



CITY OF

PORTLAND, OREGON

OFFICIAL
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3RD DAY OF AUGUST, 1994 AT 9:30 P.M.

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

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

Agenda Nos. 1248, 1249 and 1250 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 1240** Accept bid of Trico Contracting, Inc. for Clifgate sanitary sewer for \$3,489,957 (Purchasing Report - Bid 199)

Disposition: Accepted; prepare contract.

- 1241** Vacate N. Kaiser Center Drive, under certain conditions (Second Reading Agenda 1217; C-9840)

Disposition: Ordinance No. 167945. (Y-4)

Mayor Vera Katz

- *1242** Pay claim of Anthony Perasso (Ordinance)

Disposition: Ordinance No. 167946. (Y-4)

- *1243** Pay claim of Sharon and Samuel DuPlessis (Ordinance)

Disposition: Ordinance No. 167947. (Y-4)

- *1244** Amend agreement with Portland State University to change termination dates and increase compensation (Ordinance; amend Contract No. 28611)

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- *1245** Provide Portland Police Data System services to City of Beaverton (Ordinance)

Disposition: Ordinance No. 167949. (Y-4)

- *1246** Agreement to provide photographic services by the Portland Police Bureau to the Washington County Sheriff's Office (Ordinance)

Disposition: Ordinance No. 167950. (Y-4)

- *1247** Agreement with Hook-SupeRx, Inc. for the provision of mail order and retail drug network services to City of Portland benefit plan participants (Ordinance)

Disposition: Ordinance No. 167951. (Y-4)

Commissioner Gretchen Kafoury

- *1251** Increase contract with McBride Architects for roof management services and provide for payment (Ordinance; amend Contract No. 28213)

Disposition: Ordinance No. 167952. (Y-4)

- *1252** Contract with Portland Women's Crisis Line for \$20,400 for assistance to victims of domestic violence and provide for payment (Ordinance)

Disposition: Ordinance No. 167953. (Y-4)

- *1253** Contract with ROSE Community Development Corporation for \$34,000 to support affordable housing development and provide for payment (Ordinance)

Disposition: Ordinance No. 167954. (Y-4)

- *1254** Accept a YouthBuild Planning grant under the Office of Economic Development of the U.S. Department of Housing and Urban Development in the amount of \$99,848 (Ordinance)

Disposition: Ordinance No. 167955. (Y-4)

- *1255** Accept a grant under the HOME Investment Partnership Program of the U.S. Department of Housing and Urban Development for the Portland HOME Consortium in the amount of \$3,356,000 and authorize execution of the grant agreement (Ordinance)

Disposition: Ordinance No. 167956. (Y-4)

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- *1256** Contract with the Northeast Coalition of Neighborhoods, Inc. for \$82,751 for the Youth Outreach Project and provide for payment (Ordinance)

Disposition: Ordinance No. 167957. (Y-4)

- *1257** Contract with the Oregon Human Development corporation for the Oldtown Hispanic Outreach and Education Program for \$75,000 and provide for payment (Ordinance)

Disposition: Ordinance No. 167958. (Y-4)

- *1258** Contract with North Portland Citizens Committee and Kenton Neighborhood Association to provide support for implementation of a target area improvement plan for the Kenton neighborhood and provide for payment (Ordinance)

Disposition: Ordinance No. 167959. (Y-4)

- *1259** Contract with Southeast Uplift Neighborhood Program for \$37,360 to conduct HCD project-related citizen participation activities in southeast Portland neighborhoods and provide for payment (Ordinance)

Disposition: Ordinance No. 167960. (Y-4)

Commissioner Mike Lindberg

- *1260** Contract with Jon Gierlich to create and install a plaza/shelter/seating sculpture at the Matt Dishman Community Center (Ordinance)

Disposition: Ordinance No. 167961. (Y-4)

- *1261** Enter into intergovernmental agreement with Department of Environmental Quality to operate well pumping tests to study groundwater remediation (Ordinance)

Disposition: Ordinance No. 167962. (Y-4)

- *1262** Contract with Dhillon Engineers, Inc. for design of Tryon Creek back-up power for the Bureau of Environmental Services and provide for payment (Ordinance)

Disposition: Ordinance No. 167963. (Y-4)

- *1263** Contract with Boyington Construction to construct the Portal Oaks pumping station modifications project for the Bureau of Environmental Services (Ordinance)

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Disposition: Ordinance No. 167964. (Y-4)

City Auditor Barbara Clark

***1264** Reduce sidewalk assessments (Ordinance; amend Ordinance Nos. 167827, 167873, 157096)

Disposition: Ordinance No. 167965. (Y-4)

REGULAR AGENDA

Commissioner Earl Blumenauer

1248 Accept the HCD street improvement project of N. Buffalo Street from N. Boston Avenue to N. Delaware Avenue as complete, make final payment and release retainage (Report; C-9788)

Disposition: Continued to August 10, 1994 at 9:30 a.m.

1249 Accept the HCD street improvement project of N. Saratoga Street from N. Vancouver Avenue to N. Moore Avenue as complete, make final payment and release retainage (Report; C-9789)

Disposition: Continued to August 10, 1994 at 9:30 a.m.

S-*1250 Authorize the purchase of global satellite surveying equipment through Washington County's RFP#93085P and provide for payment (Ordinance)

Discussion: Cay Kershner, Clerk of the Council, said a Substitute adding an emergency clause had been filed.

Commissioner Blumenauer moved the Substitute; Commissioner Lindberg seconded and the Mayor, hearing no objection, so ordered.

Disposition: Substitute Ordinance No. 167966. (Y-4)

1238 **TIME CERTAIN: 9:30 AM** - Appeal of Portland Skidmore Fountain Market against decision of Noise Control Officer to deny request for variance (Hearing on Appeal; introduced by Commissioner Kafoury)

Discussion: Paul Herman, Noise Control Officer, said this is an appeal of his decision on an application submitted by the Skidmore Fountain Market. He said in response to a complaint, he measured the noise and found several sources in violation, particularly those operating on the premises of the New Market Theatre. He said he spoke to its management and recommended that they either apply for a variance as one way to meet the Code or else terminate the activity. The Noise Review Board considered

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the variance and, because of other associated problems, referred the matter back to him. He wrote a decision with conditions which would have limited the hours and set music levels at 70 decibels in compliance with the Code, except for the Harbor Lights area which was set at 85 decibels. He also asked management to take measurements of the bands which played and Mr. Bennett expressed concern about providing such records on a weekly basis. Mr. Herman said that condition is negotiable as he does not wish to overburden them with an administrative load. He also specified that amplified music could play for one and one-half hours, followed by an equal amount of quiet time, with either no music or acoustic music. New Market indicated they did not like the 50 percent on-off cycle and requested 40 minutes on and 20 minutes off instead.

Commissioner Lindberg asked if there was some reason why the one and one-half hour time cycle was selected.

Mr. Herman said no, although there should be a minimal period which would allow others in the vicinity to play music or perform.

Commissioner Lindberg asked him to comment on a Police report which states that the manager of the New Market Theatre has no intent of making a sincere effort to comply with the City noise Code.

Mr. Herman said he received a complaint and a call about loud band noise after he wrote his appeal. He said he would agree with the Police statement even though he did not take any action when he measured the violation because at that time the appeal had already been filed and he did not think it appropriate to do so without Council consideration.

Russell Bennett, representing the New Market Theatre and the Portland Skidmore Market, said the only variance regarding decibels is the 85 percent in the Harbor Lights area as 79 is already allowed under the Code. He said they disagree with the amount of time allowed for amplified music as they believe a 30 percent reduction is more reasonable. He said they do monitor the Market and respond if the noise goes above the allowable level, if they are made aware of it. He said since they believe things have improved since they began talking about the situation with the Noise Control Officer as they are much more aware of the laws and try to stay within them. He said they believe it is the City's responsibility to gather data and that requiring New Market to do so is too high a demand on their resources.

Commissioner Lindberg asked if the on-off ratio were equal, what amount of time would be best.

Mr. Bennett said they have found that if the intermission is too long, too many people leave and this is detrimental to their business.

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Mayor Katz noted that the recommendation from the Hearings Officer would allow music to be played, it just could not be amplified.

Mr. Bennett said music needs amplification to carry and have an impact.

Commissioner Kafoury said the burden of monitoring may indeed be on the City, not the complainants, and she would not object to striking that requirement. She does believe, however, that the equal time on/off provision should be tried on a temporary basis, with management selecting the length of time, to see if there are fewer complaints.

Commissioner Kafoury moved to remove the self-monitoring provision but retain the others submitted by the Hearings Officer.

Joe Keating, United Community Action Network, said he has been trying to work out a harmonious relationship with the street musicians and Saturday Market. The overriding concern for the musicians has been the music coming from the New Market Theatre and they believe that problem has to be solved first before any agreement can be reached with Saturday Market. He said they believe there has been no noise reduction in the past month at New Market Theatre. On behalf of the street musicians, he asked for denial of the appeal and that the rules be less generous than Mr. Herman is suggesting.

Mayor Katz asked if most of the street musicians were unamplified.

Mr. Keating said some are but they are trying to work out an agreement that the noise meet the 50-foot radius standard.

Susan Saracco, Portland Saturday Market, said Saturday Market is bombarded with noise and she hopes resolution can be reached with both the street musicians and the New Market Theatre. She said it should be New Market Theatre's responsibility to ensure that they are within the noise level because the response time to correct the situation does not occur on the same day. She requested that the requirement to have them do the measurement should not be dropped and for some relief from the noise.

Mr. Bennett said many of the street musicians are setting up on the sidewalk illegally and in violation of City Code. New Market does monitor noise during the day but it is unreasonable to ask them to compile data. He said if the Saturday Market people would come to them rather than go to the City, they will respond immediately.

Commissioner Kafoury said she still wants to remove the requirement that every group has to be monitored and reported to the Noise Control Officer. She said, however, she wants to be clear that it is the Market's responsibility to make sure the music is not too loud. She restated her

motion to uphold the decision, with the exception she had noted.

Commissioner Lindberg seconded.

Disposition: Appeal denied. (Y-4)

1239

TIME CERTAIN: 10:00 AM - Appeals of Mitchell J. Olejko and Jill Wolcott against decision of Noise Review Board to grant variance and modification to the Oregon Department of Transportation for night-time construction for the Climbing Lane project on Highway 26 (Hearing on Appeal; introduced by Commissioner Kafoury)

Discussion: Paul Herman, Noise Control Officer, said two appeals are involved here. The first relates to a decision of the Board granting a variance to the Oregon Department of Transportation (ODOT) to permit up to 100 nights of construction work on the Sunset Highway Climbing Lane project. He said most of his comments would relate to this appeal. The second appeal relates to actions taken by him, as Noise Control Officer, following the discovery that portions of the area considered by the variance are in Multnomah County. The City Attorney has stated that the Noise Review Board did not have the authority to act on the application for those portions outside the City and that the Board's decision relative to that area was invalid. Mr. Herman said it is this action that the second appeal refers to, claiming that the Noise Control Officer has no authority to overrule or amend a decision of the Noise Review Board. He said the City Attorney has responded that since the original Board action was without authority for certain portions of the project area, no decision had been made for those areas and therefore his action cannot constitute an overruling.

Returning to the first appeal, Mr. Herman said the Board decision is still in effect but applies only to those sections, the eastern and western portions, within the City. The center section, the source area where residents live, is in Multnomah County and is judged to be outside the scope of the Noise Review Board. He said appellants state that no public benefit was identified under the Code for a highway construction project counter to the purposes of the Westside Light Rail tunnel. He said, however, public benefit was considered by the Board as it tried to balance the needs of those who regularly travel the highway and the residents of Elm Lane and Highland Parkway. The Board determined that the improved traffic flow would be of public benefit and travellers would be at greater risk the longer the project continued because of congestion and restricted lanes. He noted that daytime work is permissible; the variance was requested for the time between 6 p.m. and 7 a.m. The Board asked ODOT for additional information regarding the costs if night hours were eliminated. ODOT responded that the cost increase would be \$350,000 and would add four months to the duration. The Board asked approximately 35 neighbors at the second meeting if they considered this extension

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preferable and no one answered affirmatively. The Board also concluded that by granting the variance with the conditions, noise impacts would be substantially reduced with the requirement of abatement measures.

Mr. Herman said the Board never considered whether the project was counter to the purposes of the Westside Light Rail tunnel or whether it was adequately treated in the Final Environmental Impact Statement (FEIS) as this was beyond the scope its authority. Mr. Olejko also asserted that expedited review was granted without just cause. Accelerated review was requested by ODOT in accordance with the Code and, on the basis of the information submitted, the Board felt it had received sufficient material to grant the review. However, the accelerated review came to naught because of changes in the the application so it eventually went through the regular review process. At the Noise Review Board hearings many neighbors vigorously contested both the scope and the effectiveness of the meetings held by ODOT with the community. Mr. Olejko also requests that the variance be suspended, charging that false and misleading information was submitted by ODOT representatives resulting in an incomplete factual record and misapplication of City codes. Instead of granting the suspension, the Board instead chose to hold a hearing on the matter at its next scheduled meeting. In order not to deny anyone an opportunity to appeal, the Board extended the time an appeal could be filed following that next meeting. This was done with the approval of ODOT. At that meeting, one Board member indicated that had the information been available earlier, he might have "pushed a little harder for more daytime work" but did not indicate that he would have significantly changed his position. The four remaining members also indicated they would not have changed their earlier votes to grant the variance with conditions. Mr. Olejko also contends that the balancing test required by the Code was misapplied because of insufficient or misleading information, resulting in issuance of a variance that should have been denied.

Mr. Herman noted that Mr. Olejko charges that publication of a public notice in the newspaper as required by Code was not done. Mr. Herman said that is correct but, in considering the request for accelerated review, the Noise Control Office was persuaded that the material submitted by ODOT indicated that the public had regularly been made aware of the changes and of its decision to seek a variance. For these reasons, he felt the need for public notice had already been fulfilled. He said the large number of people at the first Noise Review Board hearing suggests that public notice had occurred even though many neighbors expressed strong feelings about the perceived inadequacy of ODOT's public notification program. Finally, Mr. Olejko states that the Board's decision underestimates the negative impacts on public health, welfare and safety and fails to mitigate them. The decision states that the public's health, safety and welfare are not impacted by the anticipated noise levels even though the work is likely to be clearly audible at intermittent periods. Six

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residential locations were monitored by ODOT and Mr. Herman described the anticipated noise levels proposed during the 100 nights of construction to occur over a two-year period. He said even though the proposed activity will be about as loud as existing traffic noise, the Board did not assume that impacts are minor or negligible and took steps to reduce them to manageable levels. He said the Board does not believe public health is threatened by the anticipated noise levels.

Claude Saker, ODOT, described the scope of the highway project, contending that the extension of the westbound climbing lane between Sylvan and the zoo is needed to address the high accident rate due to merging and weaving. He said this section is characterized by stop and go traffic during the p.m. peak period. He said this contract is not part of the regional action taken in December, 1993, which deferred some elements of the highway improvements associated with the Westside Corridor project. Under this project, Canyon Court would be reconstructed and a permanent sound wall would be built between it and the Sunset Highway to provide sound mitigation for nearby residents. Westgate Drive would also be reconstructed to City standards and realigned to Montgomery Street. He summarized the FEIS public information process conducted by ODOT, which incorporated citizen concerns into the design where possible. Identified issues became part of the FEIS document adopted in October, 1991 by the federal government. All this effort has led to the final design process that is presently underway and due to be bid August 25.

Harry Auerbach, Deputy City Attorney, said in 1991, in order to get federal matching funds, the State legislature authorized a special land use process which designated Tri-Met as the agency to do the final land-use order, with the exception that the local agencies, in this case the City, are still responsible for permits and their enforcement. The noise effects were contemplated in the land-use decision and identified in the Environmental Impact Statement, with the understanding that some mitigation would be necessary. This is Council's chance to review that mitigation.

Commissioner Blumenauer asked about the City's jurisdiction in terms of the totality of the project.

Bill Manlove, Deputy City Attorney, said he concluded that the Noise Review Board does not have jurisdiction outside the City limits. That is not to say the residents who live in that area lack a possible cause of action in court.

Mr. Herman noted that the wings of the project are in the City but the center, the source of the noise, is in Multnomah County. His initial review of their noise regulations found they were not applicable to construction noise but the County disagrees and is reviewing that section. However, it has also indicated it may adopt the City's variance as originally granted as

appropriate for that section of the highway.

Mitchell Olejko, appellant, said, regarding jurisdiction, that the effect of the noise is in the City, noting that the Code provides that no person will permit sound to intrude into the property of another person which exceeds limits. He said the purpose here is to regulate sound and it does not matter where the originators are standing. He argued that if ODOT returns to the original project in the FEIS there will be no night work and all the safety issues will be addressed. He said they are not trying to stop this project but are trying to get ODOT to do what they agreed needed to be done, which is viaduct widening. He said the focus should be on 12 months of freeway movement north, unlimited truck noise variance for 26 months and the placement of 27,000 cubic yards of fill, which involves 2,700 truck movements in the middle of the night. That does not have an effect on public health and safety, probably nothing does. He said Tri-Met and ODOT have already used the variance to perform nighttime construction, although without a variance from the County. The Noise Review Board tried hard but never had the entire project and scope before it, only little pieces. For instance, the Level C noise was never discussed by the Board. He said notice to the neighborhood was minimal and defective.

Mr. Olejko asked that the variance be overturned because the Board never determined what the hardship would be on ODOT and Tri-Met by not allowing night work and returning to the original project. He said the only hardship identified, closure of a lane, is based on a misreading of the FEIS and suggested that ODOT and Tri-Met restudy the project and if they change it, do so in a way without such substantial effects.

Howard Glazer, Goose Hollow Foothills League, said the route ODOT initially proposed is not what they are proposing now, which affects both the noise and the destruction of the Canyon. They are proposing to take much more right-of-way and realign Canyon Court when there is no reason why it cannot remain where it is. He noted that Council recently asked ODOT to delay all highway projects on Canyon until the Light Rail project was completed. He said ODOT should redesign this project as they now plan, instead of building an admittedly more expensive structure, to dump a bunch of fill, requiring a much wider right-of-way. He said Tri-Met is spending at least \$50 million more by taking a tunnel route in order not to destroy the Canyon and now ODOT is doing exactly what Tri-Met was asked to avoid.

Sam Prochovnic, 4927 SW Elm Lane, said they knew they would have to put up with a lot of noise when they bought their house but find ODOT's plan unacceptable. He said there was very short notice of the Citizens Advisory meeting and the Noise Review Board hearing and he believes ODOT misinformed them when they said they could not do any night work without a variance when, in fact, they can if they stay within the City

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Code. He expressed concern that truck tread noise is not part of the variance and also is worried about monitoring, tracking of the 100 days and about the lack of sleep.

Janet Kretzmeier, 9375 SW Scenic Drive Terrace, Citizens for the Canyon Steering Committee member, said the Citizens want to ensure that ODOT adheres to the approved FEIS, including preservation of trees in the Canyon. She said ODOT's plans are undergoing constant revisions totally inconsistent with the original FEIS and will result in the destruction of far too many trees. She said they also do not understand why Tri-Met can provide noise mitigation measures to residents at the tunnel's east or west portals but ODOT is unable to provide them to Elm Lane residents. She asked that the tree removal be stopped and for control of the noise levels associated with widening Sunset through the Canyon.

Carol Routh, 1650 SW Highland Parkway, described her current attempts to sleep due to noise from a generator being used during the light rail project, which she believes will be nothing compared to the upcoming 100 nights of construction. She said the original FEIS did not include night construction and she is taken aback about the changes that have been made.

Patricia Evans, 5805 SW Taylor St., said ODOT keeps changing things and did not really pay attention to neighborhood concerns. She said light rail should be given a chance first before these highway improvements are made as they may not be needed then. She too charged that what ODOT is presenting now is not what was described in the past.

Jocelyn Cox, 8030 SE 34th Ave., Noise Control Board Chair, said the Board's role is not to judge the merits of a construction project or whether it should proceed. Their job is to determine whether a variance from the City's noise code should be granted to a construction project, based on the benefit to the public. The Board asked whether granting a variance will shorten the duration sufficiently so that a true benefit to the public is derived. Duration affects such things as the cost to the public, the amount of time nearby residential properties are exposed to allowed daytime noise impacts and the safety of commuters using the Sunset corridor due to narrowed lanes, interrupted traffic flow, etc. One question for the Board was whether the City should be concerned for the safety of Sunset commuters. The Board said yes and was sufficiently concerned about the whole issue of duration that it required ODOT to return with some very specific answers to its questions. They subsequently were persuaded that shortening the duration of the project by granting the variance would be a public benefit, providing greater safety and economy if certain conditions were met.

Linda Keener, 1812 SW Parkview Court, said they knew there would be

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noise from the highway when they moved here but are concerned about the additional noise from construction. She said she heard that in some areas help had been available for soundproofing, etc.

Maria Corvallis, 1800 SW Highland Parkway, complained about the response she received when she called the hotline number she was given by ODOT to call about noise complaints.

Barbara Devine, 2276 SW Humphrey Park Road, said ODOT received federal money on an FEIS statement submitted over a year ago and wants to change its plan in midstream. This is unfair and should not be permitted as the changes have severely impacted different areas. If ODOT wants to change the original plan it should work with citizens to find a happy medium.

Paul Owens, street musician, noting that there is only one Noise Officer for the entire City, asked Council to consider adding another Officer.

Helen Preston, 4786 SW Elm Lane, contrasted traffic on Highway 26 in 1978 when she moved to her current address and today when the constant flow of traffic consistently exceeds 55 miles and hour and the current noise level already exceeds both City and State standards. She called for construction of a sound wall on the north side of Highway 26 and also objected to the proposed removal of the trees.

George Van Lanen, 1712 SW Highland Parkway, said he trusts the City to deal with these matters fairly. He said the City faces an incredible amount of competition from the surrounding areas and there could be negative ramifications from how this project is handled.

Claude Saker, ODOT, explained why ODOT needs to proceed with the plan. The basic elements of the FEIS speak to widening the north side of Sunset as well as widening the viaduct structures, two of which are in this portion of Sunset. The FEIS document also mentions another way to do that widening, by adding fill and using a retaining wall from Highland Parkway to Westgate Drive. When ODOT went into project development after the FEIS, they found the most economical way to widen the highway was to add onto the existing structures. However, the existing structures were found not to meet the present seismic design requirements and could not be economically upgraded. They then compared the cost of replacing the viaducts with filling and the cost for replacement was very high, approximately \$7 million dollars as compared to \$3 million for filling. To do the fill they found they would need to realign the existing travel lanes in the Westbound direction and close a traffic lane. Because of the traffic demand, they concluded that closure of a lane is not possible during the day. Mr. Saker said they do not view use of fill rather than widening the viaducts as a change because it was described in the FEIS. He described

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the difficulties that would result if they are unable to perform this work at night. He said the impacts on noise and the need for mitigation were also recognized in the FEIS, although not identified specifically for each section of the corridor.

Commissioner Lindberg noted the decision several months ago to delay certain highway projects until after completion of the light rail. He asked if the neighbors understood that the climbing lane was a component of that, not one of the highway projects to be delayed.

Mr. Saker said ODOT did discuss the possibility of delaying this particular project. The decision was made in December when the region decided to delay other portions of the project and advance the climbing lane component as soon as possible.

Commissioner Lindberg asked if this was a major change since the initial approval, as the neighbors contend.

Mr. Saker said they do not see this as a major change as the FEIS talks about widening or replacing the viaducts, describing the widening as building a fill wall from Highland Parkway to Westgate Drive. That is what the project will do. There is documentation in the FEIS which points to the existing viaducts and calls for viaduct widening, noting that this can be done in one of several ways, including the placement of fill. He said there are only two changes from the original FEIS which were not called for in the original FEIS. The first concerns a 6-foot sidewalk on Canyon Court where instead, ODOT is providing a 5-foot sidewalk. The second provides for a permanent sound wall and safety fence as well as compensation for seven homes along the south side of Elm Lane.

Commissioner Lindberg asked whether ODOT had prepared a mitigation plan for the noise impacts, similar to Tri-Met's, which includes investments in individual homes.

Mr. Saker said they hired the same noise consultant used by Tri-Met and made their request for a variance on the basis of his measurements. He said ODOT policy does not allow them to physically improve private homes because of construction noise. Nor are federal funds available for that. Instead their policy is to use sound barriers and muffling devices to lower the sounds. That is the mitigation measure they have proposed on this project.

Commissioner Lindberg said there must have been different regulations for Tri-Met.

Mr. Saker said yes, the Tri-Met funding comes from the Federal Transit

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Agency while ODOT's funding comes from the Federal Highway Administration.

Commissioner Lindberg said when the City decided to do the tunnel they were trying to avoid degradation in the Canyon. He said it would be a tragedy, if after that investment, there were negative environmental impacts. He asked if ODOT is convinced that environmental degradation will not occur.

Mr. Saker said they have been looking very closely at the impacts and the amount of acreage that will be affected by both the zoo project and this one and comparing it to the anticipated impact in the FEIS. He said they have found the acreage they will impact is much less than was anticipated in the FEIS.

Commissioner Lindberg asked if he had statistics about the environmental impact if light rail line had been above ground.

Mr. Saker said no, but it was one of the alternatives in the FEIS.

Commissioner Lindberg asked him why such a significant breakdown in communications between ODOT and the neighbors seems to have occurred.

Mr. Saker said he is not quite sure but perhaps what ODOT can and cannot do may not have been relayed to citizens early on. He said ODOT has recognized the impact specifically on Elm Lane residents and met specifically with them,

where most of the impact is. He said he has provided a list of 17 meetings with neighbors in that area beginning in January, 1993.

Commissioner Lindberg suggested that people from a larger area seem to believe they are being impacted by the noise also.

Mr. Saker said when they decided to pursue the filling instead of widening the viaducts, they did discuss with the citizens the need to do night construction, including ODOT's decision to pursue a variance rather than asking the contractor to do it, as is customary.

Mayor Katz asked if the noise level on the Tri-Met piece is the same as is being requested for this project.

Mr. Saker said he believes the noise levels during construction are higher than what Tri-Met was granted at night.

Mr. Herman said in general the levels granted for this project are the same or tighter than those granted Tri-Met. He said the Board specified that

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Stage Two construction on this project may contain up to 66 nights of construction between 6 p.m. and 7 a.m., provided noise levels do not exceed 70 dba. He said it is difficult to translate from one project to the other because the measurement point varies and changes a whole slug of things. He said this one did not get any special treatment.

Mayor Katz said it would appear, in terms of noise levels for residents at night, that this was higher than Tri-Met's.

Mr. Herman said the answer seems to be yes, according to the comments of others.

Mayor Katz asked Mr. Saker if he thought the changes fall within the current FEIS. She asked if the road they were showing the community originally is different from what is being done today.

Mr. Saker said they did not make a change to the realignment of the road. He said the change they have made is to add a permanent sound wall and provide a safety fence.

Mayor Katz asked him how he described this stretch of the Canyon when he initially talked to residents of the area.

Mr. Saker said they described it as widening to the north side of Sunset, addition of a climbing lane and reconstruction of Canyon Court further to the North to accommodate the widening, raising the elevation of Canyon Court in order to connect it to Westgate Drive. At that stage they told the neighbors they would study the physical widening of the existing viaducts but when they determined they were seismically deficient and would have to be replaced, they so informed the neighbors.

Mayor Katz asked if they informed the citizens or engaged in the kind of public discussion this community is used to.

Mr. Saker said they held a public meeting February 2, 1993 with Elm Lane residents at which time they discussed the staging of construction and the need to do night time construction. In March they met with two members of the Citizens for the Canyon and in April met with the Steering Committee to discuss the project.

Mayor Katz asked if it was correct that ODOT originally was not planning to make these changes but had changed its mind to accelerate construction on the climbing lane. She said the City understood there would be no highway construction until the light rail was completed.

Mr. Saker said in November the region finalized its decision to defer some elements of the highway improvements. Prior to that there were

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discussions to defer the westbound climbing lane construction but the region recognized that the federal funding attached to the Westside corridor is at risk and that is why Metro and ODOT decided to advance the Climbing Lane project as soon as possible. Other elements of the highway improvements were deferred until after 1998, such as the eastbound widening of Sunset from 217 to Sylvan.

Commissioner Blumenauer said Council is on record as responding both to the funding shortfall and not wanting the Canyon to be a disaster zone and further compound problems in the neighborhoods. Council is on record favoring deferment of as much of that process as possible. ODOT was unwilling to do that and most of the people in the region felt that the problems associated with current traffic hazards in the Canyon necessitated the climbing lane.

Mayor Katz asked about ODOT's existing policy that does not allow for noise mitigation for private homes.

Mr. Saker said it is ODOT policy, not State law.

Mayor Katz asked what the hardships to ODOT would be if the appeal were approved.

Mr. Saker said they would have to do the work during daylight hours, closing a lane on Sunset. He said ODOT is committed to maintaining, between the Vista tunnel and Sylvan, a minimum of three lanes during peak hours and to a minimum of two lanes during non-peak hours. The FEIS also states that other measures may be needed so as not to divert traffic to local streets and that the corridor remain a functioning transportation corridor during construction. Since current traffic volumes on the Sunset are already at 99 percent capacity in the Westbound lanes in the morning, the capacity of the existing three lanes will be constrained. The other hardship would be the economic cost.

Mayor Katz said Tri-Met is working at night, so it is a matter of looking at a different level of noise acceptance.

Mr. Saker said they have looked at different scenarios, such as only delivering the fill at night, but that will extend the time line and increase the cost.

Mayor Katz asked what ODOT would do if Council grants the appeal. If ODOT's policy not to mitigate the sound for residential properties is not changed, exactly how long would it extend the project and how much would it cost.

Mr. Saker said working only from 6 p.m. to midnight would increase the

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cost by approximately \$350,000 and would also increase operation time by four months.

Commissioner Blumenauer said Council needs to focus on three issues: 1) the cost; 2) delay and; 3) effects on other City neighborhoods. He said the City is already seeing diversion into the neighborhoods, noting an 11 percent increase in traffic on Cornell. He said the record is not adequate to show what a month's or six month's delay will mean in terms of what happens on Burnside, Patton and other streets as traffic is diverted.

Mayor Katz asked Mr. Herman about not including truck noise in the variance.

Mr. Herman said truck noise is under federal control and the City is preempted from dealing with that.

Mayor Katz asked what ODOT would have to do if the level of noise were kept to the same level granted to Tri-Met.

Mr. Saker said although he does not know exactly what the Tri-Met levels are, if 50 or 55 decibels were the limit ODOT would not be able to do the work at night. With regard to ODOT's mitigation efforts compared to Tri-Met's, he noted that their work covers a three-year period while ODOT's work is only for 100 nights. ODOT's existing policy not to physically improve individual homes to address noise impacts relies on the use of other measures that are effective, such as temporary sound barriers, fitting equipment with noise suppressants, etc. He said they will apply the City's noise abatement criteria to those sections that are in Multnomah County as well.

In rebuttal, Mr. Olejko said Plan One had a construction time of 16 months, Plan Two, 15 months and Plan Three has 26 months. That is a 60 percent increase in the time traffic will be affected. The movement of the freeway into the neighborhood originally was to last four months and is now scheduled to last 12 months. He also contended that there is no material difference in cost. Mr. Olejko said at the meetings with ODOT, neighbors pointed out to them time after time that the federal highway administration has a specific provision that states that if normal mitigation measures are not appropriate then they can make improvements to private dwellings the same way Tri-Met did in Goose Hollow. He asserted that this project was not described in the FEIS and the public has not had proper input.

Mayor Katz asked what he would recommend as an alternative.

Mr. Olejko said he would recommend going back to the original proposal calling for improvement of the viaducts and really explain why this could not be done rather than going into a major construction program. Also find

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out exactly what the hardship to ODOT is.

Commissioner Lindberg said he recognizes the dual obligations to improve the transportation system and be concerned with what is happening in other neighborhoods while also protecting the quality of life for these residents. He said it does not seem to him as if enough mitigation has occurred and more could be done. Also, too many people feel they have not been listened to, indicating there is a problem. Rather than uphold the appeal, he suggested that ODOT go back and pursue additional mitigation measures.

Mayor Katz agreed. She said the City owes it to the community to resolve these contentious issues, as was done with Tri-Met. She said she sensed that kind of work had not gone on within this stretch of the project and that mitigation also needs to be further explored. She said to bar work at night is probably not an option but some agreement could be reached with the community as to what needs to be done by ODOT to make this an acceptable project without large additional costs or time delays.

Commissioner Kafoury said the issue of the length of construction time is a very good one and she is confused about why it is taking so much more time. She said the impact on other neighborhoods also needs to be addressed.

Mayor Katz said she is not satisfied yet that a hard look has been taken at how this section of the project could be mitigated.

Commissioner Blumenauer said perhaps Council could ask ODOT to develop its version of the matrix presented by the appellants. He noted Mr. Herman could not give Council an answer about whether some of the noise standards were different for the tunnel project versus the road project. He said he is concerned that there are defects in the record and if this is not in compliance with FEIS, ODOT should have an opportunity to respond to the matrix and talk about what the impacts will be on contractor. What will the consequences be if this does not go to bid as scheduled? He suggested continuing this a week to get that information.

Mayor Katz agreed that she heard two conflicting viewpoints but said she is not sure if Council will get where it wants to go if just ODOT clarifies the record.

Mr. Auerbach suggested that it is normally applicant's responsibility to provide enough factual information to allow the Noise Review Board to make a reasonable decision. He said part of the frustration in this case results from the lack of detailed, specific information and, if Council feels the record is inadequate to make a decision, the logical thing would be to send it back to the Noise Review Board for another hearing and allow the

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applicant to provide information to justify the cost, delay and what mitigation measures can or cannot be performed.

Commissioner Lindberg said the Noise Review Board in its decision states that there are so many reasons why this freeway has to be improved that they did not want to stop the project. He read a portion of their decision, noting that the impacts may be disproportionately felt by nearby residents without extensive mitigation. He said if this is sent back, more details are needed about what those mitigation measures might be.

Mayor Katz told Mr. Saker she is concerned that ODOT will dig in its heels because of its Statewide policy. She said prior to going to the Noise Board it would be wise to meet with the community and get some assistance from them in coming up with some recommendations that would make things a lot better than what Council heard today.

Mr. Saker said he is very concerned about the matrix submitted by Mr. Olejko as it does not reflect the design which has evolved in the last year and a half as ODOT has discussed it with the citizens. He said he would like to make available additional information to help Council make its decision.

Mayor Katz said ODOT needs to get beyond simply providing information to citizens and engage in real interchange so that everyone can get to a "win-win" outcome from the very beginning, one that does not have a major cost overrun, extension of time or a serious impact on Cornell and other City roads.

Mr. Saker said he understood.

Mayor Katz asked if Council wanted to remand this back to Noise Review Board and also recommend that ODOT work with a group from the community.

Commissioner Kafoury said she would prefer not to remand it as she believes the Noise Board has given Council a very thoughtful interpretation of the appeal.

Mayor Katz said there has to be a forum where the Council can respond to ODOT's matrix.

Commissioner Kafoury said she does not want to set up a long process if it is relatively clear what needs to be done in terms of denying or accepting the appeal. She moved that it be set over one week to give ODOT time to respond and set up a meeting with the neighborhood.

Mr. Auerbach said the Noise Review ordinance provides that Council may

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consider new matter and may affirm, modify or remand the decision. So Council does have the legal authority to keep jurisdiction and continue the hearing for a week, presumably to gather more information needed to make a decision. He suggested that ODOT clarify the connection between the variance and the bid opening.

Mr. Saker said ODOT has inserted the variance requirements into the bid specifications, something they have not done before. If those conditions are in the contract they can be enforced. The specifications include sound barrier requirements, certification and fitting of construction equipment, etc. The contract can go to bid as planned but if additional conditions are placed on it then that becomes a liability on ODOT.

Mr. Auerbach asked if the bid specifications include the 100 nights of construction work.

Mr. Saker said yes.

Mayor Katz said she does not want to delay the bid for a long time but if this comes back before there is time to work with the community, Council may not give ODOT a green light to go at all.

Mr. Auerbach said if Council changes the decision of the Review Board so ODOT cannot work at night and they already entered into a contract, then they would have to enter into change orders.

Mr. Saker said he needs to discuss that with ODOT and see if they are willing to take on the added risk.

Commissioner Kafoury suggested coming back in two weeks.

Mayor Katz said she does not get a sense that Council is willing to grant a green light to work all night at perhaps much higher decibel levels than is allowed on the Tri-Met project.

Commissioner Kafoury said Council should try to give ODOT a tentative decision before they go to bid.

Mayor Katz said if ODOT wants a unanimous favorable decision they need to be a little more pliable in resolving this issue.

Disposition: Continued to August 17, 1994 at 9:30 a.m.

Mayor Katz said Item 1271 will be considered now, noting that it is a communication from the Forestry Commission to address Council and not a full public hearing.

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Commissioner Charlie Hales

1271

Request from Urban Forestry Commission to address Council regarding the impact of the highway elements of the West Side Light Rail project on trees in the Sunset Canyon (Communication)

Discussion: Bill Naito, Chair of the Urban Forestry Commission, said the Commission was seeking some direction from Council as it has been bombarded by the neighborhood about cutting down 200 trees. He said ODOT never came before the Commission three years ago when this was planned but appeared about two months ago for the first time. Neighbors are screaming at the Commission, which is unsure about its role.

Mr. Auerbach said ODOT has been coming to Commission meetings recently to present reports on the Tree Preservation element and gain approval.

He said the Commission has been trying to determine exactly what it is supposed to do. He said it is complicated because when Tri-Met adopted the land use Final Order, there was no final FEIS, only a draft. However, the land use decision contemplated that many design elements and the mitigation of adverse impacts would have to be fleshed out during subsequent review and through permit approvals by the affected local governments. It specifically referenced the intergovernmental agreement Council authorized in 1991 that provided that the City would have some level of review, including City Forester review of the impacts on the scenic resource protection plan. In the final analysis, the Forestry Commission ought to review ODOT's plan to minimize the number of trees removed and maximize reforestation. He said ODOT is becoming more receptive to this and Council can hopefully give the Commission more specific guidelines on what they need to do.

Mayor Katz asked if this will be coming to Council in a few weeks.

Mr. Auerbach said it is unclear that there is any requirement that this come to Council. If such oversight is desired, Council should direct the Commission to make a recommendation and return it to Council.

Commissioner Blumenauer said there will be a City-State agreement coming to Council within a month calling for payment to the City for some of the permitting.

Mayor Katz asked if there would an amendment to the land-use final order coming to Council.

Mr. Auerbach said he is not aware of that but noted that a review of the intergovernmental agreement is called for every two years. He said that may provide an opportunity to add more specific requirements.

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Mayor Katz said it would be very valuable for the Commission to review this and make some recommendations.

Mr. Naito said the Commission would like to do that and believes ODOT will work with them to reduce the number of trees taken out.

Jerome Kasting, US Forest Service, said he reviewed the FEIS in respect to removal of the trees and came up with a two-page report that identifies specific purposes and addresses ODOT's tree preservation plan. He presented that for the record, noting his conclusion that ODOT has not provided substantial information with respect to the tree removals.

Mr. Naito said the Commission's experience with ODOT has been similar to what the Noise Review Board encountered.

Mayor Katz asked if someone from Commissioner Blumenauer's office or the City Attorney could facilitate this process.

Mr. Auerbach said he would be working with the Forestry Commission to help make that happen.

Commissioner Blumenauer said Transportation has routinely sent staff to attend the meetings with Sylvan area residents and he assumes that will continue.

Mr. Auerbach said part of the Forestry Commission's challenge has been to get hold of all the governing documents. He agreed to work on both the noise and tree issues.

Disposition: Referred to Urban Forestry Commission.

All other items on the Regular Agenda were continued to the 2:00 p.m. session.

At 12:25 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3RD DAY OF AUGUST, 1994 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Kafoury and Lindberg, 3.

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

Commissioner Earl Blumenauer

1265 Consider vacating portions of NE 4th Avenue, NE 5th Avenue, NE 5th Place and NE Suttle Avenue at the request of Richard Mayea Construction, successor to Reede Development (Hearing; Report; C-9852)

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

***1266** Create a City Employee Trip Reduction Incentive Program (T.R.I.P.) for non-represented City employees (Ordinance)

Discussion: Commissioner Blumenauer said this is the first step taken in response to Council direction given during the budget hearings.

Rich Cassidy, Office of Transportation, said the City has been quite actively promoting alternatives to driving to work within the business community for the last four years in partnership with Tri-Met and business organizations. Downtown businesses are currently offering discounted bus passes to over 9,000 employees. This pilot program for approximately 900 non-represented employees allows the City to begin "walking its talk". It also allows the City to begin to meet new regulations soon to be implemented, including meeting the State's Goal 12 agenda which requires a reduction in vehicle miles travelled by 20 percent over the next 30 years. Finally, the City is forming transportation management associations (TMAs) to look at solutions that strengthen transit, manage parking and help access large employment centers.

Mr. Cassidy said the three programs will use a "pass by mail" system operated by Tri-Met, designed to reduce administrative hassles and costs. He described the programs, noting that the Emergency Ride Home Program offers a safety net for those who say they drive because they need to get home in case of an emergency. He said they are disappointed that, because of an IRS glitch, they do not yet have an incentive program for bike and walk commuters, but hope to add that element later. He noted that, while this program applies only to non-represented employees, Transportation

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expects other employees to ask their union representatives to participate also.

Mayor Katz asked about how this is monitored so it will not be abused.

Mr. Cassidy said they have not heard of any abuses of other similar programs, but do have a way to audit the program. He said they will issue a report on their progress in six to 12 months.

Margie Harris, Tri-Met Marketing Director, urged support for this program, which offers employees an incentive not to drive to work alone and gives people an array of choices to get around. Tri-Met's experience with participating businesses has shown that this is the single most effective way to change people's behavior regarding commuting. This program will address and benefit an estimated 44 percent of City employees who currently drive to work alone and send a message about how they can make their community better environmentally. This is a comprehensive approach which allows a full range of mobility options. She explained how the emergency ride home program works, adding that their experience has been that the program is underutilized but does provide a safety net.

Disposition: Ordinance No. 167967. (Y-4)

- *1267** Agreement with Tri-County Metropolitan Transportation District of Oregon to implement City participation in Tri-Met's Emergency Ride Home Program (Ordinance)

Disposition: Ordinance No. 167968. (Y-4)

- *1268** Agreement with Tri-County Metropolitan Transportation District of Oregon to implement City participation in Tri-Met's Carpool Check Program (Ordinance)

Disposition: Ordinance No. 167969. (Y-4)

- *1269** Agreement with Clark County Public Transportation Benefit Area Authority to implement City participation in C-TRAN's Transit Check Program (Ordinance)

Disposition: Ordinance No. 167970. (Y-4)

- *1270** Agreement with Tri-County Metropolitan Transportation District of Oregon to implement City participation in Tri-Met's Transit Check Program (Ordinance)

Disposition: Ordinance No. 167971. (Y-4)

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Commissioner Mike Lindberg

- *1272** Continue negotiations for the purchase of two permanent sewer easements required for construction of the Burnside Central sanitary sewer system project, begin condemnation proceedings, if necessary, and obtain early possession (Ordinance)

Disposition: Ordinance No. 167972. (Y-4)

City Auditor Barbara Clark

- 1273** Add auditing provisions to Model Agreement for Services language to promote contractor accountability (Resolution)

Disposition: Resolution No. 35298. (Y-4)

- 1274** Assess benefitted property for the costs of construction of the NW Doane Avenue and NW St. Helens Road sanitary sewer system (Second Reading Agenda 1237)

Disposition: Ordinance No. 167973. (Y-4)

- 1275** **TIME CERTAIN: 2:00 PM** - Appeal of Powellhurst-Gilbert Neighborhood Association against Hearings Officer's decision to approve application of the Bureau of Parks and Recreation for the development of Ed Benedict Park located at SE Powell Blvd. between SE 100th and SE 105th (Hearing; 94-00183 MS)

Discussion: Ruth Spetter, Senior Deputy City Attorney, outlined the procedural rules to be followed.

Mike Hayakawa, Planning Bureau staff, said the appellants concerns include: 1) keeping the 102nd right-of-way open; 2) that the park will not be built until 1995; 3) failure to submit the required Kelley Butte Master Plan; 4) materials in the record which state that if 102nd is vacated certain additional right-of-way acquisitions and vacations would have to occur; and 5) safety issues. This Conditional Use Master Plan was a requirement, along with the Kelley Butte Master Plan, as part of the zone change and map amendment Council approved several years ago.

Mr. Hayakawa showed slides of the site and noted the applicable approval criteria. The Hearings Officer and Planning staff were satisfied that all the criteria were met and Transportation staff also stated their belief that 102nd should remain open. Parks and Recreation added skinny streets to the design in order to slow down traffic; the Hearings Officer added a condition requiring a fence near the intersection of 102nd and Powell, forcing pedestrians to use nearby crosswalks.

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Mr. Hayakawa said the safety and transportation issues were carefully examined by Transportation staff and the Hearings Officer and both believe the layout as proposed is consistent with policy. They also have no problem with the proposed phasing of construction over a five-year period. He noted that the Bureau of Planning accepted this appeal on behalf of the Powellhurst-Gilbert Neighborhood Association and a few weeks later other neighbors questioned the validity of the Board's vote. He said the Bureau's understanding is that the Board voted to support the Master Plan with the condition that 102nd Avenue be closed but that a specific vote to appeal the Hearings Officer's decision was not taken. He recommended that Council go ahead and hold the hearing to deal with the substantive issues and how the criteria are met.

Commissioner Lindberg asked if there is a specific plan to construct a street on 102nd and if there is money in the budget to do that.

Mr. Hayakawa said he believes building the street is an Office of Transportation requirement. He showed slides, noting that the Park Master Plan was required when the City approved locating the 9-1-1 facility here in 1991.

John Dixon, 3906 SE 102nd, 97266, representing the appellant, said his concern is for the safety of children attempting to cross 102nd Avenue adjacent to Powell to get to the restrooms and concession stands. He asserted that a Parks Bureau representative said at the Powellhurst-Gilbert Neighborhood Association meeting that they did not anticipate too many fatalities. He said even one is too many. He the safety of children should be the first priority and taking out 102nd will allow residents on 102nd to use a traffic signal at 104th which will save lives. He proposed to upgrade Bush Street instead of 102nd and presented a cost analysis and description of how this could be done.

Aubrey Baker, 3918 SE 102nd, 97266, cited a traffic accident on 102nd many years ago which resulted in Multnomah County installing 25 mile-per-hour speed limit signs at both ends of 102nd. That, plus increased surveillance for a limited time, reduced speeds for about one year but in the next 34 years, every driver between Holgate and Powell have gotten away with bad driving habits on that street. This year there have been several high speed police chases down 102nd. He said the proposed Plan would not inhibit such traffic from continuing and for this reason he believes 102nd should be vacated and the alternative route across Bush Street from 102nd to 103rd be used instead.

Albert Clark, 3147 SE 129th, 97266, said in the appeal there are four letters from neighborhood associations supporting taking 102nd out of Ed Benedict Park for safety purposes. He said he has found no other City park that has a road running through it and it is not needed here either. He

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said Kelley Butte Park was given to the City in 1954 for park use only and 40 years later nothing has been done, although it has been used to build a bomb shelter. He said a majority of area residents want 102nd taken out of the Park, even though this may not be popular with the few who live right next to it.

Zari Santner, Bureau of Parks and Recreation, said a Master Plan was developed in 1988 as a condition of transfer of the property from ODOT to the City and a second one, which is included in the conditional use permit, was necessary because of the sale of a portion for the 9-1-1 facility. Both plans show 102nd and 104th remaining open as through streets. In the process of developing the plans, vacation of some or all of the streets was considered by the staff and citizens advisory committees. Closure was considered desirable but, given existing Transportation policies and the fact that there was not unanimous agreement among the citizens living around the Park, staff came to believe the closure of 102nd would be a losing battle. People who live on 102nd are for closing 102nd but those living on 104th oppose it as they believe it will increase traffic on their street. Rather than closing 102nd, the Bureau tried to design the park and the crossings in a way that minimized safety problems.

Ms. Santner described the design measures employed, including reducing the width to 20 feet, tightening the turning radius at the intersection of 102nd and Powell, using bumps on the pedestrian crossings and installing a low fence on both sides of 102nd near Powell to discourage pedestrians from crossing in non-designated areas. Street landscaping will contribute to making 102nd look more like a park road also. Staff believes these measures will significantly reduce safety concerns. She said if the vacation of 102nd were approved at this point, it would delay the project by about 12 months and increase the cost of non-park improvements, which means that other park improvements would have to be eliminated. She said she believes the neighborhood associations support the Master Plan, adding that they have assembled more than \$1 million from various sources to pay for improvements to this Park. Although full implementation of the improvements is not possible at this time because of its \$2 million cost, completion of Phase 1 will create a full service park similar to many other neighborhood parks.

Commissioner Lindberg asked what average speed is anticipated on 102nd.

Ms. Santner said Transportation staff is willing to reduce the speed limit in this section. She said with the raised bumps, the maximum speed is 30 miles per hour, and because of other design elements, they believe speed will be reduced even more. She described how the pedestrian crossings have been designed.

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Commissioner Lindberg said Parks staff are quoted as saying there will only be some fatalities.

Ms. Santner said she did not say that. What she said was that since Transportation staff disagreed about the closure, the Park should be built and if there are safety problems, then maybe they could convince Transportation and Council that closure was needed.

Mayor Katz asked her if Parks would prefer the closure.

Ms. Santner said yes, adding that there was not unanimous agreement within the community. She said it was explained to them that closing one street would impact traffic flow on other streets and that the entire district needs to be considered. She said if they find there are still speeding and crossing problems, then they will request closure.

Commissioner Blumenauer asked her what would happen if 102nd were closed.

Ms. Santner said the vacation process would take about 10 to 12 months and they would also have to connect 102nd to Bush Street, rather than dead ending it. There are two properties east of 102nd, one of which is privately owned and would need to be acquired in order to make this connection, both delaying and increasing the cost.

Mayor Katz noted that if Parks or neighbors wanted to close the street, they could go through the vacation process at some future date.

Bonnie Banks, 3809 SE 104th, 97266, said the people on 102nd knew the Park was coming in and had plenty of time to give their input earlier in the process. If 102nd were closed, Bush would have to be pushed through from 104th to 102nd. She asked if it is worth having an individual lose their home for closure of a street with no guarantee that there will be no accidents as a result.

Cheryl Guthrie, 3808 SE 103rd, 97266, said she has a problem with closing 102nd and pushing Bush through because it does not show any crosswalks, traffic lights or safety measures. She said the private property would have to be purchased or there would be serious blind spots and she does not see how this would resolve safety problems in the Park. She said this Park needs to be built now and not delayed any longer.

Keith Guthrie, 3808 SE 103rd, said he is pleased with the safety measures proposed for 102nd which should stay as it is as no one knows what the traffic flow will be until the park is finished. Those issues could be addressed later. Right now the Park is a dust bowl and a dump and the neighbors voted three times in favor of going with the plan as it is. He said

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there are many more people not here today who also support this.

Richard Jacobson, 4154 SE 103rd, 97266, said this Park was planned by residents and the Powellhurst-Gilbert Neighborhood Association, which also approved it. If 102nd is closed, the traffic situation will move over to Bush, not be alleviated. He said he does not see the correlation between Ed Benedict and Kelley Butte Park. He said this appeal is what is delaying the park and no more time should be wasted.

Mayor Katz asked if he believed the ideal situation is to close both 102nd and 104th.

Mr. Jacobson said most Citizen Advisory Committee members felt only 102nd should be retained as it would provide necessary access to Powell Boulevard. They agreed that SE Bush should remain as a discontinuous street to discourage cruising.

Ken Brummer, 4409 SE 103rd, 97266, agreed with Mr. Jacobson and said since the Powellhurst-Gilbert people were involved in this process from the very beginning, he does not understand the sudden reversal. He said if 102nd is closed, traffic feeding off Holgate will park on the side streets even if they do not go through. He said he has no problem going with the Master Plan adopted in 1988.

Rex Paschall, 3807 SE 103rd, said he would lose his house if 102nd were closed and the road was pushed through another way. He said there never has been any particular safety problem on 102nd, noting that there is speeding on all the streets, most done by the neighbors themselves. He added that the Neighborhood Association has voted many times to support this plan and it should not be delayed any longer.

Ned Hoffas, 3826 SE 103rd, said he attended three meetings at which the majority vote was in favor of keeping 102nd open. He said eliminating the left turn from Powell onto 102nd would increase safety.

Ginger Byrnes, 3738 SE 101st, 97266, said transients are currently camping out in the park now and the park needs to be built to stop some of the negative activity that is going on. She asked why Ms. Snider, the owner of a derelict home across the street, is still living on the property.

Harry Auerbach, Deputy City Attorney, updated Council on condemnation of the Snider property, noting that a settlement had been reached through mediation but unfortunately the property owner did not go through with it and the City now has to begin condemnation proceedings, which may take between eight and 12 months.

In rebuttal, Mr. Dixon said all the residents on 102nd signed a revised plan

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calling for certain changes on 104th and allocated parking on the weed patch. He said it is a matter of public record regarding Ms. Santner's statement about traffic fatalities. He criticized various provisions in the current Plan and explained why those in the revised plan he submitted are superior. He said he has no children but if he can save one child's life his efforts will be worthwhile.

Commissioner Lindberg asked if Council could direct that the street be designed to limit traffic to a specific speed limit.

Glen Pierce, Office of Transportation, said typically the speed limit on a local street such as this would be 25 miles-per-hour. He said the plan proposed by the Parks Bureau includes devices that will impede speed.

Commissioner Blumenauer asked about speed limits on streets in Washington and Mt. Tabor parks, which are park streets.

Mr. Pierce said those are not dedicated public right-of-ways like 102nd. They are owned by the Parks Bureau.

Commissioner Blumenauer said he is satisfied with the Plan now but at some point Council could call for vacation.

Mayor Katz asked what would the implications be if at some point they decided to turn over 103rd to the Parks Bureau.

Mr. Pierce said since it is a dedicated right-of-way you have to go through the street vacation process.

Commissioner Blumenauer said if it is no longer a public right-of-way, you can do anything you want, such as putting up gates.

Mr. Auerbach said the only limitation is whether that can be done consistent with the City's traffic management policies.

Mr. Pierce said you would still need to address connectivity.

Commissioner Kafoury moved to deny the appeal and uphold the Hearings Officer's decision. Commissioner Lindberg seconded.

Mayor Katz said the Park needs to be built. She expressed concern about traffic in parks generally but said she is satisfied by the notion that if all the mitigation measures do not work, there is another avenue to pursue.

Disposition: Appeal denied. (Y-4)

At 3:30 p.m. Council recessed.

AUGUST 4, 1994

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 4TH DAY OF AUGUST, 1994 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Kafoury and Lindberg, 3.

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

1276

TIME CERTAIN: 2:00 PM - Adopt a policy statement on the management of cultural resource records (Resolution)

Discussion: Bob Glascock, Project Manager of the Planning Bureau's Cultural Resource Project, said this resolution was prepared and reviewed by the Project Advisory Committee composed of business, tribal and neighborhood representatives. He noted that a year ago Council charged the Planning Bureau to prepare a cultural resources protection plan for the Columbia South Shore and that the Planning Commission recommendation to Council on this Goal 5 project is expected in time for the 1995 building season. At the same time Council also directed the Bureau to encourage stakeholders to take voluntary measures to protect known cultural resource sites until the permanent protection plan is in effect.

Mr. Glascock said a number of voluntary measures have been initiated this building season and the City has made contact with three confederated tribes with a historic interest in the Columbia South Shore area. The tribes and archaeologists have told them that the sites are vulnerable to damage and looting if public agencies do not limit disclosure of cultural site records. State law gives public agencies the authority to limit disclosure of these records. He noted that six City bureaus hold sensitive cultural site records and that one of them, the Planning Bureau, will soon receive an extensive archeological inventory report and site reports for the Columbia South Shore area. Those reports indicate the location of artifacts which could be damaged if the information got into the wrong hands.

Mr. Glascock said other bureaus commission archeological survey reports as part of their public works projects. Several bureaus have taken steps to secure sensitive records and release them on a "need to know" basis and at the present time are working on a coordinated records management procedure. He said they may find that holding the records at City Archives is the most effective way to make sure the records do not get into the wrong hands.

Mayor Katz asked if these were public records.

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Mr. Glascock said yes, but State law exempts cultural site records from the freedom of information act.

Mayor Katz asked if that had been tested.

Kathryn Imperati, Senior Deputy City Attorney, said under the public records law records detailing the identity of archeological resources are conditionally exempt from disclosure. This means that when a request is made to review those records, the City would need to balance the public interest in keeping them confidential against the public interest in disclosing them. The purpose of this policy statement is to state clearly how the City is going to strike that balance in favor of protecting the confidentiality of these records in order to preserve the integrity of these sites to the maximum extent possible under Oregon law. She said her research indicates there have been no cases challenging this exemption.

Mr. Glascock said it is not the Planning Bureau's intent to say no in every situation and it hopes to work out ways to give those with a direct interest, such as property owners, the information they need while not disclosing the most sensitive information. He said the Bureau met with other affected bureaus and believe they can work out procedures that will be easy to use and still protect the records. He said once the areawide inventory is completed, there will be some issues as to the extent of information provided to property owners and how the City can go through the Goal 5 process, which is set up to lay out very explicitly the inventory sites to evaluate the economic and social impacts of development. He said they may need to group some of the cultural sites so that their specific locations are not revealed.

Disposition: Resolution No. 35299. (Y-3)

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

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council