnauzer Construction, Inc. as complete and make final payment (Report; Contract No. 32492)

Disposition: Accepted.

*1510 Contract with the lowest responsible bidder to replace the boiler system at Union Station and provide for payment (Ordinance)

Disposition: Ordinance No. 173866. (Y-4)

*1511 Lease for office space at 1211 SW 5th for the Bureau of Information Technology, GIS Group (Ordinance)

Disposition: Ordinance No. 1738867. (Y-4)

*1512 Contract with Hennebery Eddy Architects, Inc. to provide architectural and engineering services for the remodel of Fire Stations 10, 14 and 23 (Ordinance)

Disposition: Ordinance No. 173868. (Y-4)

*1513 Authorize contract with Albina Ministerial Alliance for youth services related to the We're Here, We Care program (Ordinance)

Disposition: Ordinance No. 173869. (Y-4)

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Commissioner Charlie Hales

1514 Accept completion of the NE 148th Avenue bridge over Columbia Slough project and authorize final payment to K-2 Construction Co. (Report; Contract No. 31782)

Disposition: Accepted.

***1515** Amend agreement with Port of Portland for project management services relating to the extension of N. Marine Drive (Ordinance; amend Agreement No. 50822)

Disposition: Ordinance No. 173870. (Y-4)

***1516** Contract with 22 professional, technical and expert service firms for engineering support as required in support of the Portland Office of Transportation (Ordinance)

Disposition: Ordinance No. 173871. (Y-4)

***1517** Contract with three professional, technical and expert service firms for engineering support as required in support of the Portland Office of Transportation (Ordinance)

Disposition: Ordinance No. 173872. (Y-4)

***1518** Amend agreement with David Evans and Associates to revise scope of work and provide up to \$127,000 for the Goose Hollow and Civic Stadium transportation analysis (Ordinance amend Contract No. 32313)

Disposition: Ordinance No. 173873. (Y-4)

Commissioner Dan Saltzman

***1519** Accept a sewer easement for the Tanner Creek stream diversion project granted by School District No. 1, Multnomah County, Oregon, authorizing total payment of \$34,000 (Ordinance)

Disposition: Ordinance No. 173874. (Y-4)

Commissioner Erik Sten

***1520** Agreement with Portland School District for \$29,100 for coordination of the Outer Southeast Caring Community and provide for payment (Ordinance)

Disposition: Ordinance No. 173875. (Y-4)

***1521** Authorize a contract and provide for payment for the Powell Butte sites landscape improvements (Ordinance)

Disposition: Ordinance No. 173876. (Y-4)

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- 1522 Amend intergovernmental agreement with Marion County Department of Public Works to extend the contract time to conduct pavement assessment services of the Bull Run watershed roads (Ordinance)

Disposition: Passed to Second Reading November 3, 1999 at 9:30 a.m.

REGULAR AGENDA

- 1498 **TIME CERTAIN: 9:30 AM** – Consider Endangered Species Act program annual report (Report introduced by Commissioner Sten)

Discussion: Commissioner Sten said this annual report is an attempt to give people some sense of what has been done since Portland received the Endangered Species listing last year, the first listing of endangered fish in a major urban area. Last year they inventoried existing practices to determine all the things the City is involved in that are potentially most harmful to fish and build a plan to address those. Council decided it wanted to be proactive and aggressive in its efforts to solve the problem rather than just react to regulations or lawsuits. The most remarkable achievement to date has been the City's entering into a three-way agreement with Portland General Electric and the State of Oregon to remove two dams in the Bull Run watershed. That dam removal, the first voluntary removal to occur in the State, will spur the return of a substantial amount of fish habitat. The National Marine Fisheries Service (NMFS), the key advisor on these efforts, played a key role in that as well. On the grass roots level, the City has been involved with SOLV, the Grand Ronde tribe and a number of corporate partners to team up for a voluntary program for habitat restoration, mostly funded by corporate support. He said it has become clear that the effort to restore fish habitat will take a very long time and will not be successful if other people are not drawn in. The "team-up" program planned for next year will be the basis for a much broader outreach effort. Working with the Portland Office of Transportation (PDOT), he said, they were able to remove a culvert in Johnson Creek, a small but very significant step as one of the basic conflicts in the urban environment is the one between roads and streams. PDOT has been a leader in trying to figure out solutions to some of these conflicts. Another project highlighted in the report is the Eastbank Riverfront Park, which has been used as a test case to figure out how building on the riverbank can be done in an environmentally friendly way. He predicts issues of this type will arise along every mile of the riverbank that is developed as there is still a great deal of uncertainty about what should be done. One major unresolved issue is how to treat the North Macadam riverbank. He noted that by next year they hope to have established lines of communications throughout all the bureaus as the ESA effort involves all the City. NMFS is expected to issue its regulations by January and it is hoped that everything the City has done to date will count. By this time next year a regulatory framework will be in place to respond to and the hope is that the City's problem-solving approach will line up with the regulations and provide some certainty.

Mary Abrams, ESA Program Manager, Water Bureau, said this report also includes reports on various issues studied by 10 technical teams, whose members represented many bureaus.

Sallie Edmonds, Office of Planning and Development Review (OPDR), and Chair of the Planning and Permitting Team, said her team analyzed the environmental zones to see if they are adequately protecting the riparian functional values. They reviewed zoning code language, approval criteria and zoning maps and have looked at the development review and

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implementation process to be sure what is built on the ground is what was approved. She said NMPS was generally impressed with the environmental zones but expressed concern about exemptions for City utility work. That is one issue OPDR hopes to take care of through the Title 34 rewrite. Another concern was enforcement. The next step is to establish a citizen review committee and have a scientific panel review the work of the technical team.

Janet Senior, Water Bureau and Chair of the Bull Run Team, said the team reviewed the releases done by the Water Bureau to see what improves conditions for the fish. They used an experimental approach which would allow them to gather data and measure actual benefits before any long-term commitments are made. Their goals are to decrease water temperatures in the lower Bull Run River and increase the amount of available habitat during critical fish life stages, including the spawning season. This summer the Bureau did three releases of water from the reservoirs. The first was done during the steelhead spawning season in the spring while the second involved experimental test releases during the late summer to look specifically at temperature changes based on different flow amounts. The last flow release was to benefit the Chinook spawning season in late September, the time of year it is most difficult to make flow commitments because the reservoirs are at their lowest at that time. Preliminary data shows that the releases did show some beneficial results on temperature. She said they did have some difficulty controlling the amount of water released as the Bull Run structures were not designed for that purpose. She said the next step will involve a look at options for infrastructure changes to better control releases.

Ms. Abrams said the next big issues facing them will be regulatory compliance and the cutthroat trout listing, probably by mid-December. This time the U.S. Fish and Wildlife Service will be involved as well as NMFS as there is no clear way to distinguish between freshwater trout and those that migrate to the sea. She said they expect the City's legal liability will increase once those rules are in place so they hope to have an overall plan by the next fiscal year. The other major need is to increase input from external stakeholders. There is a real concern with measurement so the City must have benchmarks in place to see if they can be met. Ms. Abrams noted that it is very difficult to assess what factors are responsible for increasing fish populations and improving fish habitat. She listed some of the possible measurements the City could implement. A Willamette River Fish Study is underway in cooperation with other agencies to put together requirements that will protect fish as the riverbank is developed. Regarding bank stabilization efforts on the East Bank, the goal is to develop methods that will best protect fish and still meet other City goals. She said by the end of the next fiscal year, the overall plan should be complete and they hope to fold the stormwater program and environmental zones into it. They also expect to have a clearer idea of what is needed on the tributaries to the Willamette and how to address fish passage through other existing culverts. They will set priorities with the help of the Bureau of Environmental Services (BES) and the Portland Office of Transportation (PDOT), complete stream assessments of Tryon and Johnson Creeks; do temperature models in the Bull Run; and report on any changes in citizen behavior as a result of their participation in the outreach program. She said the goal should be a solid, unified City approach which can set an example for the region.

Commissioner Hales said he finds the report very encouraging on one level and appalling on another as he fears the City will do all the right things but the effort will fail because there is no coordination with the region. He noted that the City's request to Metro that fish

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protection be considered a regional issue was completely ignored by the Metro Advisory Policy Committee. He said two-thirds of the population and four-fifths of the land area in the Urban Growth Boundary are not within the City. He asked staff what is going on in the rest of Metro area and what the prospect is that Portland will make itself a target for federal regulatory efforts while others avoid liability.

Ms. Abrams said the City cannot avoid liability but this is definitely an issue of regional importance and it seems like a natural Metro responsibility. However, while elected officials may not be getting along, staff in the various jurisdictions have been making this a regional issue and are heading in the same direction even though most lag behind Portland City because they lack sufficient staff. There is also some regional representation on the Willamette River Institute which will help ensure that appropriate steps are taken on the upper reaches of the Willamette. She said the City is trying to make bank stabilization and environmental zone designations incentive-based but the City cannot directly control everything that happens and if these become de facto guidelines for NMFS, there is a good possibility they would move in that direction whether they decide to do the fill or not.

Commissioner Francesconi asked what percentage of the Willamette is outside the Metro region. He asked about Statewide efforts regarding fertilizers and chemicals.

Ms. Abrams said only seven percent of the River falls within City borders. She said staff has been working with the Governor's office and jurisdictions up and down the river, but mainly on the urban issues, not the agricultural and forestry ones. That is within the Governor's realm.

Commissioner Francesconi said he would like to know if it makes sense to build an outside, non-profit group to advocate for the River. He asked that the Public Involvement Team analyze what other communities have done in that regard. Regarding the Greenway, he believes issues surrounding access to the River, where the Parks Bureau has taken the lead, should be combined with the water quality approach. He asked if it makes sense to combine these efforts?

Ms. Abrams said citizens have to have access in appropriate places and the emphasis should be on watershed health, not just water quality, as what happens along the banks is very important. One of the goals of the Bank Stabilization Guide notebook is to provide public access to the waterways in appropriate places.

Ms. Edmunds said Planning staff will be doing an update of the Willamette River Greenway plan which will touch on all these issues, including access and water quality.

Commissioner Saltzman asked if the tree preservation ordinance and planned erosion control measures will be reviewed for their impacts.

Mr. Abrams said when the initial analysis is completed, Council will get a chance to review it as to its adequacy from a biological standpoint. She said at some point staff will look at the natural areas program which will include the tree preservation ordinance. She said all these issues feed into the fish issue, the CSOs being the major problem for the fish. Being designated a Super Fund Site is also a potential future problem.

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Commissioner Saltzman noted that BES held several focus groups over the summer and found real confusion among citizens about what is going on because there are so many task forces and studies underway. He suggested creating an umbrella program to incorporate all the issues.

Commissioner Hales asked what would happen if the City submitted nothing to NMFS for review.

Commissioner Sten said some jurisdictions are doing very good work and some are doing nothing. The NMFS has never made rules in a situation like this before and he believes they are relying to some extent on the City's work to determine what is reasonable and what is not. He believes the City will be pushed on some things but will be in reasonably good shape. Until the NMFS rules are in print no one has a basis to sue and he believes that, given the City's proactive work, it is in as good a shape as one can be regardless of what anybody else does. Given Portland's size, the likelihood of its getting sued is high, whether it does anything or not. Whether the smaller jurisdictions get in trouble depends on the extent to which people are paying attention and his hunch is that they are and that those jurisdictions will find themselves in a difficult position. He falls back on the fact that all the actions the City is taking have some good benefits aside from just helping the fish. However, he agreed with Commissioner Hales that lack of a regional effort is a real failure of political leadership.

Commissioner Hales said he is not concerned that the City will be punished for doing the right thing but fears the fish will not appreciate its good efforts because they will not be applied elsewhere on the River.

Jane Cease, chair of City Club Committee on Endangered Fish Species in Portland, said personally, she believes that all regional governments will need to work on some of state land use goals and the Willamette River Initiative as it is obvious that fish do not understand boundaries. She said the City Club has studied the potential impact on the citizens of Portland as a result of the ESA listing.

Mike Houck, Audubon Society, said while he is proud of the City's efforts, the Audubon Society still has concerns about stormwater management and environmental zones and will press the City on those issues. He is also disturbed to learn that some timing changes have been made regarding the Combined Sewer Overflow (CSO) efforts. He said regional involvement is a red herring as he believes the region is moving toward consensus on a response to the ESA listing through the Metro 2040 Plan. Washington County, ironically, is going beyond what people thought it would do. If the City is really going to be proactive, it needs to address ecosystem and watershed health as it relates both to aquatic and terrestrial species, not just fish.

Commissioner Hales said there is no point in refighting the battle with Metro. He questioned Mr. Houck whether he is confident that projects like the I-5/ 217 (Tualatin Sherwood) bypass are going to be built with some attention to ESA requirements. Will they do the right thing on those projects?

Mr. Houck said he is absolutely not confident they will do the right thing and added that transportation planners must be hammered on about how they design their systems.

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John Volkman, National Marine Fisheries Service, 525 NE Oregon, thanked Ms. Abrams for her work and the City for its commitment to dealing with this issue. He said he would be happy to spend more time going over the rules and other issues.

Commissioner Saltzman said he hopes if the U.S. Fish and Wildlife Service is also going to get involved in this, it will not go through an elaborate process of reinventing the wheel.

Commissioner Francesconi said this issue can not be solved without a statewide approach and more citizen involvement is needed to fashion a coordinated approach to river access and watershed health. He said staff should work on figuring out how the measurements relate to watershed health even though some of measurements may not be the City's responsibility.

Commissioner Hales said he will continue to press for more than unilateral actions by the City although he does not question the strategy of leading by example. By one means or another, a regional approach must be found to solve a regional problem. He said he will continue to raise that point as the rest of the region will have to acknowledge that Portland has only one third of the population and one third of the area.

Commissioner Sten said it is clear the City is taking the health of the salmon very seriously. This is a difficult issue because the City has to keep moving forward but can not do it alone. He noted that while the City is only three or four percent of the River, it is double that in terms of the pollution it adds to the river. These efforts will make it hard to make a case that the City not doing its share. He said while he agrees on the need for citizen advocates, the Council needs to do better job of linking the CSO issue to others, such as access to the River, and reconcile its overall strategy.

Disposition: Accepted. (Y-4)

***1523** Authorize revenue bonds for the Public Parks System (Ordinance introduced by Mayor Katz and Commissioner Francesconi)

Discussion: Commissioner Francesconi said there are some very park deficient areas in the City, especially east of 82nd Avenue. He said when the land was annexed from Multnomah County there was an understanding that the City would add more neighborhood infrastructure, including parks, in this part of town. The City has not been able to do that very well to date. This ordinance requests an advance on residential System Development Charges (SDCs) that will equal approximately \$6 million. This is money the City would have used for other purposes but it will allow the City to buy land in this area before it becomes even more expensive. If they are able to obtain matching regional dollars, they will reserve some of the money to buy significant habitat land but the primary focus will be on neighborhood and community parks.

Gordon Wilson, Bureau of Parks and Recreation, said this will allow the City to draw an advance on a revenue stream already in place. He displayed chart to show the most park deficient areas in the City, which also corresponds to where most development is occurring and where most of the SDC revenue will come from. Passage of this ordinance will allow the City to take half of that revenue stream, about \$6 million, and convert it into upfront money through borrowing as the need arises. This makes sense because land acquisition is time sensitive and because of the rising cost of land.

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Eric Johanson, Debt Manager, Office of Finance and Administration, said they have an agreement with the Parks Bureau to step in, on a short-term basis, with general fund money if the SDC revenues are insufficient in any particular year. The General Fund would then be reimbursed for debt service costs.

Mike Houck, Audubon Society, said the City is being very creative here and this is a great approach which makes perfect sense.

Commissioner Francesconi said Parks has three critical funding needs: 1) land acquisition; 2) capital improvements; and 3) expansion of after-school programs with the County. He said he will schedule a Council work session to cover these topics and help prioritize needs.

Disposition: Ordinance No. 173877. (Y-4)

Mayor Vera Katz

***1524** Accept a \$759,400 grant from the U.S. Department of Justice, Office of Justice Programs, Violence Against Women Act (Ordinance)

Discussion: Dennis Merrill, Police Bureau, said this grant will be used to fund enhanced efforts to strengthen early intervention and respond to domestic violence.

Captain Andrew Kirkland, Family Services Division, said the City Club report on Domestic Violence was used as the framework for designing this program.

Commissioner Saltzman noted that no local match is required. This money will be used to set up teams that can help victims through the process and the program will be a lifeline for victims of domestic violence.

Commissioner Francesconi suggested that the Fire Bureau, as first responder, do more to inform women as to their rights and alternatives. He said he believes training them to do that could be done pretty easily.

Disposition: Ordinance No. 173878. (Y-4)

Commissioner Charlie Hales

1525 Support the Oregon Department of Transportation's US 26 (Portland-Cannon Beach junction) and US 30 (Portland-Astoria) corridor plans (Resolution)

Discussion: Commissioner Hales said this supports the notion that cities are cities and should not be pass-throughs for cars.

Gabe Onyeador, PDOT, said all jurisdictions within the two corridors have been involved in the planning process. He said the plans establish a 20-year vision for the corridors and provide a basis for statewide allocations

Fred Eberle, Region 1, Oregon Department of Transportation (ODOT), said the major priorities along the corridors are to: 1) maintain and preserve the existing roadway; 2) operate the facilities; 3) provide environmental protection; and 4) modernize existing roads

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and add new ones. He gave a brief overview of both corridors, with assumptions about traffic increases and needed improvements. He said they prioritized needs in three categories: 1) already committed, 2) constrained (expected to be accomplished over 20 years with the current revenue stream) and; 3) strategic. Some, such as the Lewis and Clark Bridge between Longview and Rainier and the truck route through Astoria, will require very large financial commitments. Maintenance is the number one management priority and they are also working hard to integrate land use and transportation, recognizing that some factors may outweigh the need for getting through traffic and truck traffic through the middle of some towns. In the Linnton area they are considering limiting development along the highway to avoid having strip commercial creep outside the Urban Growth Boundary. In downtown Linnton there is a real need to increase enforcement and reduce traffic speed and implement traffic calming measures. He said a lot of projects in Portland on the US 26 to Cannon Beach corridor are already under construction and the Oregon Transportation Commission is committed to completing all the improvements called for in connection with Westside Light Rail. One of the major assumptions is that the Vista Ridge tunnel will retain the three lanes it has today, despite higher traffic. He said even if the tunnel could be widened there is really no place to go once cars go through it so the hope is that increased transit use will take up a lot of the slack. He noted that the road over the Coast Range is not up to ODOT highway standards but to bring it up to standard would cost several hundred million dollars. The plan recommends leaving most of the corridor the way it is with some limited shoulder widening and a new passing lane here and there. He listed some of the planned improvements, including lengthening ramps to prevent traffic backups,

Commissioner Francesconi asked if moving freight from high tech companies to the airport had been considered on the Portland/Cannon Beach corridor as congestion goes.

Mr. Eberle said they have heard that is an issue at Metro level but ODOT is not sure that an F level of service is appropriate for the radial corridors where time-sensitive shipments are an issue. He said they know congestion will worsen and that is why they plan to initiate a lot of traffic management measures, such as ramp metering and dedicated lanes to move trucks through rush hour congestion.

Tom Wilson, President, Linnton Neighborhood Association, said the neighborhood believes that it has never been the same since Highway 30 was widened. He thanked staff for its work on the US Highway 30 Through Linnton Bicycle, Pedestrian and Vehicle Circulation Plan. Some of the traffic calming measures called for in that Plan are already underway.

Disposition: Resolution No. 35837. (Y-4)

Commissioner Dan Saltzman

***1526** Accept a \$25,000 grant from the Northwest Energy Efficiency Alliance to conduct a green building baseline study to determine the cost effectiveness of building beyond code for City facilities (Ordinance)

Discussion: Susan Anderson, Energy Office, said this will allow the City to jump start its green building efforts and promote more environmentally sensitive design. They plan to do a life cycle cost analysis for four different facilities.

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Commissioner Saltzman said while this is a small grant, it will allow the City to document positive returns from green buildings.

Disposition: Ordinance No. 173879. (Y-4)

Communications

1527 Request of Dan Blazing to address Council concerning a pending sewer problem (Communication)

Discussion: Dan Blazing, 12221 SE Kelly, said he has documents relating to his dispute with the City over the hook up of his mobile home to the sewer.

Commissioner Saltzman said BES had proposed a deal to split the disputed sewer connection charges with Mr. Blazing. He asked him if he is interested in taking the City up on that offer.

Mr. Blazing said that was a sucker deal that did not take into account another issue that came up. He noted the letter he had introduced into the record from a woman who had also been harassed about the sewer issue for some years and finally went ahead with the program despite her objections. He said he should have been grandfathered in as he complied with the County regulations prior to annexation. He sees no reason why the City should be harassing him and would have taken this to court but he could not get a lawyer to fight the City.

Commissioner Saltzman said Mr. Blazing has to decide whether to accept the City's offer by the end of this week.

Commissioner Francesconi told Mr. Blazing he could come back to Council as many times as he wanted but that his only relief is to accept Commissioner Saltzman's offer.

Disposition: Placed on File.

At 11:40 a.m., the Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS 27TH DAY OF OCTOBER, 1999 AT 2:00 P.M.

THOSE PRESENT WERE: Commissioner Francesconi Presiding; Commissioners Hales,
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.

1528 Appeal of the Madison South Neighborhood Association against Hearings Officer's decision to approve the application of Park Forest LLC for a conditional use in order to construct an addition to the Park Forest Care Center located at 8643 NE Beech Street (Previous Agenda 1092; 99-00218 CU)

Discussion: Kathleen Stokes, Office of Planning and Development Review said this group living use requires a conditional use and a Type III approval process. The Hearings Officer approved this conditional use application to increase the number of beds in this facility from 80 to 121 with conditions to address concerns raised by the neighborhood association about its physical compatibility in a residential neighborhood. After the July 28, 1999 hearing, Council asked the parties to seek mediation and the applicant and neighbors met three times before the discussions came to an impasse over the number of beds that should be allowed. The applicant contended that 120 beds were needed to make the facility financially feasible while the neighborhood felt that the number should be restricted to the 80 approved as part of the 1988 conditional use. Ms. Stokes noted that a zoning error by staff was carried over into the Hearings Officer's proceedings before being corrected. She outlined the modifications to parking and the roofline plus the addition of dormers to create a more residential scale. Most of the parking in the front was shifted to the back although some remains in the southwest corner because applicants felt a drop-off point was needed. She said staff and the Hearings Officer believe the new Code allows approval of the additional beds and that the original conditional use limiting the facility to 80 beds should be superceded.

Commissioner Francesconi asked her if the issues of building scale, parking, noise and truck deliveries had been resolved. He added that the heart of the issue is that the neighbors want to limit this to 80 beds while the applicant wants 121.

Ms. Stokes said they have been resolved as far as planning staff is concerned but maybe not for the neighbors. She said the Code specifically allows consideration of new proposals that call for increases. According to the density allowed in the Zoning Code, this site could develop with up to 160 residences.

Robert Hixon, Madison South Neighborhood Association, said the neighborhood continues to oppose this approval because they believe: 1) the Hearings Officer's decision was based on faulty information; 2) the existing agreement limits the size of the facility to 80 beds; and 3) this application does not meet the conditional use criteria. He reviewed the mediation efforts and said they reached an impasse concerning the physical size of the building addition and modification of the existing structure. He said the applicant refused to consider any reduction in the capacity or building size other than lowering the ridgeline by approximately four feet and the incorporation of dormers. He said if approved, this proposal would dominate the neighborhood and no mitigation can be achieved that will

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make an immense 45,000 square foot structure fit in with adjacent family residences. It therefore fails to meet approval criterion 33.815.105 B. Regarding traffic, Mr. Hixon said the revisions to earlier projections regarding truck traffic are still insufficient to bring it into compliance with the Code. He said conflicting information from the applicant and the absence of a current traffic study is of great concern as there is no way to reach an informed decision at this time. He did note that some agreement had been reached regarding the number of parking spaces, eliminating most of the parking spaces in front of the facility. However, the neighborhood would prefer that all parking be located in the back.

Mr. Hixon also described what he felt were inadequate sight lines from the facility onto Beech Street and questioned the City's position that an intersection was not considered a safety hazard until it had established an accident history.

Michael McSwiggen, 8605 NE Beech, outlined some of the suggestions for changes in the building design that the neighbors made during the mediation. These included reducing the front of the building to a single story, moving the main entrance to the back, and bringing the site down to road level rather than bringing in fill to raise the Southwest portion of the site. However, the care center rejected all these proposals.

Karen Kelly, 8605 NE Beech, said the neighborhood believes the Care Center should not be allowed to expand any more than 80 beds since that was the limit agreed to in the 1988 conditional use approval. She said the neighbors are still concerned about lighting, the damage to Beech Street caused by large trucks and its on-going relationship with the Park Forest Care center. She said the center continues to violate conditions in the 1988 conditional use regarding truck deliveries and the projection of trucks into the right-of-way. Overall, the neighbors believe the revised expansion plan still does not meet the physical compatibility requirement of 33.815.105 or the livability criterion.

Christine Cook, Attorney representing Robert Hixson, Karen Kelly and Michael McSwiggen, said the level of financial return on the investment in this development can not be a factor in Council's consideration of the appeal. She said the applicant's desire to house 121 beds at the facility cannot be a reason to fail to impose conditions that would mitigate the proposal and reduce its impacts. These conditions might include reducing the number of beds so that only a one-story structure would be needed. Ms. Cook listed a number of Code criteria she believes the proposal violates. She said this development would be unlike anything else in this area of single-family, one-story homes and would visually dominate everything else, depriving neighbors of their privacy. In addition, the facility will have adverse impacts on livability because of significant noise from trucks and other vehicles, lights and an inferior local street system which can not safely support this use. She said the Hearings Officer's decision was defective in that it ignored the neighbors' evidence of noise, glare and safety and compared the real problems to a 22-house development zoned R5, which could not actually occur on this site. In closing, Ms. Cook requested that the record remain open.

Judy Chown, Land Use Chair, Madison South Neighborhood Association, said the neighborhood association felt it had not been treated respectfully or fairly in regard to this review and that staff failed to correct in a timely manner either the zoning map or the other errors the neighborhood brought to their attention, withheld information and failed to keep them informed. She said the neighborhood was unable to reach a compromise with the applicant due to Prestige's unwillingness to consider any reduction in the size of the project.

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Jan Youngquist, representing Prestige, said many of the suggestions presented by the neighbors during the mediation have been incorporated into the revised proposal although, unfortunately, they were unable to reach agreement on the number of beds. Changes were made to the building design and color; the parking configuration and lighting. She explained the constraints against accepting some suggestions, such as adding a daylight basement. Regarding parking and traffic, she noted that the original proposal calling for 47 spaces had been reduced to 31, the minimum required by City Code. Eighteen spaces were eliminated from the front and four from the southeast front corner. Ms. Youngquist said they did retain a drop-off and five parking spaces in front as they believe they need a few spaces for the convenience of visitors who need to help people access the assisted living facility. She said they did consider putting the entrance in back but, since that is the focal point of the building, they wanted residents to feel part of the neighborhood, rather than isolating them. Regarding traffic, she noted that most residents do not drive their own cars and rely on vans. Employees will be encouraged to use mass transit and carpooling. Neighborhood concerns about truck noise have been addressed by reducing the number of garbage truck pickups and truck deliveries. Regarding the number of beds, Ms. Youngquist said the Zoning Code would allow 160 residents and they are requesting 121. She said they are only proposing 61 convalescent beds and noted there is a world of difference between skilled nursing and assisted living care, which are treated completely differently by zoning and building codes. She said the statement in the 1988 conditional use that no further expansion will be allowed is not allowable under the Code. Since that time the Zoning Code has been changed, but even more important, there has been a revolution in caring for seniors, especially with the advent of assisted living facilities. She said the requested density is needed to make the project financially feasible and allow the applicant to replace a deteriorating building with a project that will be an asset to the neighborhood and community in general.

Commissioner Francesconi asked if the proposed structure is six feet lower than the current structure.

Ms. Youngquist said that is correct.

In rebuttal, Mr. Hixon said he does not know how the land constraints relate to meeting approval criteria or why having a daylight basement or placing the front entrance and the drop off in back would not work. He agreed that most residents do not drive much but there are many visitors. The applicant's assertions that there are only 10 trucks per week are not backed up by any traffic study for this specific site. Finally, while the density might allow a total of 162 residents on this site, he believes the intent is not to allow the application of such density to large lots.

Commissioner Sten noted the applicant's statement that the 1988 decision is more of a skilled nursing rather than an assisted living facility. He asked if the City makes any distinction between the two.

Ms. Stokes said no, the Zoning Code would assume that both uses were for group living but the applicant is correct that the 1988 decision talked about a skilled nursing facility and did not look at assisted living. The Code does not differentiate between the two.

Commissioner Francesconi asked if staff could offer any guidance on how to interpret physical compatibility with the surrounding neighborhood.

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Ms. Spetter said there is no definition of that in Title 33. It is supposed to be fact specific.

Ms. Stokes said the relevant approval criteria regarding physical compatibility states that the proposal will be compatible with adjacent residential developments based on such characteristics as site size, building scale, style, setbacks and landscaping. The appellants believe this proposal is not in keeping with those characteristics. However, that approval criterion is followed by an "or" which states that the proposal may mitigate differences in appearance or scale through such means as setbacks, screening, landscaping and other design feature. Originally, both staff and the Hearings Officer felt that the proposal did mitigate the differences. Ms. Stokes said she believes the new proposal dramatically improves the proposal, however, and that it meets the approval criterion even better now. Whenever there is an institutional facility in a residential zone, one must realize it is not going to be just another house. She said whether it is a school or church, for instance, there will be questions about how they meet the physical compatibility criteria. That is why the "or" (b.3) is important.

In response to a query by Council, Ms. Cook said her clients have agreed to withdraw their request to keep the record open.

Commissioner Hales said he appreciates the effort both parties made during mediation and believes that has resulted in an improved proposal. He said the applicant has made changes in response to a number of the issues raised and for that reason he will move to tentatively uphold the Hearings Officer's decision, deny the appeal and approve the revised site plan, conditions and findings that reflect the revised proposal now before Council. Staff would return with findings and conditions that reflect that.

Commissioner Sten seconded.

Commissioner Hales said if a conditional use facility is properly managed and maintained that is 99 percent of the battle. This applicant has done a good job of meeting Council's original objections and he is persuaded that a small drop-off in front for cars makes sense. This revised proposal will be much more compatible with the neighborhood.

Commissioner Saltzman said this meets the conditional use criteria but, more importantly, the City has to recognize there has been some tremendous changes for the good in how seniors are housed, including providing more assisted living and Alzheimer's wings as opposed to just skilled nursing facilities.

Commissioner Sten said the neighbor's argument that an 80-bed cap had been placed on this facility ten years ago was compelling but he realizes the applicant has the right to reapply. He wishes the applicant could have compromised a little more on the number of beds. However, he believes the proposal does meet the criteria and does not think there will be a major difference in impact based on the number of people who live there. It is more a design and operational issue. He is also not convinced that two stories is incompatible in an urban environment..

Commissioner Francesconi said there is an overwhelming need for this kind of facility but that is not point of this decision, which is whether it is physically compatible with the neighborhood. He has to agree that there is a dilapidated structure there already. This

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meets the very minimum Code parking requirements and the applicant has done a number of things to mitigate the impact. He noted that the zoning does allow 160 residents.

Disposition: Tentatively approve Hearings Officer's decision and adopt revised proposal. Prepare findings for November 17, 1999 at 9:30 a.m.

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

GARY BLACKMER
Auditor of the City of Portland

Cay Kershner / bo

By Cay Kershner
Clerk of the Council