



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

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

**THOSE PRESENT WERE:** Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

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

Agenda Nos. 469 and 477 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

- 465** Accept proposal of Unicorn Travel Services, Inc. for furnishing annual travel management services (Purchasing Report - Bid 35-A)

**Disposition:** Accepted; prepare contract.

- 466** Accept bid of John Arnold Company for 8" and 6" water mains in NE Holman, NE Buffalo, NE Broadway and NE Crystal Lane for \$155,546 (Purchasing Report - Bid 79-A)

**Disposition:** Accepted; prepare contract.

- 467** Accept bid of K-2 Construction for Steel Bridge East LRT ramp repair for \$67,168 (Purchasing Report - Bid 124)

**Disposition:** Accepted; prepare contract.

- 468** Vacate a certain portion of SW Whitaker Street, under certain conditions (Ordinance by Order of Council; C-9848)

**Disposition:** Passed to Second Reading April 6, 1994 at 9:30 a.m.

**Commissioner Earl Blumenauer**

- \*470** Accept a grant from the Oregon Department of Transportation in the amount of \$20,000 to develop a comprehensive Bicycle Master Plan (Ordinance)

**Disposition:** Ordinance No. 167494. (Y-5)

- \*471** Accept a grant from the Oregon Department of Transportation in the amount of \$50,000 to construct the SW Multnomah Boulevard bikeway project between SE 71st Avenue and SW Barbur Boulevard (Ordinance)

**Disposition:** Ordinance No. 167495. (Y-5)

- \*472** Authorize the purchase of four mini cargo vans through the Oregon State Price Agreement and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167496. (Y-5)

**Commissioner Charlie Hales**

- \*473** Approve North Portland Trust Fund grant offers totaling \$44,941 and authorize agreements (Ordinance)

**Disposition:** Ordinance No. 167497. (Y-5)

- \*474** Authorize Intergovernmental Agreement with St. Helens Rural Fire District to provide technical assistance (Ordinance)

**Disposition:** Ordinance No. 167498. (Y-5)

- \*475** Authorize an agreement with URS Consultants for \$36,103 to provide design and consulting services for the replacement of the Willamette Park boat launch (Ordinance)

**Disposition:** Ordinance No. 167499. (Y-5)

**Commissioner Gretchen Kafoury**

- 476** Accept construction work on contract with Russell Construction, Inc. for The Portland Building lobby renovation as complete and release retainage of \$8,688 (Report; Contract No. 27678)

**Disposition:** Accepted.

**Commissioner Mike Lindberg**

- 478** Accept completion of the Alder pump station remodel and make final payment to Hollinger Construction, Inc. (Report; Contract No. 27642)

**Disposition:** Accepted.

- 479** Accept completion of the Sullivan Pressure Line replacement and make final payment to Copenhagen Utilities and Construction, Inc. (Report; Contract No. 27992)

**Disposition:** Accepted.

- \*480** Amend contract with Woodward-Clyde Consultants to complete the revision of the City of Portland Stormwater Quality Facilities Design Guidance Manual (Ordinance; amend Contract No. 28858)

**Disposition:** Ordinance No. 167500. (Y-5)

- \*481** Call for bids for the construction of 12-inch, 8-inch and 6-inch water mains in SW Garden Home Road, SW 54th, SW 58th, SW 59th and SW 64th Avenues (Ordinance)

**Disposition:** Ordinance No. 167501. (Y-5)

- \*482** Call for bids for the construction of 8-inch and 6-inch water mains in NE Holman, NE Simpson, NE Fargo Streets, NE 42nd, NE 60th and NE 62nd Avenues (Ordinance)

**Disposition:** Ordinance No. 167502. (Y-5)

- \*483** Contract with Archaeological Investigations Northwest, Inc. for professional archaeological services for certain public improvements projects and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167503. (Y-5)

- 484** Amend City Code to provide additional enforcement options to the Mid-County Mandatory Sewer Connection requirement (Second Reading Agenda 443)

**Disposition:** Ordinance No. 167504. (Y-5)

**City Auditor Barbara Clark**

- \*485** Select Public Knowledge, Inc. to conduct a Span of Control Management Study, authorize a contract and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167505. (Y-5)

Mayor Katz said a motion to hold a recessed meeting outside Council Chambers was needed in order to meet Code requirements. The meeting is scheduled for Wednesday, April 6 from 7:00 - 9:00 p.m. in the King Community Center to consider the Police Strategic Plan.

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Commissioner Hales moved, Commissioner Lindberg seconded and, hearing no objections, the Mayor so ordered.

**REGULAR AGENDA**

**\*464**

**TIME CERTAIN: 9:30 AM** - Create a local improvement district to construct street, storm sewer and water system improvements in the SW 50th/Marigold District (Hearing; C-9805; Ordinance introduced by Auditor Barbara Clark)

**Discussion:** Dan Vizzini, Auditor's Office, said the purpose of today's hearing is to present information so Council can make an informed decision about whether to proceed with this project, either in its current form or some different form. The Council has complete authority to decide whether and in what manner to go forward. No decision needs to be made today as Council may wish to hold additional meetings. He said the remonstrances, most of which concern the street design, project costs and the apportionment method, need to be addressed. Other issues, relating to the LID process, have also been raised and while they are not germane to this project, they provide pertinent information to consider in making the LID process more user-friendly. He said certain policy issues have been raised, including the use of waivers to ensure the future development of local improvements, connectivity of local streets, application of infill development and density policies, and continued use of longstanding apportionment methods.

Teresa Culp, Office of Transportation, Manager of the Street LID Program, described the project, which would construct about 3400 feet of 20-foot wide curbed streets. These would be skinny streets with parking on one side and sidewalks on both sides except in areas where it would be unusually costly. A storm sewer system will also be constructed. The project was initiated in the Spring of 1992 with the original petition support totalling 62 percent with planned improvements for SW 49th, 50th and 51st Streets between Orchid and Marigold. Ms. Culp reviewed the public involvement process, including holding five public meetings, postcard surveys, mediated meetings and status letters. She said agreement was reached on three of the four major issues raised but they were unable to reach consensus about street connectivity. After a preliminary cost estimate was provided, property owners in the south half of the project indicated they did not want to continue, so that section of the project was deleted. The area to the north, however, still supported the project, with about 78 percent in favor. Ms. Culp said after completing the project design in August of 1993, street excavation costs were found to be unreasonably high on one portion of the project so the connection of 49th north to 49th south of Dolph Court was dropped and that portion was redesigned for a cost savings of approximately \$100,000. Summarizing the costs, Ms. Culp

said the street and storm sewer construction is about \$786,000, project management and engineering costs are \$240,000, while construction financing and administrative costs are \$40,000. Current City subsidies total \$101,000, making the property owners share around \$966,000. A typical assessment for a 5,000 square foot lot would range from \$10,000 to \$13,000. Cost for construction of street, sidewalk, storm sewer and water quality facilities is spread among properties on a square footage basis. Three major issues raised by property owners are connectivity, assessment methodology and cost.

Greg Jones, Transportation Planning, identified some of the connectivity issues and relevant City policies, noting that in 1992 Council passed the Transportation Element of the Comprehensive Plan which made many changes in existing policy and made the Transportation Element and its policies and street classifications a part of the Comprehensive Plan. In Policy 6.6 the City adopted language calling for provision of an interconnected street system with sidewalks, streets and bicycle paths. At the district level, the Southwest district adopted Policy No. 2 which also addresses connectivity. He noted the existence of both mandatory and aspirational policy in the Transportation Element. He said the current connectivity policies are aspirational in terms of Council's ability and discretion in applying them. However, that will change as the State begins pushing to make all City policy mandatory, giving Council less discretion in the future in addressing these issues. In this LID some connections were very difficult to make because of the terrain and therefore are not included. He said staff has done a very good job of identifying a network that complies with City policy to the extent possible.

Ms. Culp said early on it became clear that some residents wanted connected streets while others did not. The neighborhood came up with some alternatives during the mediation process which ranged from cul-de-sacs on all the north/south streets to paving Dolph Court. However, none of the alternatives were supported after review by the bureaus involved, including Fire, Police and Transportation Planning. A compromise was proposed which would leave a 100-foot long segment of Dolph Court between SW 50th to the north and south paved only for a bike path. This compromise was not supported by either the neighborhood committee or the adjoining property owner, Mr. Balch, so staff returned to the original design.

Mr. Vizzini briefed Council on the assessment method, noting that benefitting property is defined as property that abuts a public improvement. Apportionment is based on permanent characteristics of real property and there is a separation between the apportionment method and affordability. The intent is to arrive at an equitable distribution of the costs based on the assumption that properties are

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responsible for the public improvements that they abut. An issue raised by property owners in this project is that the apportionment is unduly beneficial to the vacant land owners, particularly the two petitioners for this project. He said staff did not tailor the assessment to any one property owner but has tried to apportion the cost uniformly and equitably, based on the size of the property and spread over the entire area that is benefitted.

Mr. Vizzini said a second issue is whether it would be more equitable to distribute the street excavation costs to properties where it is most required. He said in the past they have not tried to segregate out separate elements of street construction as they felt the additional administrative and accounting costs did not justify such an approach. He said they tried to equalize the cost district-wide because they believe the assumption made by neighbors that all the excavation costs will fall on vacant land owners on the downhill side of SW 50th is false and will have unintended effects. They believe the cost of building the street should be distributed on an area basis. He noted that in the private sector, improvement costs prior to development are generally spread to all lots in a uniform fashion also.

Mr. Vizzini said another issue is the storm sewer extension on SW 48th, where staff recommends that the district boundaries be revised to include properties on the north side of 48th that would benefit from the storm sewer. To do that, the current assessments would have to be recalculated and a new hearing would be required but staff believes such a change will provide greater equity to the rest of the property owners in the district.

Regarding waivers, Mr. Vizzini noted that their use to secure the necessary support to make needed local improvements has been a means for Council to maintain its authority to require them. He noted that a significant number of waivers have been recorded throughout the City in exchange for accelerated development prior to the improvement of local streets or sewers. If Council decides not to use waivers, the question arises about all the waivers already out there and whether the City intends to use them to force local improvements. Council needs to decide whether it wants to use waiver process even when there is significant opposition from the neighborhood.

Commissioner Blumenauer said staff should outline alternatives and consequences if the City does not use waiver process.

Mr. Vizzini said the problem with waivers is that the economic cost of them is not realized until improvement is made.

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Commissioner Blumenauer said the developer knows he would have to pay much more and charge a higher price for the house if the improvements are made at the start.

Mr. Vizzini said the City could require developers to pay a fee prior to development and use the fees to offset the future cost of the local improvement. Or the City could, as it does now, allow the developer to sell at a reduced cost price and have that cost realized at some future date by the current owner. He said infill projects inherently create two classes of property owners -- vacant landowners and those already in houses -- allowing the vacant landowner to realize a means of paying the assessment through development of the property. He said the City has to decide whether to continue to use waivers, require the developer to recognize the cost of future improvements, or specify that the street be built when the first house goes up.

Regarding Robert Court, Mr. Vizzini said those properties front on two streets and there is a significant public record about creation of an improved street on Dolph Court. This was known before the homes on Robert Court were built and the properties were to be waived from objecting to future assessments for the improvements. Those waivers were never obtained but the intent is clear. The Robert Court properties abut Dolph Court and are therefore subject to an assessment for improvement of Dolph Court. The policy also calls for assessing only a percentage of those properties for the second frontage. While it seems unfair to ask them to pay for improvements on Dolph Court as well, in reality the City has given them a discount in making the apportionment. He said the Auditor's Office believes the Dolph Court properties should remain in the district and the assessment policy should stand.

Ms. Culp outlined the project costs. She said the original estimate could not account for emerging requirements for water quality, erosion control, pedestrian facilities, the quantity of excavation and the need for storm sewer laterals to control private property drainage. As a result the property owner costs are quite a bit higher than originally anticipated, with base cost at around \$10,000. She said to make the project more affordable they have looked at various cost-saving and redistribution methods. If street excavation costs were attributed to that property, some properties could save \$1,000 while others would increase by \$11,000. Staff has asked for additional analysis if this is what Council wishes. They also looked at options for sidewalks, including having sidewalks on one side of the street only and allowing some kind of gravel path in areas where lots are currently vacant. Depending upon the option chosen, the average cost could decrease from \$60 to \$180.

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Ms. Culp said staff also believes that the storm sewer boundaries should be expanded to include certain properties along SW 48th where a storm sewer is being installed which could ultimately be used to drain the new street. Assessing these properties would reduce costs to others in the district by almost \$400. She said they have considered bidding out the construction contract in advance of decisions on formation of the LID and this would allow Council to evaluate the formation question with more solid data. Because of the favorable bidding climate, as much as five percent might be saved on the total project, or about \$500 for each property. All these cost saving methods might reduce the average assessment by about \$1,000.

Mayor Katz asked for comments from Mr. Vizzini on these changes.

Mr. Vizzini said his only outstanding issue is whether to go to bid before a decision is made. He said many other municipalities require a second hearing after the bids come in to safeguard against any substantial increase in the costs over the engineer's estimates. He said property owners hate signing on the dotted line before knowing the exact cost. In the past engineering estimates have been pretty close to the actual bids but it is a wise safeguard to require a second hearing, particularly if the bids exceed the estimate. He said Commissioner Blumenauer's proposal to move to bid before formation of the district is a good one because it keeps the City's options open and adds the safeguard of a second hearing before the final decision is made. He recommended changing the Code for future projects to require a second hearing.

Commissioner Blumenauer said a significant cost is the \$300,000 projected for storm sewers. He said over the years he has found the amount the City itself invests varies quite significantly from project to project. At some point Council needs to address this as the cost of the assessment could be reduced from between \$1,000 to \$3,000 depending on the amount of the subsidy.

Dave Gooley, Bureau of Environmental Services (BES), said generally property owners pay costs directly assessable to them based on benefit while the Bureau picks up those costs that cannot be assessed to individual properties, such as the cost of intersection and oversizing. BES has set aside funds to contribute towards storm water and sanitary LIDs and there are funds available to pick up costs that benefit properties outside the district boundaries. He said the reference in their memo to \$150,000 relates to the anticipated costs of oversizing and other kinds of improvements not directly related to that LID. The \$150,000 should not be interpreted to mean a direct subsidy of the LID itself.

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Commissioner Lindberg said in the past there have been three subsidized projects, one in mid-County and two which used federal funds. While this is an option for Council, the cost implications for adopting a subsidization policy are estimated at \$10-50 million dollars over 10 years in local storm sewer costs. About \$500,000-700,000 would need to be built into the Bureau's annual budget. Some subsidy percentage, for instance 50 percent, could be set. Another policy question is whether the City subsidizes developers.

Commissioner Blumenauer said historically BES has had some funds available to subsidize certain types of development at its own discretion, without a strict formula.

Russ Lawrence, Bureau of Environmental Services, said past subsidies were in combined sewer areas where separation of sewers had been scheduled and the subsidies were used to install sumps.

Commissioner Hales asked for a quick summary of the Bancroft process.

Mr. Vizzini said the City is required to make loans available to property owners to pay their assessments over time. The average monthly cost on a 20-year basis at 8 percent is around \$105-110 per month for the average property owner in the project. He said while there is no market for 30-year loans, they are considering a repayment schedule that begins with a rate calculated at the 30-year rate. That would reduce the cost about \$10 a month. The State also allows deferrals for homeowners over age 62 earning less than \$17,500 a year. There are no other methods currently to help property owners manage the costs although the Auditor's Office does work with individual owners so they do not lose their property.

Commissioner Lindberg asked what the average cost for LIDs has been up until this time.

Mr. Vizzini said \$5-6,000 for street improvements. He said, however, the projects now being done are in areas where there has been long-standing objections because of affordability or, as in Southwest, where the terrain is such that costs have always been high. In addition, Southwest was platted as if from Mars and makes no sense whatsoever considering the terrain.

Anthony Balch, 5152 SW Dolph Court, said he has lived in this area since 1923, adding that there has been a constant hassle about trying to get people to agree to street improvements here. Because it is located between two canyons, the area has very limited access. He said this project cannot be separated from the safety of the school where

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additional access is needed. He described some of the problems that resulted as homes were built in the area and said another access is badly needed to move traffic away from the school onto Garden Home Road.

Gile Downe, attorney for Anthony and Don Balch, said this area is already platted and more than 50 percent developed with housing. In addition, sanitary storm and water systems are already in the right-of-way so no one has the luxury of redesigning the area in accordance with the terrain. This LID is simply the completion of a plan implemented by the City years ago when the Rolfe property was developed. Street dedication was required from the developer for the future improvement of Dolph Court and street waivers from property owners to the north of Dolph Court were required by City ordinance as a condition of approval to the platting of the Rolfe addition. There are 39 houses in the area south of Dolph Court and 34 remaining building sites. As a condition of issuing the building sites the City required waivers on the right to remonstrance on the street improvements. Now the City needs to complete the plan by installing streets and the storm water system in order to serve both existing housing and the remaining lots available for construction. Dolph Court needs to be improved and connected to Garden Home Road via SW 50th. The original plan was to connect both 49th and 50th to Garden Home but 49th had to be abandoned because of the terrain, making the connection via 50th all the more important.

Pat Calligan, representing a neighborhood committee, said they originally went to the City in 1990 with high hopes of getting the needed improvements. She described the lengthy process that resulted, adding that when the estimates finally came, they were triple the original. She said it is time to stop this LID as after four years it has become a monster.

Tammy Testa described the sequence of events and meetings that led to this hearing, including a total of 42 meetings. She said to date no movement from the City's original proposal has occurred despite all these meetings and overwhelming opposition to the current plan, as indicated in two separate surveys, and based on major concerns involving cost, design and effect on the neighborhood.

Frank Warrens, SW Robert Court, said this LID is a bureaucratic monster conceived by one or two majority property owners who sought to avoid their responsibility for providing streets and other basic improvements in this sub-division before selling their building lots. He said the land owners allowed checkerboard development and 42 new home purchasers were forced to sign waivers, handing the tax assessor a blank check for future improvements. He said in order to secure such items as mailboxes residents were encouraged to petition the City by

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self-serving individuals who sold the building lots and knew they would reap windfall benefits from the dramatically increased value of their undeveloped home sites. He then focused on the inequity of the assessment on Robert Court home owners where, he claimed, not one of them will ever derive a single benefit from the paving of Dolph Court yet will have to pay \$10,000 simply because they border the LID. He asked that Council vote to kill this LID.

Leonard Weitman, SW 50th, showed slides to illustrate the design issues, adding that there are obvious drainage issues that need to be taken care of. He said they are very concerned about speeding traffic that will be cutting through their neighborhood and about the safety of children who attend Smith School. He objected to plans to pave Dolph Court, claiming they would end up with an east-west connecting route with a blind intersection only half a block from the school. He said Dolph Court is one of the last green spaces left in the neighborhood and should be retained as it is. He said connectivity is nice but in this terrain comprehensive connectivity is not possible. He said their systematic design process based on input from people in the area proposes a solution that does not include cut-through traffic or for building a street (Dolph Court) that goes to nowhere. He asked Council to say no to the design from Mars.

John Graham, SW 49th, said he is concerned about the safety of children travelling to school. He said this LID reflects the dated transportation policies of the 1970s with its imperatives for connecting streets and building a car-oriented system. He said the City should work in creative collaboration with the community and build this project right the first time rather than trying to fix it later.

Tom Tower, Robert Court, said the neighborhood is united in asking Council to vote no on this LID which was started by neighborhood petition but has grown so expensive and impervious to citizen input that the original petitioners now oppose it. He said even City staff thought the cost was excessive, noting that last year after a postcard survey, properties south of Marigold were excluded because the owners were not waived and they had voted no. At the same time eight residents north of Dolph Court also voted no but were kept in the LID because their properties were waived. The shrinking LID also concentrates the high cost of developing the most difficult terrain for the greatest private profit on the backs of the smallest number of taxpayers.

Kate Wood, 8915 SW 50th, said she would not have purchased her house, which is one of the waived properties, had she known the cost of this project. She charged that staff had not listened to the alternatives proposed by neighbors. She said she would like to achieve

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the goals of having streets, sidewalks and water control without breaking the back of the individual home owner.

Richard Harris, 8846 SW 50th, said the cost has become inordinate and he cannot afford the improvements. He added that 50th has a 60 degree grade which will make it impossible for cars to stop.

Kip Reynolds, 9009 SW 50th, said he lives on the corner of 50th and Marigold, and is being assessed \$21,000 for a portion of Marigold because he has a double lot on a street he never uses. He said when he bought his house the estimated cost for the improvements was three times less than now.

Timothy Evans, 8635 SW 52nd Ave., said the safety of school children is his major concern. Any plan that puts more traffic in front of the school is a bad one. He said he does not agree that some sort of freeway from Taylor's Ferry to Garden Home will result if a connection is made at Dolph and 50th.

Helen Gould, 8908 SW 50th Ave., objected to the cost of the improvements, adding that she would like to find a solution where the needs of the neighborhood and the needs of the City are both accommodated. She said the neighbors want to pave the streets, fix the drainage problems and keep the costs affordable and equitable. The City seems to want to improve the connectivity of streets, provide improvements for infill development, address stormwater runoff, provide traffic alternatives to circumvent Smith School and have customers happy with the services being provided. As a waived property owner, she said she did not envision giving a blank check to the City. Alternatives should be considered, particularly since, when the increase went from \$8,000 to over \$12,000, 100 percent was due to the increase in BES's estimate and removal of the \$150,000 subsidy which neighbors believed was a commitment by the City.

Scott Westby, 8602 SW 50th, said developing 50th as proposed will endanger children. He said the City should not be hitting people with a \$21,000 assessment or with a \$10,000 assessment when they were expecting \$3,000. Instead of a mailbox, people got this monster proposal which will cause them a huge financial loss. He called the waiver process unfair, one that reaps a windfall for the developer.

Loni Wheeler, 8825 SW 50th, 97219, said she was surprised to find her property was waived, adding that she wants her street to be paved but cannot afford the over \$13,000 assessment. She said she hopes some compromise is possible.

John Alland, Land-use Chair, Southwest Neighborhood Coalition, said this was platted as though the land was completely flat and points up the need for a district plan. He said environmental concerns have not been raised, noting, for instance, that the Fanno Creek Plan is not even shown on the overlay. Another concern is about allowing properties which are not waived to just back out and not share in the costs to improve streets in southwest. He said a way to divide the costs equally between all users needs to be found and called for a new solution that provides connectivity to Taylors Ferry.

Commissioner Blumenauer asked what he meant by that.

Mr. Alland said connectivity is very important but alternatives to creating freeways through neighborhoods need to be found. He said there should not be a straight connection from Taylors Ferry to Garden Home Road, but there should be pedestrian and bike pathways. The Fire and Police Bureaus, however, want through streets so the question is whether there can be multi-modal connectivity.

Commissioner Blumenauer said he understood this plan calls for narrower right- of-way and does have sidewalks.

Mr. Alland said perhaps one-way streets could be used, especially past Smith School.

Gile Downes, attorney representing Don Balch, said the streets were originally designed to be wider but in order to accommodate neighbors' concerns about flow-through traffic they were narrowed to 20 feet. He said flow-through traffic is not a realistic concern because of all the turns people will have to make. A connection is necessary, however, to direct traffic away from Smith School. He said suggestions that the Balch brothers will receive some special benefit are untrue as their property will be assessed like everyone else. He noted that while they own undeveloped lots they have been assessed for a sewer system they cannot use. Regarding costs, he noted this is a very expensive LID and everyone would like lower costs, but the improvements are essential because of the development already there as well as that which will occur in the future. He said there will be no cost savings by deferring these improvements and suggested looking into finding other sources of City money. He said this project has to go through now.

Pat Moshofsky, 8600 SW 52nd, said she is not in the LID but her property backs up to it. She said it is unfair to throw all the traffic from the houses that will be built in the area onto 52nd. She said 50th should go through as it will benefit those on Robert Court. She said while it may initially seem desirable to have subdivisions that are closed off, they make it hard for children to get to school or from one

neighborhood to another. She said everyone either has waivers or has paid development costs and the improvements are reflected in the sale price.

Chris Wagner, 4934 SW Marigold, said he wants pavement but believes his assessment of \$20,000 is unfair and he is being penalized because the south end of the project was deleted. He suggested a boundary change that would give him equity.

Kay Durtschi, Southwest Neighborhood Coalition, said waivers need to be noted during the real estate sales process to make sure that people understand them. She said a waiver today at \$3,000 is quite different from one for \$10,000 or \$20,000 and this policy needs to be changed. The Combined Sewer Overflow (CSO) problem also needs to be mitigated as it is a major cost in this LID. She said there are still too many loopholes in this LID, adding that having neighborhood plans in place would have made a major difference in how this project was handled. Connectivity is a very big part of neighborhood plans and it will happen if the City gives the neighborhoods the money to do them. She said there will be a major speeding problem if 50th is run from Taylors Ferry to Garden Home.

Commissioner Hales asked how a neighborhood plan could change the configuration of a development in a situation where there is already a subdivision plat with infrastructure in place and dedicated right-of-ways.

Ms. Durtschi said a plan would help neighbors understand where they are and what needs to be done. She said no neighborhood plans have as yet been completed in Southwest and that is why they are begging for help from the City.

Commissioner Hales asked if the district coalition recommends that the City not proceed with any LIDs until neighborhood plans are completed.

Ms. Durtschi said she would need board approval to answer that but if the neighborhoods have the tools they can complete the plans. However, that does not mean that no LIDs should be done.

Ms. Moshofsky said the waiver form must be noted on the disclosure forms now required by law, adding that they have always showed up on the preliminary reports that should go to both buyers and sellers.

Commissioner Blumenauer said Council is talking about working with the real estate industry to make it more clear what the consequences are.

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Craig Anderson, 48th and Marigold, said he was one of the original petitioners for the project and was shocked when the final assessment was three times as much as the preliminary assessment. He said it would be fairer to have the cost of developing Dolph Court borne entirely by the holder of the undeveloped land. He said now houses are developed lot by lot to circumvent rules required for larger developments.

Madeline Katter, 5017 SW Robert Court, stressed the lack of safety because of the steep grade on SW 50th. She said the LID will have an adverse effect on her home value because of the increased traffic.

Terri Hereford, SW 50th, said water problems and pot holes are depreciating property values. She said the City must go through with the LID to provide a street and proper drainage. She said she has no problem with the amount she has to pay and waiting longer will only increase the cost

Tony Nardone, 49th and Marigold, said his street, SW 49th, is not getting paved and may be subject to yet another LID assessment later. He said in addition to the overwhelming opposition of those attending today, six neighbors have already moved because of this project.

Lee Gustafson, 9002 SW 51st, said the people who live here have moderate incomes and will be adversely affected by the higher assessments. He said they had originally asked for paved streets and catch basins for the water runoff but somehow the project went far beyond that, adding sidewalks, tree plantings, etc.

Ivan Skoro, a local builder, 13030 SE Wiese Rd., Boring, said everyone who bought houses from him wanted to know when the improvements would be made as no one wanted holes in the street or dust. Also, because of the graveled streets on 50th and 51st, too much traffic has been going to 42nd. He said everyone will profit from these improvements and a way needs to be found to move forward rather than doing nothing.

In rebuttal, Mr. Downe said very few people think that nothing should be done here even though the concern about the high cost is very understandable. Waivers allowed homes to be purchased at a lower cost than if the developer had been required to make those improvements. While the costs may be high they will ultimately be recouped by the property owners and doing nothing is not a viable alternative.

Mr. Balch said the area has struggled for many years to get streets and drainage. He noted prior and current opposition to the improvements

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but said this is a good design which offers an opportunity to get this thing done. He said he would not sign any petition until he was assured by the City that over 50 per cent of the property owners were amenable to having storm sewers and streets. He said these improvements will pay off in the future.

Mayor Katz noted the real sense of frustration with the process which is a result of conflict between current regulatory policies and the newer, aspirational policies. There is also frustration about the cost and the City may be able to satisfy citizens in that regard. Other issues, such as waivers or neighborhood plans, will not be resolved with this LID. Another issue regards the redrawing of lines and the legal requirement to take this back to the neighborhood.

Commissioner Blumenauer said he heard something different. He said this is not the last LID of the old system. Council needs to face the issue of connectivity which is needed to avoid a nightmare in transportation. He said this is a 20-foot, skinny street and reflects a fundamental City policy that Council needs to say either yes or no to. He agreed that affordability is a big issue and he believes the City can do better. He said drainage is a \$225,000 problem facing these people and it is appropriate for the City to talk about this. He said he would like Council to decide about connectivity and then move on to the subsidy or investment issue. He said if waivers are an issue, the City needs to do it sooner rather than later.

Mayor Katz said there is conflict between some policies that are aspirational and those currently on books.

Mr. Vizzini said the Engineer's report recommends that Council overrule the remonstrance, uphold the connectivity policy and refer the project back to the City Engineer for proposed cost reduction and redistribution measures as appropriate. The Engineering staff would like direction about the design, the remonstrances and whether the apportionment policy should be changed. That needs to happen if this project is to move forward. Because of storm drain issues on 48th, staff will be coming back with a new notice to property owners and a new hearing.

Commissioner Hales noted that a second hearing will result because of the circumstances of this LID.

Mr. Vizzini said because the boundaries were expanded, they have to do it anyway. Transportation would like, once the design guidance problems are solved, to go to bid before the next hearing. However, the engineering cannot move forward without a decision on connectivity and the apportionment issue.

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Mayor Katz noted the City Engineer, as a compromise, had recommended disconnecting one block of SW Dolph between 50th, north and south. That was unacceptable to the neighborhood committee so the street was designed for full connection. Subsequently, due to cost considerations, the connection to SW 49th north of Dolph was dropped so the connectivity issue is not clear-cut. She said she is more interested in the earlier recommendation made by the City Engineer to address that and, if they can get to a win-win on that, then they could deal with the cost issue.

Ms. Culp said the compromise was suggested as a way of moving the project forward with recognition of the significant need for streets and storm sewers. However, the compromise was not accepted.

Ms. Calligan said residents wanted the compromise but also wanted staff to look at the rest of their concerns. She said she thinks that staff decided that if that was not enough, they were not going to give in at all. Some neighbors believe it was given and then taken away to keep them quiet about the other issues. Others suspected that Tony Balch did not want the compromise to happen and that is why it was dropped.

Mayor Katz noted he was not involved in the mediation process.

Ms. Calligan said he originally signed up and was personally asked to attend but did not do so.

Vic Rhodes, City Engineer, said they tried shuttle diplomacy and offered to drop one connection but the neighborhood told them it did not go far enough. Nevertheless, they took that to Mr. Balch's lawyer and were told that it was unacceptable unless all of Dolph Court was improved. Based on the neighborhood stand against improving any of Dolph Court, staff believed there was no way to work things out. That is why the connectivity issue has been brought to Council. He noted that the issue is the connection between 50th north and 50th south on Dolph.

Commissioner Blumenauer asked him to clarify policy changes. He said with the City under increasing pressure to make connectivity real, not just aspirational, there is no question that, if this were a new project, the City would call for this to be paved.

Mr. Jones said the policy now is aspirational--it says "should" not "shall," an important distinction. With implementation of the State Transportation Planning Rule, the City will be asked to change "should" to "shall" and then identify any exceptions. He said connectivity is new policy, not something from the 1970s, and its intent is to allow all modes to move through neighborhoods to get to transit, allow kids to walk and bike to schools, etc. If you do not connect Dolph Court you

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end up with long cul-de-sacs and people have to walk all the way around. A compromise was considered to make some pedestrian connections but that did not fulfill everyone's interest so they went back to the street system.

Commissioner Lindberg asked if the compromise could still be imposed even if all parties did not agree to it. He said that has some appeal to him.

Commissioner Hales noted that there are properties along the south side of Marigold that are going to be included in the district but at the same time the City has chosen not to extend the boundaries of the LID all the way to Orchid, thereby leaving unpaved segments on 49th, 50th and 51st between Marigold and Orchid. He asked why the LID did not proceed farther south.

Ms. Culp said that area was included in the original project but when the preliminary design indicated that costs would be higher than anticipated, staff stopped work on the design to see if the project was still acceptable. Properties in the area referred to did not support continuation so the project was designed to include only the area where there was support.

Commissioner Hales asked if by support she meant waivers.

Ms. Culp said support was measured in terms of postcards returned, not necessarily waivers. About 52 percent of the actual owners indicated support. With waivers, support reached about 78 percent.

Commissioner Hales said he would still like to review the assumptions made about the boundaries and the larger issue of connectivity. He noted proposals for various levels of sidewalk improvements and asked what the rationale is for building so much sidewalk if there are no sidewalks called for adjacent to the school, on Marigold between 51st and 52nd.

Ms. Culp said staff felt it was appropriate, given the large size of the project, to have sidewalk on at least one side of the street. Even though the extra link outside of the district may be desired, since that property is not within the current district there is no way to include them. She said it could be added to the project if the boundary were redefined.

Commissioner Lindberg said he supports connectivity and does not think it is satisfactory to have a City of cul-de-sacs. He believes connectivity is not at odds with such programs as traffic calming and that skinny streets can be made safe for pedestrians and school kids. Second, the project is obviously too expensive, so BES should return

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with policy options on the subsidies and what they would mean overall to the budget and to rates. Third, he is concerned about the waiver process and would like to see if there are alternatives to use in the future.

Mr. Vizzini said one difficulty with the LID process is that it is supposed to be democratic although the waiver process bends that a little. The problem with expanding the district, even though it seems logical to do so, is that it can only be done when local support is in place. If staff came back with a new boundary with sidewalks on Marigold to 52nd and improved streets to Orchid, there is the possibility that the remonstrance rate would be high enough to remove it from Council authority entirely. Thus, Transportation Engineering is constrained on one side by City design standards and the other by State LID law.

Commissioner Kafoury said doing nothing is not an option as leaving no streets and drainage in this area is not acceptable. She supported the connectivity policy, adding that she hopes there can be some compromise here. She too agreed that the costs are unacceptable and ways need to be found to reduce the cost and at the same time make sure that a clear policy is set for what the City will or will not do in the future. She said such a policy should be reviewed in terms of what was done with the Mid-County sewer project.

Commissioner Blumenauer said he agreed with Commissioners Lindberg and Kafoury about the affordability issue and believes it is reasonable to have a subsidization of drainage costs. If the compromise offered by Vic Rhodes would help resolve things, he would have no problem accepting that.

Commissioner Hales agreed.

Ms. Gould said, regarding Commissioner Hales' question about why one little street was not connected, with three-quarters of a block unpaved and the rest paved, the neighbors in the SW 50th area would like to see that section paved now. She said her preference would be to pave something like that, with houses on both sides, right now and delay on some of the vacant lot areas which do not have an immediate economic benefit. Second, she views the neighbor as the client and the City as the contractor. The contractor has presented an estimate which is higher than the client can afford, making discussions about cost reductions very appropriate.

Mayor Katz said there seems to be consensus that staff needs to be more flexible on the aspirational connectivity policy. She said Council is suggesting that staff look at the compromise, deal with cost and

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revisit the boundaries. She said the community was involved in this for three years and ought not to be excluded now. She said staff may want to look at some of the design options mentioned in the memo as well as into the subsidy issue.

Mr. Vizzini said the ordinance is up for second reading next week but should probably be delayed to some future date.

Commissioner Blumenauer said his issue is how to get to affordability and he is confident it can be dealt with but he does not want this to go on and on if that cannot be resolved. He said he thinks that should be known by next week in terms of drainage investment and the re-engineering.

Commissioner Lindberg said by next week BES can bring in information as to the policy implications. He said what they would be doing here is very similar to mid-County, not just for this project, and a lot of the same kind of decisions need to be made as were made there, adding that those discussions were very lengthy and complex. He believes staff should study all the different ways costs can be cut and then bring in the policy choices from BES.

Mayor Katz agreed, adding that there needs to be some review of the project design itself as well as the subsidy.

Mr. Vizzini, noting the need to involve the public in these discussions, asked that the hearing be continued for two weeks.

Mr. Auerbach said if Council is talking about subsidies of sewers, there is the larger public to be addressed -- the rate payers who will be paying this piece of the pie.

Mayor Katz agreed, stating that is why she believes the design is as important as the possible solution from the rate payers.

**Disposition:** Continued to April 13, 1994 at 9:30 a.m. Time Certain.

At 12:40 p.m., Council recessed. The items pulled from Consent and all items on the Regular Agenda were continued to the 2:00 p.m. session.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 30TH DAY OF MARCH, 1994 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

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

**REGULAR AGENDA**

**\*469** Application for \$96,935 from the Edward Byrne Memorial State grant program administered by the Bureau of Justice Assistance (Ordinance)

**Discussion:** Lt. Dennis Merrill, Planning and Support Division of the Police Bureau, said this grant will be used to develop a map information program and allow the Bureau to answer "what if" questions regarding crime displacement. It requires a 25 percent match from the City which is already budgeted for the statistical support unit. The program will also be made available to other police agencies in the State.

**Disposition:** Ordinance No. 167506. (Y-5)

**\*477** Accept a grant from the U.S. Department of Housing and Urban Development for an Emergency Shelter grant program under Title IV of the Stewart B. McKinney Homeless Assistance Act in the amount of \$310,000 (Ordinance)

**Discussion:** Cay Kershner, Clerk of the Council, said this had been placed on Regular Agenda because it amends the current budget.

**Disposition:** Ordinance No. 167507. (Y-5)

**486** Accept bids of Lakeside Industries for \$1,460,000, K. F. Jacobsen & Co., Inc. for \$794,000, and Porter W. Yett Company for \$420,000 for the annual supply of asphalt concrete (Previous Agenda 414)

**Discussion:** The Clerk noted that the title had been corrected to conform with the report itself.

**Disposition:** Accepted; prepare contract.

**Mayor Vera Katz**

- \*487** Contract with Ball, Janik and Novack representation in Washington, D.C. on matters pertaining to the relationship between the City of Portland and the federal government (Ordinance)

**Disposition:** Ordinance No. 167508. (Y-5)

**Commissioner Earl Blumenauer**

- \*488** Authorize an Agreement with Tri-County Metropolitan Transportation District of Oregon to provide funding for the Salmon Street Station to be constructed as part of the Westside Light Rail Project (Ordinance)

**Discussion:** Howard Glazer, 2378 SW Madison, representing the Goose Hollow Foothills League, said this adds something positive to the neighborhood and City rather than just avoiding the negative aspects of light rail. He recalled initial Tri-Met resistance to this station as well as their roadblock which required part of the funding to come from outside the Tri-Met budget. The City and the Multnomah Athletic Club, however, came through and it looks like a complete station will be built.

Scott Andrews, President, Multnomah Athletic Club, said 18th and Salmon is a natural place for a station and thanked all who were involved.

**Disposition:** Ordinance No. 167509. (Y-5)

- \*489** Authorize an Agreement between the City of Portland, the Goose Hollow Foothills League and the Multnomah Athletic Club to provide funding for the Salmon Street Station to be constructed as part of the Westside Light Rail Project (Ordinance)

**Discussion:** Commissioner Blumenauer said this really captures the nature of the work that went on.

**Disposition:** Ordinance No. 167510. (Y-5)

**Commissioner Gretchen Kafoury**

- 490** Recognize the week of March 28 - April 3, 1994, as Community Development Week and call upon the citizens of Portland to display their support for the Community Development Block Grant Program (Resolution)

**Discussion:** Commissioner Kafoury said the Portland Home

Consortium is receiving the outstanding community partnership award from HUD for the partnerships that have been developed. She said this is the only jurisdiction in the country that has been able to figure out how to wend its way through the maze of federal regulations.

**Disposition:** Resolution No. 35262. (Y-5)

- \*491** Authorize application to the State of Oregon Criminal Justice Services Division for Edward Byrne Memorial State and Local Law Enforcement Assistance Program funds in the amount of \$257,536 (Ordinance)

**Disposition:** Ordinance No. 167511. (Y-5)

**City Auditor Barbara Clark**

- 492** Assess property for large lot deferral contracts through February, 1994 (Hearing; L0043; Second Reading Agenda 458)

**Disposition:** Ordinance No. 167512. (Y-5)

- 493** Assess property for sewer system development charges through February, 1994 (Hearing; Z0561 through Z0569; Second Reading Agenda 459)

**Disposition:** Ordinance No. 167513. (Y-5)

- 494** **TIME CERTAIN: 2:00 PM** - Establish business property management license fee for downtown business district to fund supplemental downtown security and cleaning, crime prevention, business development, and marketing and communications services (Second Reading Agenda 411)

**Discussion:** Commissioner Blumenauer said this is not an issue he would personally support if it were brought forward to fund general City services. This however is an evolution of the Economic Improvement District which has made a great deal of difference downtown. He said during the first three years the district was extraordinarily successful and became a model for other cities. He said funding it on a voluntary basis has been an extraordinary effort but it does not look like it could be continued for another three years. He noted that every conceivable option was explored by those involved and this gives the private sector a potential funding mechanism which they fully expect to be litigated. This is clearly not without some risk to the City but after weighing the options, he will vote in favor although he does not support its application for general city purposes even if the mechanism is found to be valid.

Commissioner Hales said the success of downtown is the result of years of vision and risky decisions such as building the transit mall. This helps ensure that the momentum of that success continues, remembering that every downtown business and office is in a competitive environment that demands safety, cleanliness and a welcoming environment.

Commissioner Kafoury said she was distressed to hear last week that Measure 5 was meant to cripple local government from looking at creative solutions to providing services. This is the kind of arrangement Portland gets awards for because of its unique partnership with the private sector.

Commissioner Lindberg said he strongly supports the ability of citizens to tax themselves and control their own destiny. This continuation is a strong statement about retaining the quality of life downtown rather than accepting gradual deterioration. He said a mandatory program is much more efficient and cost-effective than a voluntary one.

Mayor Katz said a strong downtown needs strong neighborhoods. She said the crime rate in the City has flattened and the reason why is because of the drop in the crime rate in Old Town/Chinatown and downtown. The City could not have done that without the help of the Association for Portland Progress.

**Disposition:** Ordinance No. 167514. (Y-5)

### **REGULAR AGENDA**

**495**

Accept bid of Hydro-Temp Mechanical, Inc. for Fire Station No. 1 HVAC upgrade for \$523,400 (Purchasing Report - Bid 92)

**Discussion:** Carleton Chayer, Purchasing Agent, said four bids were received and Hydro-Temp Mechanical is the apparent low bidder. AU Local 290 requests that the low bidder be disqualified for alleged violations of apprenticeship, prevailing wage and permit requirements. The second low bidder, Markman, Inc., has requested award of the contract as they have now committed to 32 percent MBE and 9 percent WBE participation. He noted that AU Local 290 made similar charges in November when another contract was awarded to Hydro-Temp. Mr. Chayer said, however, that the situation has not changed since that award was made. The Bureau of Labor and Industries (BOLI) has not disqualified Hydro-Temp from bidding on public works contracts and no decision has as yet been made to proceed with disbarment. He said BOLI told him that the earliest a final order could occur on this would be in December, if it chooses to proceed with the investigation.

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Mr. Chayer said the Union has also charged building violations but the State Codes Division told him the matter had been resolved and no penalties were imposed. Regarding MBE and FBE participation, he noted the City is prohibited from setting specific goals and while Markman should be commended for their commitments to minority-owned businesses, the City does not have the option of rejecting Hydro-Temp for not exceeding the commitments of the second low bid. He recommended that the bid be accepted as no basis has been found to disqualify the low bidder.

Commissioner Lindberg asked if BOLI had made any progress in its investigation since November.

Mr. Chayer said he believes they are still gathering data.

Clyde Trapp, Markman, Inc., protested award of this bid because of non-compliance with the bidder's instructions on minority business usage and First Source hiring requirements. He said Markman made great efforts to increase minority participation and now believes they are being penalized for not being the low bidder even though they have a phenomenal 41 percent minority participation. He said if they had known the low bidder was going to be bidding this job, his company might not have submitted a bid. He asked when the minority community is going to have a more active part in Portland construction if they are not given a chance here.

Donald Kool, Plumbers and Steamfitters Local 290, said they do not feel that Hydro-Temp is a responsible low bidder and requested that its bid be rejected. In support of this charge, he cited Exhibit No. 3 in the packet distributed to Council which outlines violations of permits and site licensing law. Exhibit No. 5 is civil court judgments for failure to pay subcontractors.

Ken Ford, Hydro-Temp Mechanical, said he has a letter from BOLI regarding resolution of matters previously raised which concludes that BOLI is closing its investigation. The basic violation was failure to post prevailing labor wage rates on a board. He said they work in existing, occupied structures which makes it difficult to find a posting location. Regarding minority participation, he said Hydro-Temp has subcontractors that exceed the specification goal stated in the contract. He asserted that his company is 33 percent employee minority/female staff. He said his company is very much into the training of minorities in the crafts and trades and would match its record against anyone's.

Commissioner Hales requested a copy of the letter and asked about the Multnomah County Circuit Court judgment.

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Mr. Ford said there was a disagreement about the scope of work and because their paper work was insufficient, they went ahead and paid the judgment.

Commissioner Hales asked about the civil penalty (Exhibit 3) dealing with journeymen certificates for people in the company's workforce.

Mr. Ford said he had four witnesses onsite during this incident but it looks like the State is going to hold a hearing on this issue. He said it has not been scheduled yet.

Dave Rowe, Executive Director, Associated Building and Contractors, said Mr. Ford is a good contractor and has made a tremendous effort to hire a minority workforce but has elected not to become a member of organized labor. He said in 1992 Mr. Kool filed over 100 complaints with the building Code Agency on open shop contractors. He said to make a complaint all it takes is one man's word against the contractor and the State is bound to investigate. It costs a contractor up to \$3,000 to fight an allegation, or \$1,000 if you pay the fine. He said Mr. Ford has a perfect safety record over three years, adding that this bid is \$50,000 less than the next bid. This is a witch hunt and should not be in Council Chambers.

Mayor Katz asked about the letter Mr. Ford said he had from BOLI.

Mr. Chayer said it looks like BOLI has asked Hydro-Temp to provide information.

Commissioner Lindberg said Council has to make a judgment about responsible bidders and in this case there are both old and new allegations. He asked if Purchasing tries to determine their validity.

Mr. Chayer said they look to see if there has been a final order or fines actually paid. The alleged violations in this case are either in process or on appeal.

Commissioner Lindberg said the criteria then is whether there is a final order.

Mr. Chayer said he treats them as allegations until then.

Nancy Ayers, Deputy City Attorney, said there are a series of allegations here, none of which have been proved before BOLI, the agency the City has delegated to make determinations on prevailing wage rate issues. She noted that the reasons for rejection of a bid are listed in the purchasing manual and in order to reject a bid Council has to rely on those reasons. One reason would be debarment by BOLI, but

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until it makes such a decision Council does not have the grounds for rejection. State statute and City Code give Council the authority to reject any and all bids but to do that some formal process such as a hearing must be provided, similar to what BOLI already conducts. That is an option but currently the City is not set up to do that.

Mayor Katz asked what happens if the City does not feel BOLI is serving it in a timely manner.

Ms. Ayres said Council could then determine whether a specific City process is necessary so it can make its own determinations.

Mr. Chayer said BOLI told him that the report Council received in November from the union consisted of statements made from one side only and it would determine whether to hold formal disbarment proceedings after they gathered the information from the other side. He said BOLI has now indicated that December would be the earliest time a determination would be final, if they choose to go ahead with it.

Mayor Katz said the City may want to set up its own process so it can get quicker results.

Mr. Chayer said much of the time is used for appeals.

Commissioner Blumenauer said if the City did take this over it would have to provide much the same process as BOLI in terms of investigation, due process requirements and appeals.

Ms. Ayres agreed.

Mayor Katz said she is frustrated that this is not getting resolved and Council is not getting the information it is looking for.

Commissioner Blumenauer said an assertion made by a challenger that it is being penalized because it complied with the bid requirement for MBE and FBE and somehow the apparant low bidder did not, nor did it comply with First Source requirements. He noted that Mr. Chayer said the City could not use the lack of minority or female hiring to reject a bid.

Ms. Ayres said that is correct, presently the City does not have a goal-specific minority and female participation program.

Commissioner Blumenauer asked about First Source compliance.

Mr. Chayer said he believes Hydro-Temp is in compliance.

Commissioner Hales said if there is a pattern of serious labor law violations, Council could reject the bid but, as in November, these are still allegations, not convictions and therefore there is no basis to overturn the bid.

Commissioner Lindberg said he is voting aye somewhat reluctantly as he believes there is some substance to the allegations. However, he would need to have some findings of fact before voting against it.

Mayor Katz said she is very disappointed that the City has to wait a year to get findings so that it can act on this matter. She said she will pursue having the City set up its own process. She said she is very sympathetic to those who have concerns about Hydro Temp but right now the only thing Council can do is support the bid.

**Disposition:** Accepted; prepare contract. (Y-5)

### Commissioner Charlie Hales

**\*496** Amend Title 33, Planning and Zoning, to clarify floor area bonuses in the Central City Plan District (Ordinance; amend Title 33)

**Discussion:** Commissioner Hales said this amendment will improve the workability of daycare facilities in downtown buildings.

Tom Dixon, Planning Bureau, said the proposed amendment involves the manner in which floor area ratios (FARs) are granted when daycare facilities are provided in the Central City plan district. Present Code language bases the bonus on the amount of floor area devoted to the daycare facility and excludes areas such as porches, patios, balconies and other areas that could be used as part of the daycare facility but are not technically part of the floor area. The proposed language would include these areas as part of the calculation for the bonuses when those areas are used exclusively by the daycare facility. This is an emergency ordinance because at least one downtown project is affected by its implementation.

**Disposition:** Ordinance No. 167515. (Y-5)

**\*497** Amend the Comprehensive Plan map and change the zone of property at 635 and 711 SE 60th Avenue from R2 to R1, Residential (Previous Agenda 305)

**Discussion:** Pete Kasting, City Attorney, outlined the procedural rules. He noted an article in the March 29 Oregonian which should be made part of the record.

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Mike Hayakawa, Planning staff, noted the relevant criteria, stating that the purpose of this change is to legalize an existing 39-unit apartment building. He noted that the size of the property was reduced as a result of a minor partition recently approved which was based on a factual error where 39 units were represented to be 21. He reminded Council, however, that the application before Council is a map amendment, not the minor partition, and was reviewed by Planning staff as if it were a new application. Both staff and the Hearings Officer recommend approval with the conditions that the applicants themselves proposed. Mr. Hayakawa said much of the testimony heard earlier had to do with the Westerman site, adjacent to this site, the Culver property.

Mr. Hayakawa showed slides of the area, noting that the issue here is density and the number of units. He said the Culver site, at just under one acre, is at R.2 density which would allow only 20 units. They would like R.1 density to legalize the 39 existing units.

Mr. Hayakawa said staff, in approving the partition requested by Mr. Westerman, relied upon his statement that there were 21 units instead of 39. As is generally done in the case of partitions, no site visit occurred and staff relied upon information supplied by the applicant as to the number of units. No notice was required at that time for minor partitions. He recommended approval since the criteria have been met. He said this is a case where people have knowingly or unknowingly established certain land uses and it is left to Planning to determine after the fact whether they meet the criteria. He said the Westerman situation is separate and Mr. Westerman is making an effort to address the landscaping concerns and meet all requirements.

Steve Schell, attorney at 707 SW Washington, representing Stanley Culver, said there was an inadvertent misrepresentation about the number of units which they believe resulted when someone at Westerman looked at the tax records and made a mistake as to the number of units. When everyone figured out what happened they found there was not enough density on the Culver property to justify the 39 units already there. They believe that most of the concerns raised by neighbors have been addressed, adding that both Mr. Culver and Mr. Westerman have been willing to enter into a good neighbor agreement.

Jack Caplinger, Mt. Tabor Neighborhood Association, said he has worked with neighbors on SE 58th whose backyards now abut two three-story buildings and who believe that, if the planning had been more accurate, would probably never have been built. The Association has no real problem with the Culver situation and takes a neutral position on that. He said the issues specific to the neighbors on SW 58th regarding landscaping, retaining walls and fencing have been remedied and they believe a good neighbor agreement could be

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implemented with Mr. Westerman.

Bob Naylor, 716 SE 58th, said developers have profited from false information in this case, charging that the minor partition was approved without benefit of a required public hearing. He said neighbors have also been lied to and threatened. The number of apartments for Culver/Westerman exceeds the carrying capacity of the land and traffic flow on adjoining streets has increased dramatically. He said they oppose the rezoning but if this case is approved, propose the following conditions: 1) all conditions proposed by Culver be met; 2) both Culver and Westerman be required to participate in a good neighbor plan; 3) no more units be added to either property; and 4) landscaping must be brought into compliance with City Code and any landscaping agreed on in the good neighbor plan must be added.

Mr. Schell said the good neighbor agreement is already included in the proposed conditions and Culver is willing to work with the Mt. Tabor Neighborhood Association. While they have no objections to the other conditions proposed by Mr. Naylor, he noted that they have no control over Mr. Westerman.

Commissioner Blumenauer asked how Council might render a decision that encouraged Mr. Westerman to be part of a good neighbor agreement.

Mr. Schell noted the letter from Mr. Westerman committing to do the landscaping by April 25 and said the City probably has all the power it needs to force compliance.

Commissioner Blumenauer wondered if language could be drafted to invite Mr. Westerman to be a party to a good neighbor agreement before final action by Council.

Commissioner Hales asked if that could be included in Condition 8 even if Council cannot enforce that inclusion on Culver.

Mr. Kasting said Council cannot impose something on Mr. Westerman in this proceeding. It could, however, draft a condition requiring the applicant to participate in any process that is established to develop good neighbor plans. Council could also direct the Planning Bureau to invite Mr. Westerman to cooperate also.

Commissioner Blumenauer wondered if Council, rather than the Bureau, could invite Mr. Westerman to participate.

Mr. Schell said the condition could be reworded to call for Culver to use its best efforts to get Mr. Westerman to participate.

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Mayor Katz said Council could draft a letter to Mr. Westerman.

Mr. Kasting said to the extent that there are conditions applicable to Mr. Westerman's property, the City can enforce compliance with those conditions.

Commissioner Hales said the continued gentle persuasion by Mr. Hayakawa and interest by the Council should be enough to do the job.

The Council Clerk noted this was an emergency ordinance.

Commissioner Hales moved to grant the Comprehensive Plan amendment and zone change with the conditions listed in the ordinance and with the modification of Condition No. 8 to include a statement that the applicant is requested to use their best efforts to include Mr. Westerman in the process of a good neighbor agreement.

Mayor Katz said Council also invites Mr. Westerman to participate in such an agreement.

Mr. Kasting said if the ordinance is amended it must be carried over one week.

Commissioner Hales retracted his amendment and then moved adoption of the ordinance as proposed. Commissioner Blumenauer seconded.

Mayor Katz said the letter to Mr. Westerman could go out regardless.

**Disposition:** Ordinance No. 167516. (Y-5)

**498** Tentatively grant, with added conditions, portions of appeals of Woodstock Neighborhood Association and Joe Van Haverbeke, applicant, against Hearings Officer's decision regarding the five-lot subdivision at SE 48th Avenue and SE Mitchell Street (Findings; 93-00549 SU; Previous Agenda 306)

**Discussion:** Duncan Brown, Planning staff, said staff did not receive the findings on this appeal until yesterday and requested additional time for review.

**Disposition:** Continued to May 4, 1994 at 2:00 p.m.

**Commissioner Gretchen Kafoury**

**499** Liquor license application for Pay Less Drug Stores Northwest, Inc., dba Payless Drug Stores #1502, 8336 N. Ivanhoe Street, package store liquor license (new outlet); Favorable recommendation (Report)

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**Discussion:** Mike Sanderson, License Bureau, said the St. Johns Neighborhood Association opposes this application but the Bureau has received no complaints and there is no history of any problems with sales to go. There is also sufficient evidence that the store will close at 9:30 p.m. Both the License and Police Bureaus recommend a favorable endorsement.

Mayor Katz noted that the licensee has proposed not to sell 40-ouncers.

**Disposition:** Favorably recommended. (Y-5)

- 500** Liquor license application for Pay Less Drug Stores Northwest, Inc., dba Payless Drug Stores #1506, 900 N. Tomahawk Island Drive, package store liquor license (change of location); Favorable recommendation (Report)

**Discussion:** Mr. Sanderson said this application is for a change of location for Pay Less. Nearby property owners believe there are sufficient outlets and object to granting this license. However, he noted the change of location does not change the number of outlets on the island and the applicant has a good record of compliance. It also does not sell products favored by street drinkers.

**Disposition:** Favorably recommended. (Y-5)

- 501** Liquor license application for Insomnia, Inc., dba Tribeca, 704 NW 21st Avenue, Dispenser Class C (DC) liquor license (new outlet); Favorable recommendation (Report)

**Discussion:** Mr. Sanderson said the primary concerns of nearby residents are late night noise and litter. The operator will emphasize food and applicants of similar outlets have not been found to cause problems.

**Disposition:** Favorably recommended. (Y-5)

- \*502** Grant permits to provide agency requested transportation services in the City (Ordinance)

**Discussion:** Dennis Nelson, Manager, Bureau of Licenses, said this and the following two items deal with a new category of passenger permits recommended by the Taxicab Board and adopted by Council in June under a new Code section entitled Limited Passenger Services. This ordinance grants permits to two applicants in this category, on which the Board recommended favorably.

**Disposition:** Ordinance No. 167517. (Y-5)

**\*503** Grant permits to provide specially attended transportation services in the City (Ordinance)

**Discussion:** Mr. Nelson said this ordinance grants permits to two companies under this category. The following item deals with a permit where the Board did not rule favorably.

**Disposition:** Ordinance No. 167518. (Y-5)

**504** Deny Specially Attended Transportation permit application for TLC Transportation, Inc. (Report)

**Discussion:** Mr. Nelson said this type of permit was determined by the Taxicab Board of Review to serve a very narrow niche and is basically designed to provide regular transportation services for persons with medical needs but not requiring ambulances. The American Disabilities Act requires that people with disabilities be provided access by regular servers and the City is requiring that cab companies provide wheelchair access in 20 percent of their cabs. Providing wheelchair transport does not qualify as specially attended transportation. This niche is intended to meet the needs of those who need special help in addition to wheelchair access. The Taxicab Board recommended unfavorably because it was their intent that this be a narrow niche. He said TLC provides broader services, primarily wheelchair access, than the other two providers who are being granted permits and the Board felt this was not the kind of service intended when this class was established.

Commissioner Hales asked if TLC could apply for a taxicab permit.

Mr. Nelson said they have the right to apply at any time.

Commissioner Kafoury asked if there are limited permits.

Mr. Nelson said at the last meeting 17 permits were granted to existing companies to provide wheelchair access.

Commissioner Kafoury asked if there are a finite number of permits.

Mr. Nelson said yes, as determined by the Board, but the number was recently expanded. In order for a new company to enter the market it must show it can provide services that existing companies do not. TLC is requesting 12 permits to accommodate those with medical needs.

Steve Moskowitz, representing TLC, said the company has been operating a very specialized service to those with medical needs since 1991, using nine vehicles and 12 drivers. Ninety percent are Medicare

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patients. He said this ordinance is unconstitutional because of its vagueness, arguing that there is nothing in it that defines what kind of special medical need is served with the special niche. He said he is confident that this type of ordinance would be tossed out by the Courts if challenged. However, even if the ordinance were valid, he is very concerned about the nature of the proceedings. He said there is nothing in the ordinance to indicate that TLC does not meet all the requirements stated in the Code. Unlike taxicabs, these vehicles are required to have certain kinds of equipment such as wheelchairs. Unlike taxicab drivers, TLC drivers have to be specially trained in the use of disability transport as well as first aid and CPR, and there is a great need for this type of service. He said there are no grounds to deny TLC or to distinguish between TLC and the other two companies that are being granted permits in this category.

Mayor Katz asked what kind of permit TLC has.

Mr. Nelson said none.

Commissioner Lindberg asked if the Board had made findings of fact to show that this application does not meet the criteria. He asked if TLC would be considered a regular taxi service.

Mr. Nelson said the Taxi Board was working from a staff recommendation based on intent and involvement with the ADA. That document represents the findings. He said the files show that for some time TLC has been operating as a taxicab, primarily providing wheelchair-accessible service, which under the Code qualifies as a taxicab permit. The nut of the issue is that such service is for a disability, not a medical need, requiring especially attentive care. He admitted this is a fine distinction. He said there have been complaints to Board from other cab companies about this service and he believes that TLC itself was confused and truly thought it was an SAT, but it is not.

Mayor Katz asked Mr. Nelson if he were troubled by the fact that TLC is operating without a permit.

Mr. Nelson said yes. The Board spent six months going through definitions of what is and what is not a cab. While that was under debate, the Taxicab Code was not strictly enforced. Staff felt that Specially Assisted Transportation should not be regarded as taxicabs but did require some level of regulation to protect the public.

Commissioner Lindberg asked if there was now an abundance of wheelchair-accessible service.

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Mr. Nelson said the taxicab companies are reaching their goal of 20 percent accessibility and the aim is to provide it as part of normal services. TLC stepped into a market niche during an interim period when there was not enough supply to meet the demand.

Commissioner Lindberg asked what the percentage was now.

Mr. Nelson said, with the new permits recently granted, they are getting very close to the 20 percent.

Commissioner Kafoury asked if other companies are providing similar services.

Mr. Nelson identified a list of other companies that may be providing similar services and said they are seeking further information from them now. He said the City does not regulate rates in this area.

Arlene Gowan, Multnomah County Adult and Family Services, supported TLC, adding that her organization has used this service since its inception. She said the owner has gone out of the way to have women drivers for abused children and has made other Childrens Services Division transportation clerks' work much easier. She said the other two companies have only several vehicles and there are dozens of children who need transportation.

Ken Love, TLC owner, said they have never been able to determine where the complaints have come from as none have been made available to him. Wheelchair vans are used because TLC has wheelchairs and other equipment available. He noted that they have received many awards for their contributions to the community.

Elsie Hastings, volunteer for Aging Services and member of the Tri-Met Board on Accessible Transportation, said TLC transports her several times a month and she believes they are deserving of a permit.

Angie Carter, in-home care provider for Aging Services, said the Loves provide special services that many cab companies will not, such as scooters.

Marilyn Booth Love, co-owner of TLC, Inc., said they have grown from one to nine vans. She said the other two companies transport the same type of clients as that they do and TLC believes it has been unfairly judged because their company did not begin as a result of transporting a family member.

Clark Woodworth, Tri-Met Accessible Transportation, said taxis are not required to be accessible by the ADA but if they decide to be accessible

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their equipment must meet ADA requirements. Portland has decided it wants taxicabs to be accessible and has a 20 percent requirement. He said the assumption is that the cab companies should provide safe and appropriate service for all customers, including those who use wheelchairs. He said there is no reason why the taxicabs cannot provide Mrs. Hastings good service and supported the staff position that TLC does not fall within the narrow niche this permit is meant to serve.

Mayor Katz asked if the special needs criteria is carefully spelled out.

Mr. Woodworth said it is still open to subjective decision making.

Mayor Katz asked if the criteria was vague enough for Council to go either way.

Mr. Woodworth said, yes, it is a judgment call although the Taxicab Board clearly understands the distinction.

Commissioner Hales asked for a summary of the criteria.

Mr. Nelson read the criteria.

Commissioner Hales asked where the notion that a niche has to be the right size arose.

Mr. Nelson said the Board intended that this be a very narrow niche for very specialized transportation services for people with special medical needs.

Mr. Kasting said the essential question is the description of the niche. A permittee should demonstrate that adequate and reasonable service is not currently being provided.

Commissioner Kafoury said they knew there would be challenges when they adopted these ordinances. She suggested granting a permit to TLC for the rest of the calendar year while staff works through some of the issues raised. She said she is not convinced that this company fits the category and whether there is more demand than capacity in the system. She said at the end of the year the company could then apply for a regular taxi license or be granted an exemption because it provides some market niche not currently being met.

Commissioner Kafoury moved to grant the permit until December 31, 1994. Commissioner Hales seconded.

Commissioner Lindberg also supported the motion, questioning whether the other permittees are providing adequate service during rush hours.

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Mr. Nelson said if Council grants this company an SAT permit, the agencies it services need to understand that if TLC provides wheelchair service alone, it is in violation, as that does not qualify as a special medical need. The company should understand it is not getting a permit to operate wheelchair access.

Commissioner Blumenauer said he is a little concerned that staff is defining the services by referring to legislative record rather than having clear, concise definitions in the Code. He said he is concerned about inviting unending litigation when the City begins to enforce the Code because of the vague definitions. He said he believes there is more staff work to be done to clarify this.

Mayor Katz said the Board needs to clearly spell out what SAT means.

Mr. Nelson said the Board will take this back for further study and will report back to Council prior to renewing or granting any other permits.

Commissioner Hales said a distinction needs to be made between protecting the public interest and protecting the business privilege of those already licensed. He said when limiting competition through a licensing process, there is a need to think clearly about public versus private interest. He said he is uneasy about some of the Board's assumptions regarding licensing.

**Disposition:** Overruled; temporarily grant permit. (Y-4; No-1, Mayor Katz)

At 4:40 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

  
By Cay Kershner  
Clerk of the Council