



CITY OF

PORTLAND, OREGON

OFFICIAL
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 5TH DAY OF JANUARY, 1994 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding;
Commissioners Blumenauer, Hales and Kafoury, 4.

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

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

CONSENT AGENDA - NO DISCUSSION

- 2 Accept bid of Pacific Water Works Supply Co. for various clamps, service saddles and couplings for \$30,074 (Purchasing Report - Bid 69-A)

Disposition: Accepted; prepare contract.

- 3 Accept bid of James W. Fowler Co. for Kenton Basin CSO sump unit 4 for \$558,356 (Purchasing Report - Bid 77)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

- * 4 Pay claim of Paul Branch (Ordinance)

Disposition: Ordinance No. 167244. (Y-4)

Commissioner Earl Blumenauer

- 5 Vacate a portion of SE 27th Avenue south of SE Bybee Boulevard, under certain conditions (Ordinance by Order of Council; C-9850)

Disposition: Passed to Second Reading January 12, 1994 at 9:30 a.m.

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- * 6** Accept jurisdiction from Multnomah County of certain county roads lying within the corporate limits of the City of Portland, pursuant to the Intergovernmental Agreement authorized by Ordinance No. 155651, passed by Council March 1, 1984 (Ordinance)

Disposition: Ordinance No. 167246. (Y-4)

- * 7** Amend contract with Flexible Video Systems for high cube van mounted TV sewer inspection system (Ordinance)

Disposition: Ordinance No. 167247. (Y-4)

Commissioner Gretchen Kafoury

- * 8** Agreement with Multnomah County to share planning costs for consolidation of facilities, fleet, communications and electronics, and printing and distribution (Ordinance)

Disposition: Ordinance No. 167248. (Y-4)

- * 9** Authorize an Agreement for Services with SERA Architects, PC to evaluate and document the existing condition of City Hall (Ordinance)

Disposition: Ordinance No. 167249. (Y-4)

Commissioner Mike Lindberg

- 10** Accept completion of the Sump Upgrade Project, Phase V and make final payment to Brundidge Construction, Inc. (Report; Contract No. 28720)

Disposition: Accepted.

- *11** Amend contract with Fletcher Farr Ayotte for additional services at a cost of \$5,201 and extend the completion date (Ordinance; amend Contract No. 28378)

Disposition: Ordinance No. 167250. (Y-4)

- *12** Amend agreement with Elcon Associates, Inc., to extend termination date with no increase in contract amount (Ordinance; amend Contract No. 28537)

Disposition: Ordinance No. 167251. (Y-4)

- *13** Authorize a contract with Twin City Testing to provide laboratory and consulting services and provide for payment (Ordinance)

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Disposition: Ordinance No. 167252. (Y-4)

REGULAR AGENDA

- * 1** **TIME CERTAIN: 9:30 AM** - Adopt report entitled, "Police/Citizen Accountability Initiative;" adopt amendments to City Code Section 3.21, Police Internal Investigations Auditing Committee; adopt amendments to Police Internal Investigations Auditing Committee and Citizen Advisors Rules; adopt Schedule of Appointment for Citizen Advisors and authorize IID complaint neighborhood intake sites (Ordinance introduced by Mayor Katz)

Discussion: Mayor Katz said this is a balanced approach designed to improve citizens' access to the process, promote communications with neighborhoods and the Police Bureau, upgrade the review proceedings and launch mediation as an alternative for dealing with probably 97 per cent of the calls to the Internal Investigations Division (IID).

Ramsey Weit, Mayor Katz's assistant, reviewed four major elements of the the proposal: 1) access and communications; 2) review procedures; 3) monitoring and 4) mediation. He noted the complaint process is being decentralized by allowing citizens to make complaints at neighborhood sites. The appointment of citizen advisors will also be decentralized and neighborhood coalitions will be able to name committee members. The group will be expanded, with six appointed by Council and seven by the neighborhoods. The proposal attempts to make the review process more meaningful by ensuring that the responsible police commander is present at the hearing to explain the rationale for the Bureau's decision in a given case. The proposal will add a staff person with experience in investigations and the Police Chief has offered to have a member of the citizens' panel participate in the Bureau's Review Level Committee, which considers cases of the type coming to the citizen advisors. In the area of monitoring, quarterly reports will be scheduled on the Council calendar, allowing advisors to comment on patterns of police conduct and identify needed changes. An attempt will also be made to capture risk management information, providing improved management review of officers who have had repeated complaints.

Mr. Weit said the pilot mediation program is voluntary and will involve 10 complaints. The hope is that this will be the preferred alternative for both officers and citizens to resolve complaints. Overall, the goal of this proposal is to make the system more accessible to citizens, provide a more satisfactory review process and add resources to improve the work product and give Council better information about what is happening.

Bill Hamilton, immediate past PIAC Chair, supported the recommended changes. He said advisors have seen a strong need for some new process

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to settle minor disputes and believe mediation can accomplish this. In most cases PIIAC found there was no misconduct but there was a great deal of misunderstanding and unhappiness about Police procedures.

Steven Moskowitz, attorney, said one misconception is that the City does not have a review board with full investigatory powers. He pointed out that Council has all the authority it needs to conduct its own investigations into the conduct of any City employee. However, about 12 years ago, voters chose a narrower approach in dealing with complaints about Police officers. The Bureau conducts the initial investigation which is reviewed by a group of citizens to see if it was conducted in a fair and impartial manner. The proposal before Council today makes a number of changes to enhance the process and make it more responsive to community policing. This proposal enhances the outreach process and clarifies the role of citizen advisors, particularly with regard to their monitoring responsibilities. The addition of a mediation process is especially welcome.

Chuck Duffy, member of former Mayor Clark's staff, supported these changes, especially the mediation process, to improve the level of trust. He said he has followed PIIAC from the beginning and believes the system put in place by the voters to audit Internal Investigations is a good one and should not be changed to independent review. The key to the success of PIIAC is the appointment of neutral, objective and impartial committee members.

Kay Durtschi, Southwest Neighborhood Information, said she received overwhelming support for these changes from their problem-solving group. The shorter time line is very important in setting up this process and gives citizens a chance to talk to each other. She said a lot of the concerns can be diffused when taking the reports. Finally, allowing public testimony on the quarterly reports will be very beneficial.

Roger Morse, President, Portland Police Association, said PIIAC was formed to provide a window into the Police Bureau by performing an auditing function and reviewing Internal Investigations Division investigations to assure they were conducted in a fair manner. Since PIIAC was formed Police have made significant modifications in the way they handle complaints but they look at further changes to PIIAC with a certain amount of jaundice, especially as they feel the current system works and other systems have not been shown to be better. They particularly question the spending of additional money on a new bureaucratic apparatus. However, while some recommendations go beyond what PPA would have liked, overall it believes the modifications should improve the functioning of PIIAC and the relationship between the Police Bureau and the community.

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Police Chief Charles Moose supported the proposed changes and, even though they will not bring absolute happiness to the Bureau, the Police will provide absolute compliance. The changes will bring in a different group from the community and recognize the larger role of the neighborhoods. The involvement of the PIIAC chair at the management review level is certainly a look inside the Bureau that has never been granted to citizens before. More emphasis on monitoring and review will enhance the ability of the Police to make better decisions and provide Council with a new window into Police operations as well.

Mark Kramer, attorney involved in litigating cases against the Police, said this fails to correct the major flaw in the current process, namely the lack of independent review, an independent staff and failure to provide subpoena power. He cited strong community consensus for adding these three processes, arguing that there are successful models across the country which incorporate these elements. He said as long as PIIAC remains a monitoring function of IID he will not recommend that citizens use it as a primary investigative tool because it is not fair or objective.

Commissioner Kafoury asked Mr. Kramer to comment on the mediation program.

Mr. Kramer said if mediation is unsuccessful there is no reason the complainant should not be able go through IID. Second, intake for mediation should also be decentralized through the neighborhood offices and City Hall. Finally, mediation should not be excluded for complaints about excessive force or disparate treatment if both the officer and complainant agree to it.

Winona Shaw, 6720 SE Ramona, 97206, said the lack of meaningful response to these recommendations could be overcome with widespread media coverage. Portland needs a police review board, made up of unbiased members who have no ties with the City or Police. The Board should also have access to an officer's past history, including complaints of misconduct and excessive force, in order to rid the Bureau of bad apples. She also objected to the fact that no record is made of grand jury proceedings.

Gene Guillaume, 1572 N. Prescott, 97217, said PIIAC must operate in an open, not conspiratorial, role. Police should be trained to be sharp shooters rather than simply spraying bullets and resorting to deadly force.

Michael Mazzenga, PO Box 42456, 97242, said PIIAC is form without substance. Police have to be accountable to the people and they are not if people do not have the power to conduct independent investigations

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and issue subpoenas. It is unreasonable to expect the Police to investigate themselves without bias.

Dan Handelman, 2600 NE Martin Luther King Blvd., 97212, member of People Overseeing Police Study Group (POPSG), said some of the changes they have offered have been incorporated into the plan but the fundamental problem with the current system, the lack of an independent investigative body, has not been addressed. He cited a report released by the New York Civil Liberties Union which proves that independent investigators make for better review systems. He said four elements are key: 1) independent intake; 2) unbiased mediation; 3) subpoena powers for the review board and 4) independent investigators. Subpoena power is a necessary tool in order for the citizens to hear all evidence related to Police misconduct. Finally, the proposal for a full time staff person trained in investigations might mean that a former police officer could serve, something they oppose, and, in addition, the staff person is limited to looking information supplied by IID and thus unable to conduct investigations of their own. He said he is surprised staff person is not allowed to question witnesses and gather evidence.

Marc Jolin, POPSG, 2600 NE Martin Luther King Blvd., 97212, said effective independent civilian review is good government and provides an institutional check on the Police. Encouraging the public to come forward with complaints and policy suggestions gives managers a better idea of policies that are working well and those which have potential problems. The basic problem with this proposal is the lack of independence from the Police as complaints will still be investigated by the Police, not an impartial body. He cited the New York Civil Liberties Union report which finds that citizens respond in greater number to civilian units than police internal investigators and demonstrate qualitative improvements. He said they have an alternate proposal they would like Council to consider and, if unwilling to support, refer to a vote of the people.

Norman Wicks, 1927 NW 25th, said he is a sufferer from post traumatic stress syndrome and a victim of Police bullies, adding that he has filed 10 complaints against the Police. He said allowing Police to investigate themselves is the same as allowing criminals to sentence themselves. He called for a voter's initiative if something better than this cannot be devised.

Juliann Lansing, 380 SE 27th, #1, said the Police stick up for one another and should not investigate themselves. She asked why Portland has the third highest number of shootings in the nation.

Susan Ward, President, League of Women Voters, supported the Mayor's initiative except for some reservations about the mediation process. She

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said they will wait until the pilot project is completed before making final judgment. They very much support having complaint intake sites outside the Police station. While they are curious about the reason for having 13 members, they support production of a quarterly report by the advisors as well as hiring a staff person with investigative skills and report-writing abilities. Any additional costs should be paid for from the Police Bureau budget. They especially like having the PIIAC chair participate on the Review Committee.

Paul Richmond, PO Box 454, asked why Police records cost \$2.00 a page. He said Police officers are being set up against the citizens and both are pawns for other interests. He said the initiative is basically smoke and mirrors. If you really want to have citizen input, citizens should be able to elect police officers and remove them as they would any government officer.

Emmanuel Paris, Neighborhood Mediation Center, said a lot of questions have been raised about the mediation process. He described the Center's services and said they feel good about their ability to help resolve misunderstandings about Police conduct. He said he looks at this as a significant development that will provide access and fairness across the board.

Julien Minnard, Neighborhood Mediation Center, said the mediation process is designed to allow parties to express their concerns, share their perceptions of what happened and find ways to resolve conflict. Sessions are held in private and are confidential. Mediators manage the discussion between the disputing parties; they do not take sides or force people into agreement.

Al Siebert, 1917 NE Marine Drive, 97211, current PIIAC member, said he believes this proposal provides a much better process. He said serving on the committee has been quite an education and, while he understands the frustration citizens feel about the way complaints are handled under the current system, at the same time he has come to appreciate how dangerous it is to be a Police officer.

T. J. Browning, 3545 SE Ankeny, said she became frustrated by the PIIAC process after an incident in Laurelhurst Park where neighbors who were dissatisfied about Police activity were told by PIIAC they could not testify because they had not been interviewed by IID. This problem has not been addressed by this proposal, which still just reviews the reviewers. She took issue with statements from City Hall that civilian review boards have not been found to work. She said there is no proof that community policing works either, but it makes sense. She said the fact that only one Police man has been fired in 20 years casts doubt on the effectiveness of IID. A civilian review board would increase

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accountability while this proposal hurts community policing as there is no fairness or trust in it. She said while the Police and Union are very happy with this, citizens are not.

Commissioner Hales asked her about the Laurelhurst Park incident.

Ms. Browning said they registered a complaint with the Police immediately following the incident but for some reason it was not logged in with IID as an official complaint and fell out of PIIAC perusal, giving them nowhere else to turn.

Mayor Katz noted that eventually, after several months, the neighbors did testify.

David Fidanque, ACLU of Oregon, said the ACLU believes effective review of police misconduct charges must be conducted by an independent agency. He said the critical issue is to make sure the complaints are made to begin with and unless the system has credibility with the public, this does not happen. He said decentralizing the intake process could make a big difference but it is very important that people in the individual neighborhoods be properly trained. The mediation process needs to be monitored closely to make sure the cases being mediated are appropriate. He asked Council to look closely at the New York Civil Liberties report on civilian review boards.

Everett Jaros, PO Box 1912, 97207, said he is excited about the new intake and mediation systems but is concerned that the proposal may tip the scale in favor of a more closed system among the Police. It seems on the one hand that PIIAC will be encouraged to hear directly from the Commander (under Section 3.21.085) and yet (under 3.21.070) the advisors are given discretion to communicate with the appellant if required to understand the facts about the incident.

Mr. Auerbach said what he is referring to (Page 11 of Exhibit B, Code Section 3.1.070) is language which directs the committee to exercise its discretion whether or not to accept review of an IID decision.

Mayor Katz said she would review that to see if there is a problem.

Everett Antilla, 3415 NE 22nd Ave., said this proposal will not create an independent review board which makes its own findings. He said if citizens are involved it will increase the mutual respect between the Police and the community.

Sherry Lambert Holstein, 6141 SE Steele, called for independent intake and outtake to allow charges of excessive force to be answered with accountability. She said this proposal does not go far enough and

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supported the changes recommended by Marc Jolin. Changes in police training may soften the excessive force image the Police have now.

Dana Shaw, Portland resident, said her brother was shot and killed by Police several years ago. She supported a citizens review board, adding that the police should not be allowed to police themselves and unbiased people should make decisions about whether excessive force was used. The community wants to be able to trust its Police and the decisions it makes and, as it stands now, it cannot do that.

Mayor Katz asked those who have additional language changes to turn them in to her and asked Council members for their suggestions.

Mr. Auerbach clarified, in response to an earlier question, that the citizens committee can hear testimony from people who were not complainants. That is dealt with in 3.21.085 (4)(b) which states that the committee may take testimony from anyone.

Mayor Katz said this concludes the public testimony. She said her proposal is not what everyone wants but it will undergo continuing review and will be changed if necessary. She noted that Council is PIIAC and one option is for Council to take on total responsibility for complaint review, although she does not think it is interested in doing so.

Commissioner Kafoury said this is an evolutionary process and she is glad the Mayor is willing to fold it in with her oversight of the Police Bureau and come up with a system that is significantly improved.

Commissioner Blumenauer said Portland is not like Los Angeles or New York and he feels good that we are attempting to design a Portland system. He said he is willing to have Council face down tough issues but is not interested in pursuing yet another level of bureaucracy which will only complicate things and make it more expensive. He noted that citizens have an independent review board in the Mayor who is the independently elected head of the Police. This proposal is the right way to go, especially with the mediation approach which encourages people to talk to each other.

Commissioner Hales said he is particularly pleased by the role of the neighborhood associations and mediation staff. He said he has a question about the options if mediation fails but is otherwise very supportive.

Disposition: Passed to Second Reading January 12, 1994 at 9:30 a.m.

Commissioner Earl Blumenauer

- 14** Consider vacating a portion of NW 10th Avenue and NW Hoyt Street at the southeast corner of Block 116, Couch's Addition, at the request of Walker Road Limited Partnership (Report; Hearing; C-9849)

Discussion: Pat Prendergrass, 121 SW Morrison, 97204, petitioner, said they are asking the City to vacate an easement on Hoyt Street to facilitate a 27-unit housing project.

Disposition: Approved. City Engineer prepare ordinance (Y-4)

Commissioner Gretchen Kafoury

- *15** Authorize application to the U.S. Department of Housing and Urban Development for a grant under the Innovative Homeless Initiatives Demonstration Program, in the amount of \$1,000,000 (Ordinance)

Disposition: Commissioner Kafoury said they hope to get this money to use for shelters and emergency services and also begin shelter needs for battered women and families.

Disposition: Ordinance No. 167253. (Y-4)

- *16** Amend agreement with Portland Development Commission by increasing amount of the contract by \$2,959,717 and provide for payment (Ordinance; amend Agreement No. 28851)

Discussion: Commissioner Kafoury noted that while aircraft maintenance is still listed at \$500,000 in the agreement, she believes Council agrees that PDC is not authorized to spend this money without serious discussion because of the Pamcorp situation.

Disposition: Ordinance No. 167254. (Y-4)

- *17** Authorize amendment to Parking Garage Operating Agreement (Ordinance; amend Contract No. 27868)

Disposition: Ordinance No. 167255. (Y-4)

At 11:35 p.m. Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 5TH DAY OF JANUARY, 1994 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales and Kafoury, 4.

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

- 18 TIME CERTAIN: 2:00 PM -** Appeal of Mittleman Jewish Community Center against Hearings Officer's decision to impose Condition F in approving a conditional use master plan for site development and improvements located at 6651 SW Capitol Highway (Hearing; 93-00476 MS)

Discussion: Pete Kasting, Senior Deputy City, reviewed the procedures for today's hearing and for appeals.

Commissioner Hales stated a potential conflict of interest as he is a member of the Mittleman Jewish Community Center (MJCC).

Tom Dixon, Planning staff, said the Hearings Officer approved the MJCC Master Plan with six conditions and the MJCC is appealing Condition F which requires installment of improvements along the frontage of Tax Lot 1, including sidewalks, curb, paving and storm drains.

Bases of the appeal include: 1) that Condition F is not required by any conditional use approval criteria; 2) that MJCC does not own and therefore does not control Lot 101 and 3) that the improvements are unnecessary as Tax Lot 101 will be kept as is, now that the parking lot improvement has been denied and the existing playing fields will not be relocated.

Mr. Dixon showed slides indicating that Lot 101 is used by pedestrians despite the lack of sidewalks.

Regarding the ownership issue, Mr. Dixon noted that a conditional use was awarded MJCC in 1985 for limited use. In addition, when MJCC applied for the master plan, it included this property within the plan. The second issue is that under the improved master plan, improvements anticipated under Phase 2 included a 60-space parking lot which was denied by the Hearings Officer with the result being that the anticipated

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improvements on Lot 101 will not now occur. MJCC did not dispute denial of the parking lot but argues that it should not have to make the improvements. Mr. Dixon cited the applicable approval criteria, adding that the Hearings Officer noted in her decision that Transportation Engineering has pointed out the need for traffic improvements and that MJCC already generates enough traffic to justify them. He said relevant transportation policies are mandatory in approving master plans and urged that Council support the condition.

Mayor Katz asked why MJCC did not have to make these improvements when it got the conditional use.

Mr. Dixon said staff recommended those improvements in 1985 but the Hearings Officer did not require them, probably based on limited use. It was not appealed to Council.

Commissioner Hales asked if the Code and policies that apply are the same now as in 1985.

Mr. Dixon said the transportation standard has become mandatory since then.

Mr. Kasting said one of the issues is the conditional use criteria. Council has adopted a modified conditional use process which is considerably more detailed than it was in 1985.

Roy Lambert, MJCC President, said their master plan calls for the addition of a wing for children's programs which they hope to build next summer. Their original request anticipated adding parking and using Tax Lot 101, subject to agreement by the lessor. Since no parking is now being added, Lot 101 is not needed and it seems inappropriate to impose on the MJCC the obligation to install improvements prior to development of the property. He said they do not own Lot 101 and it is possible they could be denied the right to make the improvements by the lessor. At some point the Jewish Federation of Portland, owner of Lot 101, will develop it but until then improvements should not be required. He said he does not dispute the pedestrian traffic but believes it is not generated by MJCC members. The cost of the improvements, estimated at \$25,000, is a hardship for the Center and will adversely affect either the size of the children's center or the programs that are offered.

Kay Durtschi, Southwest Neighborhood Information (SWNI), speaking for the Transportation Committee, said MJCC has already exceeded its fundraising goal for this year and it should not be a hardship for it to make these improvements. She said SWNI is consistently asked to help with pedestrian improvements in the community and this is a vital link in the Capitol Hill corridor. She said if developers are required to put in

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pedestrian pathways, this project should, too. She said this is a safety hazard for those who use it and urged that the improvements be made.

Mary Ann Cassin, 35412 SW Vermont, 97219, said sidewalks are a very important improvement and if the improvements were made more pedestrians would use them.

Jay Mower, 777 SW Chestnut St., 97219, asked why one should wait any longer for the sidewalk. He cited the visual preference survey which indicated people prefer streets with sidewalks.

Katherina Woodward, 6234 SW 30th Ave., 97201, said she walks on the street rather than walking on a rough, uneven path. She asked Council to uphold the condition.

Helen Farrens, 3956 SW Condor Ave., said she cannot walk on that muddy strip now because it is definitely unsafe for older people, a growing segment of the population. She supported the condition.

In rebuttal, Irv Potter, Chairperson of MJCC Master Plan Committee, said they agree that the developer should put in the improvements but the MJCC is not proposing to develop the property now and does not even own it. He said decisions about use of the property lie with the Jewish Federation and the MJCC is concerned that improvements put in now might not be compatible with the future use. Second, he said the argument that these dollars can be contributed by MJCC as part of good neighbor policy because they have met their fundraising goal is not true. The third issue is ownership of the lot. He repeated his argument that since the lot is owned by the Jewish Federation, it is outside of the control of the MJCC.

Commissioner Hales asked whether the Center was concerned about liability if the criterion was not applied.

Mr. Potter said to the extent there is exposure, it has existed for decades. He emphasized that this is not property MJCC owns and that there is no provision for putting in improvements on one's next-door neighbor's property. If it were their property or they were developing it, the criterion would apply.

Commissioner Hales noted, however, that the property is within the master plan.

Mr. Potter said that is unfortunate as they only put it in when they anticipated putting in a parking lot. If there had been a procedure to remand the master plan back to the Hearings Officer they would have removed that property and resubmitted it, but no such procedure exists.

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It is in their master plan but in a way that states that nothing is planned for the property.

Commissioner Hales asked if it were in their master plan in 1985. He noted that it was encompassed within the conditional use.

Mr. Potter said they were not leasing the property in 1985.

Mayor Katz said this parcel was granted conditional use approval in 1985.

Mr. Potter said the lease was signed after the conditional use was approved.

Mayor Katz asked staff who is liable for the street improvements, the lessor or the owner.

Mr. Kasting said it would be MJCC if the improvements were a condition on a conditional use master plan as they are the ones who have the permit.

Mr. Potter said it is not so much a question of who is liable. It is that they cannot build their children's wing until the improvements are put in. If they ask the Jewish Federation and it says no, then MJCC cannot build.

Don Gardner, Transportation Engineering, said the criterion in the conditional use approval is that the transportation system needs to safely support the proposed use in addition to existing uses. He said staff believes that without the sidewalk improvements, the site does not safely support existing uses in the area nor proposed future uses. He said were this lot not part of master plan or under a conditional use, they would have to wait for development to require the improvements but since it is a part of the site, the City Engineer may require standard street improvements, including curbs and sidewalks, as a condition of the building permit, land-use action or conditional use. That is how the City gets developers to make improvements.

Mayor Katz asked if Council accepted the appeal, would the City Engineer require these improvements.

Mr. Gardner said they have the authority under the Code and believe the improvements are necessary but it might go against Council's implied directive.

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Commissioner Blumenauer said Transportation is giving their best judgment that this is not safe. He said Southwest Portland in particular has great pedestrian problems because these kinds of improvements are always put off and people seek exemptions from the requirements of property ownership. He said the longer such improvements are put off, the longer it will be until there is a system that works. If Council wants to change direction, it needs to tell staff to back off and wait either until there is a for-profit development or somebody gets hurt and there is a crisis. He said Transportation is responding to current policies and not looking at who owns it, but at whether it is safe and fits in with City policies. He said staff is applying policy appropriately and the appeal should be rejected.

Commissioner Kafoury said the issue for her is not should there be a sidewalk but who is responsible to pay for it.

Mr. Gardner said the definition of site can include more than one ownership and, as the applicant, MJCC defined the site and so would be the responsible party. He said for improvements in the public right-of-way, MJCC does not need the consent of the Jewish Federation and the Office of Transportation can require them without their permission.

Commissioner Kafoury asked for a recent example of where such improvements have been required.

Mr. Gardner said generally those cases are not contested as a person knows it is his site. He said development requirements are often placed on major chains which lease property on which the development occurs. The City is not a party to their agreements with the property owners.

Commissioner Kafoury asked if staff is placing requirements for public improvements even on abutting property not part of a development.

Mr. Kasting said the party receiving the permit is responsible for making sure the conditions are satisfied. If that can be done the permit is granted. If the conditions cannot be satisfied, it is not.

Mayor Katz asked what happens if the Jewish Federation decides not to lease that property to them.

Mr. Kasting said it is not necessary to obtain consent from the Federation as the area where the improvements would be made is already within a dedicated right-of-way under the City's jurisdiction.

Commissioner Kafoury said the traffic people feel that as an existing use, the property should be improved. That is the issue, not whether it is part of the development right now.

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Mr. Gardner said yes, it is necessary now and, since it is part of the development, they can require it.

Mayor Katz asked about the statement that the proposed programs can potentially generate both vehicular and pedestrian traffic that support the need for these improvements.

Mr. Dixon said it is not uncommon for institutions to have multiple ownerships and that is never an issue on how those improvements are made as an institution expands or changes. Also, MJCC demonstrated in their site plan that Tax Lot 101 was an integral part of their operation. They got approval in 1985 to use it for outdoor recreation and there has been no indication in their application that they were reducing that use. In fact, the master plan notes that they contemplate increased use of Lot 101. The number of vehicles generated by MJCC is projected to increase over the life of the master plan and failure to accommodate pedestrian use on the site is very short-sighted. One of the main objectives of City policy 6-11 is to improve pedestrian connections to schools and parks and as the MJCC plans to increase classroom space by 10,000 square feet they should also be providing for pedestrian safety, as there will be some kids in the neighborhood who will walk to classes.

Mr. Kasting said the City Code lists approval criteria for various permits and states that if an application meets all the approval criteria it shall be granted. In this case one of the criteria is that the transportation system be capable of supporting the proposed use in addition to the existing uses in the area. If Council finds that criterion is met, it should grant the permit without any conditions. If Council finds it is not met, it can deny the application or grant it with a condition to ensure the proposal will conform with the applicable approval criteria.

Commissioner Kafoury said the issue is that the existing uses of the MJCC demand the improvements and this is an opportunity to enforce the condition.

Mr. Lambert said there is a certain element of gamesmanship about this which is Kafkasque. It would be in the interest of the Center to apply for a new master plan without this piece of property because it never should have been included in the first place.

Commissioner Blumenauer said staff indicated that it finds the existing transportation system unsafe so will not recommend approval of any permit unless it is made safe. Withdrawal will not fix that problem.

Commissioner Hales said the issue of ownership is not germane to application of that criteria.

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Mr. Lambert said what is germane is what is included in the master plan and if this lot had not been included, they would not be having this discussion.

Commissioner Hales said that is not what staff told us. If the use on the campus envisioned by the master plan cannot be safely served by that section of street, regardless of the ownership, it is within the bounds of the City to impose that condition.

Mayor Katz asked again what the requirement would be if this lot were not in the master plan.

Mr. Gardner said if it were not in the master plan, he would not have the right to require the improvement of this lot. He said he is not sure how it would work if there was a legal relationship between the parties.

Mr. Kasting said in this situation Council is applying the zoning code and determining whether each of the approval criteria has been satisfied or not. The main criteria here requires the transportation system to safely support the proposed, as well as the existing, use. That criterion does not limit itself to the transportation system immediately abutting the site.

Mr. Gardner said an example would be requiring off-site improvements on a conditional use for a hospital near a congested street. They could require additional lights, for instance.

Mayor Katz asked what would happen if the applicant went back and changed its master plan and took that property out of the site.

Mr. Gardner said they would be unable to do that under Title 17, but under the conditional use criteria in Title 33, they can if the Hearings Officer supports it.

Commissioner Blumenauer moved to tentatively deny the appeal and uphold the Hearings Officer's decision. The motion was seconded.

Mr. Dixon said if MJCC reapplied for master plan approval and left this lot out, it is conceivable that it could be denied any use of that tax lot at all. However, if they came back with everything the same, staff would be hard pressed to make findings that pedestrian safety exists for a school expansion when it clearly states in policy 6-11 that one of the main objectives is to improve and make safer pedestrian routes to parks and schools.

Commissioner Blumenauer said he feels this is an appropriate application of City policy.

Commissioner Hales said the policies of pedestrian safety are sound and there is no way Council could uphold the appeal and still abide by them. The combination of site improvements and the addition of the sidewalk will make this a better place for neighbors.

Disposition: Tentatively deny appeal; prepare findings for January 19, 1994 at 2:00 p.m.

- 19 TIME CERTAIN: 2:30 PM** - Identification of City of Portland priorities for the funds from the former Water Avenue ramp project (Resolution introduced by Commissioner Blumenauer)

Discussion: Commissioner Blumenauer said one item in Attachment A needs to be amended to include approximately \$175,000 in street improvements in the Water Avenue area.

Mayor Katz asked if this item was proposed in any other program.

Steve Dotterer, Office of Transportation, said it was included in Phase 3 of the East Marquam project and while he included the Esplanade improvements he forgot the street improvements at Water Avenue, noting that a few years ago the City rebuilt Water Avenue except in the area of the ramp terminal. Now that the ramp is not being built, that portion of the street still needs to be rebuilt.

Commissioner Blumenauer said the intention is to put this one chunk in so they can deal with OMSI and that area.

Hearing no objections to Commissioner Blumenauer's amendment, the Mayor so ordered.

Mr. Dotterer said it also reduces the lowest priority item, the transit-related development, by that amount in order to balance the budget. He said this resolution responds to Council's request to identify \$19 million in alternative funds to the ramp. It asks for amendments to the construction and development sections of the State Transportation Improvement Plan. The resolution does three things: 1) requests an Eastside Transportation master plan study to be funded out of the development section as well as preliminary engineering and an environmental impact statement on the Greeley/I-5 project and on alternative southbound access to I-5; 2) identifies the list of projects for use of the \$19 million; and 3) asks the region to reserve some money for construction of an alternative southbound access.

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Commissioner Hales said he thinks this is a very credible effort.

Commissioner Blumenauer said the Oregon Department of Transportation has issued a memo about the utilization of some of the funds that should be part of the record.

Commissioner Kafoury noted the Central Eastside Industrial Council continues to oppose diverting the money from the ramp.

Rex Burkholder, 1912 NE 11th, said cutting projects in order to fund alternative modes of transportation is a very positive step and one the Bicycle Transportation Alliance supports. The difficulty is the City is taking a pretty big hit in terms of not getting much investment in transportation because so many projects have been cut. Given the large number of people who work in Central Eastside and live in inner southeast, pedestrian and bicycle improvements in those specific areas should be considered.

George Crandall, 1445 NW 30th, speaking for AIA Urban Design Committee, urged the City to recommend use of the funds for two programs: 1) the integrated East Bank master plan and 2) Metro's alternative mode investment options. They support the Todd Land Acquisition Revolving Fund to provide the financial mechanisms needed to further the assembly of land parcels around transit stations. In addition, they support the Todd Infrastructure Program as many of the most successful regional developments have been stimulated by highly visible public expenditures, including parks, roads and infrastructure.

Chris Beck, Trust for Public Land, 1211 SW 6th, supported Item 6, the transit-oriented development section. He said they would like to see more money thrown into that fund if possible and hope the City's representative at JPACT will advocate that other regional funds go into transit-oriented development.

Commissioner Blumenauer said this resolution is the next step in carrying forth the program and building some momentum for regional support.

Commissioner Hales said this relates very closely to what Council did last week regarding the Sunset Highway improvements and accelerates the trend to turn away from traditional freeway improvements as the solution to transportation woes and instead look to multi-modal transportation systems. This is an exciting list of projects and a much more attractive set of public investments than dumping the money into one ramp.

Disposition: Resolution No. 35230 as amended. (Y-4)

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At 3:35 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner
By **Cay Kershner**
Clerk of the Council