



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 31ST DAY OF MAY, 1995 AT 9:30 A.M.

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

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

Mayor Katz and Andrew Haruyama, Office of International Relations, introduced a visiting delegation from Suzhou, China who are here to help plan the proposed classical Chinese garden in Old Town.

Agenda Nos. 840 and 860 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

829 Accept bid of Eagle-Elsner, Inc. for SW Multnomah Blvd. bikeway for \$169,577 (Purchasing Report - Bid 143)

Disposition: Accepted; prepare contract.

830 Accept bid of Hessel Tractor for furnishing one 4-wheel drive tractor backhoe loader for \$76,252 (Purchasing Report - Bid 149)

Disposition: Accepted; prepare contract.

831 Accept bid of Familian Northwest for furnishing annual supply of brass pipe, bronze fittings and brass pipe nipples for \$26,644 (Purchasing Report - Bid 153-A)

Disposition: Accepted; prepare contract.

832 Accept bid of Starplex Corporation for peer group security services for Parks and Recreation for \$15,652 annually for four years (Purchasing Report - Bid 158-A)

Disposition: Accepted; prepare contract.

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833 Reject all bids for installation of ornamental street lights in Old Town (Purchasing Report - Bid 160)

Disposition: Accepted; prepare contract.

834 Accept bid of Lorentz Bruun Company, Inc. for Forest Park (High) 0.5 MG reservoir for \$1,817,661 (Purchasing Report - Bid 163)

Disposition: Accepted; prepare contract.

835 Accept bid of Jim Miller Construction for Fire Training Center Phase V for \$136,971 (Purchasing Report - Bid 166)

Disposition: Accepted; prepare contract.

836 Accept bid of Ingersoll Rand for one 12-ton tandem vibratory asphalt compactor for \$93,425 (Purchasing Report - Bid 167)

Disposition: Accepted; prepare contract.

837 Accept bid of Scott Machinery Co. for one tractor with flail type brush cutter for \$63,985 (Purchasing Report - Bid 168)

Disposition: Accepted; prepare contract.

838 Accept bid of Xerox Corporation for furnishing one high-speed laser printer for \$291,074 (Purchasing Report - Bid 170)

Disposition: Accepted; prepare contract.

839 Accept bid of American Bicycle Security Co. for furnishing 47 bicycle cabinets for \$65,000 (Purchasing Report - Bid 175)

Disposition: Accepted; prepare contract.

841 Vacate a certain portion of SW 57th Place north of SW Taylors Court, under certain conditions (Ordinance by Order of Council; C-9882)

Disposition: Passed to Second Reading June 7, 1995 at 9:30 a.m.

842 Vacate a certain portion of NE Jarrett Street east of NE 138th Avenue, under certain conditions (Second Reading Agenda 767; C-9870)

Disposition: Ordinance No. 168865. (Y-4)

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Mayor Vera Katz

***843** Establish the nonelective contribution (Employee Benefit Allowance) for the Cafeteria Fringe Benefit Plan known as "Beneflex" for the Plan Year July 1, 1995 through June 30, 1996 (Ordinance)

Disposition: Ordinance No. 168866. (Y-4)

***844** Authorize a contract with IBM Corporation for system software license upgrade at the estimated amount of \$281,100 without advertising for bids and provide for payment (Ordinance)

Disposition: Ordinance No. 168867. (Y-4)

***845** Contract with Xerox Corporation for a five-year lease/purchase of a high-speed laser printing system and five years' maintenance for a combined total of \$302,495 and provide for payment (Ordinance)

Disposition: Ordinance No. 168868. (Y-4)

***846** Declare forfeited property at 17 NE 172nd to be surplus and authorize its sale and conveyance (Ordinance)

Disposition: Ordinance No. 168869. (Y-4)

***847** Disburse City money in connection with the forfeiture of property at 6044 SE Rhone Street, declare property surplus and authorize its sale and conveyance (Ordinance)

Disposition: Ordinance No. 168870. (Y-4)

Commissioner Earl Blumenauer

848 Declare the purpose and intention of the City of Portland to construct street improvements in the SW 47th Avenue/SW Palatine District Local Improvement District (Resolution; C-9823)

Disposition: Resolution No. 35398. (Y-4)

849 Set hearing date, 9:30 a.m., Wednesday, July 5, 1995, and initiate the vacation of portions of SW Capitol Hill Road, SW 19th Avenue and SW Nebraska Street (Resolution; C-9889)

Disposition: Resolution No. 35399. (Y-4)

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***850** Authorize execution of a Quitclaim Deed for unused City property adjacent to N Burr Avenue (Ordinance)

Disposition: Ordinance No. 168871. (Y-4)

***851** Execute revision No. 1 to amendment No. 2 of subsurface lease agreement with KOIN Center Limited Partnership (Ordinance; amend Contract No. 19685)

Disposition: Ordinance No. 168872. (Y-4)

***852** Agreement with Biggs Cardosa Associates, Inc. for design of the North Going Street bridge seismic retrofit in an amount not to exceed \$193,968 (Ordinance)

Disposition: Ordinance No. 168873. (Y-4)

***853** Authorize a contract and provide for payment for the SW Multnomah Boulevard bikeway project (Ordinance)

Disposition: Ordinance No. 168874. (Y-4)

***854** Authorize the purchase of 46 microcomputers through the Oregon State Price Agreement for a total of \$117,325 and provide for payment (Ordinance)

Disposition: Ordinance No. 168875. (Y-4)

Commissioner Charlie Hales

***855** Contract with McCoy Plumbing, Inc. for \$89,000 for plumbing replacement for the Fire Bureau and provide for payment (Ordinance)

Disposition: Ordinance No. 168876. (Y-4)

***856** Contract with Basic Fire Protection, Inc. for \$49,216 for fire sprinkler installation at Fire Station No. 3 and provide for payment (Ordinance)

Disposition: Ordinance No. 168877. (Y-4)

***857** Approve application of Friends of Forest Park, a nonprofit corporation, for property tax exemption (Ordinance)

Disposition: Ordinance No. 168878. (Y-4)

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***858** Amend contract with Hennebery Eddy Architects to increase the amount by \$4,700 (Ordinance; amend Contract No. 29832)

Disposition: Ordinance No. 168879. (Y-4)

***859** Amend Ordinance No. 168751 to correct contract amount with Leisure Concepts and Design, Inc. for swimming pool master plan (Ordinance; amend Ordinance No. 168751)

Disposition: Ordinance No. 168880. (Y-4)

Commissioner Gretchen Kafoury

***861** Contract with SE Asian Vicariate and Catholic Charities for \$12,000 for the SE Asian Seniors Program and provide for payment (Ordinance)

Disposition: Ordinance No. 168881. (Y-4)

***862** Authorize contract with the lowest responsible bidder for the Bureau of Buildings ninth floor remodel and provide for payment (Ordinance)

Disposition: Ordinance No. 168882. (Y-4)

***863** Accept bid and authorize contract with Sam Gillespie for custodial services at the Sandy River Station (Ordinance; return Agenda Item No. 654)

Disposition: Ordinance No. 168883. (Y-4)

Commissioner Mike Lindberg

***864** Amend contract with Montgomery Watson Americas, Inc. for \$353,200 Phase II - Facility Design, for professional consulting and engineering services, to accommodate compliance with the EPA's Lead and Copper Rule (Ordinance; amend Contract No. 29580)

Disposition: Ordinance No. 168884. (Y-4)

***865** Call for bids to provide decorative fountain maintenance in various locations within the City (Ordinance)

Disposition: Ordinance No. 168885. (Y-4)

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REGULAR AGENDA

840 Accept the lowest responsive bid for DEC personal computers
(Purchasing Report - Bid 183)

Disposition: Accepted; prepare contract. (Y-4)

860 Commend the Association for Portland Progress for the success of the
Smart Park marketing program and the award it received from the
Institutional and Municipal Parking Congress (Resolution)

Discussion: Commissioner Kafoury noted the award earned by the
Association for its successful marketing program.

Clayton Hering, Chair, Association for Portland Progress, thanked the
Bureau of General Services for its willingness to try something new and
different with the garages. The marketing campaign has been highly
successful and has been recognized by many other cities with municipal
parking lots. The program drew increasing numbers of new customers
to the lots and changed people's views about parking downtown.

Disposition: Resolution No. 35400. (Y-4)

***826** **TIME CERTAIN: 9:30 AM** - Create the Sustainable Portland
Commission, establish its mission, powers and duties, and provide for
the appointment of members and officers (Ordinance introduced by
Commissioner Lindberg; amend Code Chapter 3.112)

Discussion: Commissioner Lindberg said the concept of sustainability
has really taken off throughout the nation in the last five years. People
are looking for some kind of umbrella upon which to place their
personal actions and also foster good public policy. He described some
of the accomplishments of the current Energy and Environment
Commission and introduced the appointees to the Sustainable Portland
Commission.

Pam Brown, Sustainable Portland Commission, said the principles
adopted by Council in November, 1994 provide a work plan for the
Commission. She described some of the Commission's current projects,
including formation of a Green Team to help City bureaus purchase
products which promote sustainability and energy efficiency.

Disposition: Ordinance No. 168886. (Y-4)

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827 Confirm appointment of Nancy P. Bond, Thor E. Hinckley, Wayne Lei, Roby J. Roberts and Bill C.M. Welch to the Sustainable Portland Commission (Report introduced by Mayor Katz)

Disposition: Confirmed. (Y-4)

Commissioner Mike Lindberg

*866 Authorize a grant from the Oregon Department of Energy in the amount of \$6,000 for FY 1994-95 for the extension of the City Employee Telecommuting Pilot Project through June 30, 1995 (Ordinance)

Discussion: Sue Anderson, Energy Office, said they expect to receive an additional \$70,000 grant to work on telecommuting with downtown businesses. This is just an extension of the current grant which will allow them to begin working with businesses now. They are surveying 10 businesses which have already begun telecommuting efforts. She said they hope to return to Council in June with a general guideline for telecommuting for non-represented employees.

Disposition: Ordinance No. 168887. (Y-4)

*828 **TIME CERTAIN: 10:00 AM** - Execute a loan agreement in the amount of \$70,000 with Arts Celebration, Inc. and the Association for Portland Progress to support Artquake festival production costs (Ordinance introduced by Commissioner Lindberg)

Discussion: Commissioner Lindberg said Artquake was initiated as a way to bring people back downtown after it had been torn up during construction of the transit mall. Although everyone says how great it is, it hangs on by a financial thread. Regarding policy issues raised regarding the number of requests for funds made directly to Council by arts groups, he said he would like to see all such requests go to the Regional Arts and Cultural Council (RACC), which would decide which groups receive loans. A cultural tourism strategy also needs to be in place. The second issue concerns whether there should be a policy to handle requests for loans from art groups. He said such requests also ought to go the regional agency in the future but, in this case, he believes the City should take the minimal risk.

Karen Whitman, Executive Director of Arts Celebration, asked for Council support of this \$70,000 loan to be guaranteed by the voluntary gate fees requested from Artquake attendees. The \$70,000 exactly matches the 1994 gate receipts and shows no growth even though they expect it to trend upwards. She said they are continuing to upgrade the festival and are also developing a framework for the region's first cultural tourism plan, which should be completed by October, 1995. She

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said this year will see the establishment of a closer relationship with the Art Museum and a new program which brings businesses and the arts closer together. She said this loan will establish the credibility essential to raising contributions and obtaining sponsorships.

Tom Usher, 2534 SW Arden Road, APP Arts Task Force Chair, said in recent years Artquake has been in jeopardy although last year's event turned out to be very successful. The Task Force supports its continuation in 1995 but believes a stronger funding base is necessary. The loan would be managed by APP and repaid in full in September.

Ruth Scott, APP Director, said last year APP handled Artquake's funding and this year APP proposes to act as the financial custodian for the loan monies. She described how they would operate and how the loan would be repaid. She said they look forward to completion of the regional tourism plan and also hope to see a policy developed regarding future loan requests.

Mike Smith, Portland Oregon Visitors Association, urged Council support of this loan. He stressed the importance of cultural tourism, noting that Artquake has been identified as an important element.

Mayor Katz asked Ms. Whitman what her vision for Artquake is.

Ms. Whitman said the intent is to make Artquake the world class, international arts festival that the regional arts plan foresees. She said she is unsure what must be done but believes completion of the plan will clarify its mission.

Commissioner Lindberg said part of the vision involves forming partnerships. He asked about partnerships with the major arts groups.

Ms. Whitman said a central part of this vision is to get the arts groups involved. Where you see their partnership year after year is in the festival design.

Commissioner Lindberg asked if she was comfortable with the City's announcement that this was a one-time loan.

Ms. Whitman said requests by the Art Museum, the Historical Society and Artquake for help from the City represent opportunities that it should capitalize on. However, there should a policy in place so that the City does not have to deal with each one on a case-by-case basis.

Commissioner Hales asked what Artquake can do internally to ensure it is not in this situation year after year, if RACC is not in a position to make operating loans.

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Ms. Whitman outlined some of her reorganization efforts, noting that she has moved the focus from the artist to the audience, while at the same time protecting the festival's artistic integrity. That changes how one approaches possible sponsors. She said if Artquake earns over \$70,000 this year she hopes to use the additional revenues to clarify its mission, continue to professionalize the organization and foster cultural tourism.

Commissioner Hales said right now the City's budget is healthy and Council can accede to such requests but fostering any dependency on the City is questionable. He said the City should not normally be making loans out of its General Fund for any worthwhile purpose that comes alone. The RACC is the appropriate source. He said he has a high regard for Artquake and will support this request but this should be the last one as Council should not be in the position of "loan maker."

Mayor Katz said she would rather give a loan that will be repaid than a grant. She said she has some concern about RACC taking this over. Council has clearly identified its priorities but if it does want to make a commitment to cultural tourism, then it should think big. She cited her preference for granting such requests as the Art Museum's for funding the Imperial Chinese Tombs exhibit, rather than a lot of little events that have little impact.

Disposition: Ordinance No. 168888. (Y-4)

At 10:37 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 31ST DAY OF MAY, 1995 AT 2:00 P.M.

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

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

867

TIME CERTAIN: 2:00 PM - Consider the LUBA remand of the application by Babler Brothers for deletion of a street improvement condition of approval from a past zone change at 8100 NE Grand Avenue (Hearing; 93-00833 CU)

Discussion: Pete Kasting, Senior Deputy City Attorney, read procedures to be followed regarding this hearing and any appeal to LUBA.

Mr. Kasting said this case involved a request to remove a condition from a prior land-use decision. The Council granted the request and removed the condition. It was appealed to LUBA, which denied three of four assignments of error but found the City's decision was defective on the fourth because certain issues had not been addressed in the findings and conclusion. The remanded issue is whether there are any applicable policies in the Transportation Element of the Comprehensive Plan. In the earlier appeal, no questions were raised regarding applicable transportation policies. The only evidence in the record at this point is a statement by the Office of Transportation Planning that transportation policies had been reviewed and none were found relevant to this proposal. Appellant was allowed to raise this issue at LUBA because the City had not jumped through all the procedural hoops necessary in order for the "raise it or waive it" defense to apply. It is now up to the City to address whether there are any applicable policies in the Comprehensive Plan relevant to this decision and, if there are, whether or not they are satisfied by this application.

Mayor Katz asked if the City should have gone through each policy initially.

Mr. Kasting said the City should have at least identified that the policies were considered and found not to be relevant. It is not necessary to make a specific finding regarding each policy, however, unless an issue is raised as to that policy.

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Mark McCulloch, 3000 First Interstate Tower, 1300 SW 5th Avenue, attorney for Ted and Elizabeth Lamm, said over a period of 21 years Babler Brothers and its predecessor were obligated through various land-use decisions to make improvements on the north end of Grand Avenue off Columbia Boulevard. None of the improvements happened and the Bablers were relieved of that obligation. The LUBA decision states that they could not determine whether and to what extent the cited transportation policies apply to the proposal. The City must identify which, if any, planned policies apply and how they are satisfied. He said he believes that six policies within the Comprehensive Plan apply. The first three are within the introductory part of Goal 6, Transportation Goal. One goal is to provide adequate accessibility to all planned land uses. The evidence in the record is clear that Grand Avenue should be improved to provide such accessibility.

Commissioner Hales asked if the appellant, on remand, is allowed to raise new issues about policies that were not fully explained by the appellant at the original hearing.

Mr. Kasting said the remand would allow that. The only issue is whether there are relevant policies in the Comprehensive Plan and if they are relevant, have they been satisfied. This was not raised earlier but is a result of a new interpretation by LUBA of the "raise it or waive it" statute in this case.

Commissioner Lindberg clarified that the appellant wants the street improvement.

Mr. McCulloch said adequate accessibility applies to the Lamm property, Truax Oil and Mr. Patel, owner of an adjoining motel. He cited a report from the Oregon Department of Transportation (ODOT) dated February 15, 1994, which talks about its responsibility for maintenance and operation of NE Grand Avenue along with Martin Luther King Jr. (MLK) Boulevard and recommends that the City retain its conditions on the Babler Brothers property. Second, the requirement for safe and efficient movement of people and goods is also relevant to the ODOT memorandum and relates to the nearby property owners and their interest in seeing this improvement completed. Third, the policy speaks to maintaining the infrastructure in good condition. In this case, the right-of-way should be maintained and there is no present movement afoot to vacate the right-of-way. Fourth, regarding Policy 6.15 and on-street parking management, there are parking problems on this unimproved right-of-way and the addition of the curbs, and controlled parking would advance this goal. Fifth, Policy 6.22, pertaining to right-of-way opportunities, is an important goal that needs to be addressed. Finally, 6.25, Access Management, states that the City will work with ODOT on a case-by-case basis as it develops access

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management agreements for State highways within the City. That directly pertains to ODOT's concern about its obligation to maintain this piece of property and its recommendation for retention of the Babler Brothers' condition. Regarding earlier discussions about formation of a Local Improvement District (LID), he said the City has in place right now an obligation by the Babler Brothers to make these improvements. Secondly, there is no assurance that an LID can or will take place. Since there is already a cost effective way to make this improvement, it seems a straightforward matter to require the Babler Brothers to make the improvement, as they have been obligated to do for the last 21 years.

Mayor Katz noted that Page 78 states that since the applicant needs Grand Avenue for side access, the Bureau of Transportation Engineering has determined it would be inequitable to make the applicant solely responsible for improvements that would benefit several properties. It recommends that applicant be relieved of the street improvements required by past conditions of approval.

Mr. McCulloch asked that the record be left open for seven days.

Rob Forest, Construction Manager, Truax Harris Energy, said his company is adjacent to Grand Avenue and borders on the Lamm property. He said his company would like to see the access left open and questioned why the applicant would be allowed to circumvent a 20-year commitment, particularly as the improvements seem to be something which ODOT would like to see accomplished.

William Cox, attorney representing the applicant, Babler Brothers, Inc., said this matter was remanded strictly because of a LUBA "ping pong." While much of the testimony is dependent upon the ODOT letter, he argued that ODOT has no authorization over this street, citing testimony from City Transportation Engineer Glen Pierce. Mr. Cox suggested that Mr. McCulloch generated the ODOT letter. He said the Bablers are not trying to escape their commitment and over 20 years the road has been brought up to grade and a number of improvements have been made. They are saying they have done enough. Transportation staff agreed and found that access was not desirable because of existing congestion. The opponents have access from MLK and this is an alley for them. It may be better conceived as an alley because of the stacking problem that occurs at MLK and Columbia. Also, the Transportation preapplication summary noted that future improvements of that intersection may affect that area although a street vacation is not required currently. He said the bottom line is that Transportation policies have been reviewed and none are relevant to this proposal.

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Mr. Kasting noted that there is already testimony on tape from Mr. Pierce stating that ODOT is mistaken in its belief that it has responsibility for this section.

Commissioner Hales asked staff if Transportation feels any need to elaborate on its original testimony and add to the record.

Mr. Kasting said the findings will have to address each of the policies which have been asserted as being applicable.

Glen Pierce, Office of Transportation Engineering, said the memorandum referred to as having come from him did not.

Greg Jones, Office of Transportation, said he believes Transportation Engineer Rosemary Sippola's 1993 memo still applies even though Transportation's review process has changed and now provides more comment about applicable goals and policies. The substantial issues, however, of whether those policies apply to this case, have not changed. Many of the policies identified by the appellant were based upon the ODOT memo, which is inaccurate as the City has responsibility for that right-of-way. ODOT does not. Regarding accessibility, Ms. Sippola notes that circulation is available to adjacent property owners from other rights-of-way. This street would not have to be improved to provide that access. Since access and circulation are available from these rights-of-way, it is unnecessary to provide this improvement

In rebuttal, Mr. McCulloch said he did not generate the ODOT memo as charged by Mr. Cox and his clients are not depending solely on it. He said there is a transportation issue involving a public thoroughfare right-of-way which all the adjacent property owners will corroborate. He said the suggestion that circulation is just as easy without Grand is untrue. He said the truth is that it is very difficult, particularly because of the meridian that runs down MLK. He said the noted transportation goals and policies do apply and if they are analyzed, it will be clear that the Bablers should be held to the conditions they are obligated to meet.

Mr. Kasting noted that the record must remain open for seven days and suggested that Council continue this item for two weeks. Council agreed. (Record will be open until Wednesday, June 7, 1995 at 2:00 p.m.)

Mayor Katz asked if clarification was needed about the ODOT letter.

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Commissioner Hales noted that Transportation had already stated that ODOT does not have jurisdiction, the City does.

Disposition: Continued to June 14, 1995 at 2:00 p.m.

868

TIME CERTAIN: 2:30 PM - Presentation of PIIAC Citizen Advisors' First Quarter 1995 Monitoring Report (Report introduced by Mayor Katz)

Discussion: Gerald Kling, Chair of the monitoring subcommittee for PIIAC, said due to recent reforms in the Internal Affairs Division (IAD) of the Police Bureau, many previously identified problems and concerns have been alleviated. During the first quarter, PIIAC reviewed a total of 22 closed internal investigations, including three that were appealed to PIIAC. The Citizens Advisors returned two for further investigation. Areas of concern noted in the report have already been addressed by IAD Acting Captain Weber. These include the tracking of cases that were declined or suspended. A standard operating procedure has now been adopted for notifying people of their appeal rights to PIIAC even when cases are declined by Internal Affairs. Another issue, the lack of letters of disposition, has also been addressed. Lines of communication between the Citizens Advisory Board, Lisa Botsko and Captain Weber are much improved also and Internal Affairs has made major changes in the way it operates.

Commissioner Lindberg noted that on page 8 it urges the Bureau to begin using information from Risk Management for command review purposes. He asked if the Bureau is now doing that

Mr. Kling said Risk Management information has not been used in the past to initiate command level review. Right now, a case that goes through Internal Affairs could trigger command review, regardless of the outcome, but tort claims do not. He said he does not know why that information is not being used but the monitoring committee has asked for greater access to tort claim information. The City Attorney is determining how much information can be given to PIIAC without betraying confidentiality or revealing methods of litigation.

Mayor Katz said the goal is to find out if there are officers who repeatedly have tort claims filed against them even though there is no IAD or PIIAC review of those claims. Council would also want to know if any officers abuse their driving privileges.

Mr. Kling said there could be times when there is only one complaint to Internal Affairs about an officer but meanwhile ten tort claims have been settled at great expense to the City and are never reviewed. A Risk Management committee is already looking at driving and other

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abuse patterns but that is not within PIIAC's purview. He said PIIAC is seeking more information from Risk to see if trends emerge that identify training needs within the Bureau.

Commissioner Lindberg asked whether the committee was getting reports on patterns regarding individual officers through the regular complaint process, not from Risk.

Lisa Botsko, PIIAC Administrator, said they are working with the Auditor to see if command process is kicking in when it should. They are not getting the names of specific officers.

Commissioner Lindberg said when it was first formed, this committee was getting the information without the names of the officers. Everyone seemed to agree this was very valuable information and he does not understand why it is not provided now.

Mayor Katz said someone in command should have that information and use it to assist officers.

Mr. Kling said command review should trigger information about officers who have had multiple complaints against them. Right now it is not being triggered as much as it should be.

Acting Captain Ron Weber, IAD, asked if he was talking about the "dirty 30 list", officers with the most complaints.

Commissioner Lindberg said yes.

Captain Weber said they can provide whatever information Council wants, i.e. names of officers who have the most complaints, as long as Council understands the danger of using such statistics incorrectly. He said while this information is already reviewed within the Bureau, he is not sure it has always followed its own rules and or monitored it as well as it should have.

Mayor Katz said if she was in a command position she would want to know that information before there were serious difficulties.

Paul Richmond, speaking for Portlandian newspaper, said an ounce of prevention is worth a pound of cure and what is disconcerting is that he does not see benchmarks being applied to aspects of government which affect citizens. He said the Bureau needs a thorough overhaul regarding training and hiring. Noting the murder/suicide by a Police officer, he asked if adequate measures exist for families and for officers who are undergoing stress. Regarding Officer Erickson, who fired 22 times in a residential neighborhood, some steps could be taken to make

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sure that officers of his caliber are not hired. He said he was curious about what steps are being implemented when new hires are taken in to ensure there is no lowering of standards. He said the recent Auditor's Report indicates that, despite the addition of 141 officers, only 41 new officers have been added to patrols. The majority of officers have been added to tactical operations, such as the gang enforcement team, and a representative of the police union recently stated that such specialized units are creating an interest in gangs among young people. He asked if there are forums for officers and others to discuss deployment. Some neighborhoods such as Buckman feel they are not getting sufficient response regarding their efforts to reprioritize community policing goals.

Mayor Katz said the issue of benchmarks is relevant. On the issue of domestic violence, the City has just received a grant to review whether frequently called addresses to 9-1-1 can be identified. Could the City get information that could prevent serious incidents of domestic violence and child abuse. Regarding training and hiring, training has been enhanced and a new psychological exam is now being used, although the results are not yet known.

Commissioner Lindberg said he likes the idea of people at the grass roots level having input about deployment.

Commissioner Kafoury said an early warning system about incidents of domestic violence would be wonderful. She said the Bureau of Emergency Communications is working on this.

Ms. Botsko said PIIAC is also doing a fatality report.

Disposition: Accepted.

At 3:12 p.m., Council recessed.

JUNE 1, 1995

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 1ST DAY OF JUNE, 1995 AT 2:00 P.M.

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

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

869

TIME CERTAIN: 2:00 PM - Consider the LUBA remand of the application by Joe Van Haverbeke and adoption of new findings for approval of a five-lot cluster subdivision located east of SE 48th Avenue and north of SE Mitchell Street (Hearing; 93-00549 SU)

Discussion: Michael Holstun, Senior Deputy City Attorney, noted the guidelines regarding hearing and appeal procedures.

Duncan Brown, Planning Bureau staff, noted conditions of approval for this five-lot cluster subdivision which should be attached to the revised findings distributed today. He cited the applicable approval criteria, goals and policies. He said originally the Hearings Officer approved a four-lot subdivision which was appealed by both the applicant and the Woodstock Neighborhood Association. Council's decision was to approve a five-lot subdivision with conditions. This was appealed to LUBA by the Woodstock Neighborhood Association and remanded back to the City. He said today Council is being asked to adopt new findings based on the material in the record and on the findings with amendments circulated on June 1. He said the notification sent to surrounding property owners and interested parties about today's hearing contained a site plan other than what was adopted by Council but still contained the major elements approved in 1994 -- a five-lot subdivision with two flag lots and three curb cuts. The correct site plan is attached to the latest copy of the findings. He asked for approval of the new findings, as well as adoption of the previous decision and findings with those conditions and site plan.

Steve Moskowitz, attorney representing the Woodstock Neighborhood Association, 111 SW Columbia, 97201, said the prior decision was that 48th Avenue be a 26-foot street with a 40-foot right-of-way and sidewalks and parking on both sides. Council's decision was remanded to explain three issues: 1) how the City interprets Code Section 34.010.a a (figure 1) to allow a 40-foot right-of-way for the approved 26 foot street; 2) how that 40-foot right-of-way is consistent with Comprehensive Plan Policy 11.11; and 3) why the required sidewalk

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should be included in calculating total density of the project in order to meet the Code's minimum density requirements.

First, regarding 34.010.a (figure 1), the proposed findings say the only necessary correlation is between parking and street width and therefore the width of right-of-way is immaterial. However, the Code clearly states that a 26-foot street with parking on both sides requires a minimum 50 foot right-of-way in an R5 zone. He cited a chart in the Code and said staff erred in reading the standard requirements. The recommended standards adopted by Council as part of the "skinny streets" provisions state that right-of-way widths should correspond with street widths in order to accommodate the potential of sidewalks, plantings and strip construction.

Regarding Comprehensive Plan Policy 11.11, the proposed findings state that this policy addresses only street improvements, not street rights-of-way and therefore the 26-foot improvement is consistent with existing land-use patterns. That interpretation, however, conflicts with another statement in the findings which says that the zoning code definition of "street" is all the area within the right-of-way. Mr. Moskowitz said you cannot say on one page that "street" is everything within the right-of-way and on another say that "street" means something different. The Hearings Officer properly found that a proportional relationship between street improvements and rights-of-ways is required, concluding that a 40-foot right-of-way was not consistent with existing land-use patterns. Regarding minimum density, these findings state that what is normally called a sidewalk may be called a pedestrian easement and thus may be included in calculating the total density of the project. But the Code, 34.60.020 (c), provides circumstances under which easements may be required in subdivisions. It states that a pedestrian way may be created to connect to a cul-de-sac or an oddly shaped block. Those circumstances do not exist in this case. This is a sidewalk, part of the street, and should not be used to calculate the total density of the project. He said Council has several choices. It could hold a new hearing on the issue of parking and determine that parking is required only on one side of the street, in which case there would be a new ball game regarding the street width and right-of-way. Or, the applicant could withdraw this proposal and perhaps some new criteria in the proposed Subdivision Code would allow what has been proposed. Woodstock Neighborhood Association, however, would prefer that Council require the 50-foot right-of-way along with the 26-foot wide street with parking on both sides.

Moshe Lenske, 4314 SE Crystal Springs Blvd., 97206, said Woodstock hopes this property will be developed but the findings before Council should be rejected. He said the Bureau is well aware that the ancient subdivision Code is inadequate and out of synch with the

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Comprehensive Plan and Transportation Planning rule. He asked Council to require the 50-foot right-of-way rather than allowing 40-feet in order to gain enough square feet for 4-1/2 lots, rounded to five lots by the fraction formula. He said this decision would respect the neighborhood's effort to balance good development with density, adding that every other property on this block except this parcel has already dedicated a 50-foot right-of-way. The existing street should continue at the same width and the center line should be straight and not zig, for safety reasons. Sidewalks and parking strips should line up on the two-block street. He noted that the 40-foot right-of-way includes a condition for a five-foot sidewalk easement but that unsafely enters into the line of street traffic. Changing the right-of-way to 40 feet also changes the building setbacks so that new manufactured homes would stick out from the regular setback line that existing home owners have invested in. Mr. Lenske said two flag lots are created, invisible from the street, becoming two potential crime locations. Two poles for flag lots are created, each with driveway easements for double use. This would impair the movement of emergency vehicles. He said neighborhood integrity will be maintained only with a 50-foot right-of-way and asked for support of the Hearings Officer's decision in this regard.

Terry Griffiths, 4128 SE Reedway, 97206, former chair of the Woodstock Neighborhood Association, said they believe three changes needed to be made in the initial recommendation of the Bureau of Transportation Engineering and the Planning Bureau in order for this subdivision to be compatible with the neighborhood. Council supported two of these changes but Woodstock believes the third, dedication of 25 feet of width to the public right-of-way, is needed. A 50-foot right-of-way would allow consistent street patterns but would limit the subdivision to four building lots and eliminate the flag lots which are inconsistent with the surrounding homes. Council supported the neighborhood's contention that a fully improved street was necessary and access to one of the subdivision lots should not be allowed through a right-of-way stub at SW 49th and Mitchell. The Hearings Officer agreed that the appropriate right-of-way was 50 feet but Council overruled that and called for 40 feet with a sidewalk easement adjacent to the right-of-way inside the developer's property. The neighborhood association appealed because they could not understand how a five-foot easement could be counted in the square footage of developable land. She said that seems inconsistent with Comprehensive Plan Policy 11.11 and existing land use patterns in the neighborhood.

Marsha B. Irish, 4801 SE Steele, 97206, said the sidewalk under this subdivision does not qualify as a pedestrian way as it is clearly for the developer's benefit, not the public's convenience. She said the neighborhood is not against development but does oppose it when it affects the livability, safety and design standards of homes on this two-

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block street. She said the City should abide by its own rules and regulations.

Tim Ramis, attorney representing Joe Van Haverbeke, said LUBA remanded this so that the City Attorney's interpretations could be incorporated into the findings, not just in the brief. These are consistent with Council's prior decision and staff is satisfied that this would uphold the original decision. He said a reversal of Council's prior decision is a horrifying thought for the applicant after what he has been through and would undermine the reliability of the decision-making process. He said the interpretation called for by the opponents would create a rigid system and eliminate any flexibility in trying to fashion a compromise, as occurred in this case. He said opponents' attempt to get a 50-foot right-of-way would result in a reduction of the overall density, something staff has resisted in order to achieve minimum density requirements. Second, what is urged by the opponents is not what LUBA is requiring. LUBA simply requires the City to retool the findings to include the legal analysis of the City Attorney. The flaws in the opponents analysis have been fully exposed in his brief. Regarding Figure 1, Mr. Ramis said Section 34.60.010 refers to minimum rights-of-way and says that widths in excess of those minimums may be required. It is clear that Council has discretion to adjust these widths and in this case it imposed a 40-foot right-of-way and then required a wider street width -- 26 feet -- because it more closely fits the configuration of already existing streets and because neighbors wished to have parking on both sides. Second, regarding Policy 11.11, Council's decision is consistent with the Code standards and with improvements in the area. He said streets are not 50-feet wide; they are 28 to 30 feet wide. A 26-foot street is therefore consistent. Regarding density and inclusion of the pedestrian easement, he said Page 17 of the LUBA decision states that the definition of street is the area within the right-of-way so the City's decision is completely consistent with the Code language. The original decision was a good compromise for both the applicant and neighborhood. The applicant was required to build far more extensive improvements than he originally wanted to and received only three curb cuts instead of the five originally proposed. The neighbors got a wider street and full improvements with parking and sidewalks on both streets. The City also met the minimum density requirement, which on this property is five lots.

In rebuttal, Mr. Moskowitz said the neighborhood wants development, but wants it to meet the Code criteria. LUBA remanded this not merely to refine the language in the findings but to explain how Code and Comprehensive Plan policy supports it. He said the black and white language of the Code does not now allow a 40-foot right-of-way with a 26-foot wide street and parking on both sides.

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Commissioner Kafoury asked staff for a response.

Mr. Brown said Code Section 34.60.010 (a) is clear about how to interpret Figure 1. It states that minimum right-of-way and roadway widths shall be shown on Figure 1. He said staff interprets that to mean they are minimum requirements and the City can ask for additional right-of-way widths or improvements within that right-of-way.

Commissioner Lindberg asked how one interpreted the chart handed out by opponents' attorney.

Mr. Brown said within the R5 zone one could choose either the 50 foot right of way width or the 40 foot (on the third line). He said in this case Council decided that within the 40 foot right of way width there should be a 26-foot roadway width and parking on two sides.

Commissioner Lindberg asked what staff had recommended.

Mr. Brown said staff recommended approval of a five-lot subdivision.

Commissioner Lindberg noted that the Hearings Officer then recommended four and Council went back to five. He asked about current City policy regarding flag lots, noting that two are approved here.

Mr. Brown said the City's policy is that they should be allowed and encouraged within the single-family residential zone in order to promote infill.

Commissioner Hales said that is a problem in this case. There is a lack of synchronicity in the Code as the City now has a new, high-tech set of street standards bolted onto a Model T Subdivision Code. Both sides are presenting ways to cut and paste the incomplete Code to support their own interpretations as to how the findings can or cannot be substantiated.

Commissioner Kafoury asked if this decision could reflect what the new Code provisions might be. Are both sides valid?

Mr. Brown said there are good reasons for both positions and at this point in time, the City is looking at the remand and at correcting deficiencies in the findings.

Commissioner Kafoury said there is always the fear that Council may make a decision one year, about flag lots, for instance, and a year later a new policy comes out.

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Commissioner Hales said that is what everyone feels awkward about. He said the neighborhood, on this remand, is asking Council to revisit the density question by asserting that the findings cannot be corrected adequately. Applicant disagrees and staff supports that. He said he feels honor bound to support the prior decision even though he does not think this is a good result. That is not much comfort to Woodstock, however, where they are advocating for a different decision than they got. He said Council must decide if it is too much of a stretch to adopt corrections, in which case the whole application collapses. Or does it take the applicant's and staff's recommendation that there is a legally defensible way to support the application. He said on remand, he believes Council must defer, to an extent, to its own previous decision.

Mr. Lenske said the map submitted today is different from those previously submitted, adding that it is incorrect, does not comply with City Code and omits things which the City previously approved. It is not the same one the City approved. He said the City also requires that a cluster have a plan. He argued that there are many grave errors and omissions to the plan.

Ms. Griffiths said the map they see today has three "snout" houses. This is not what came with the notice.

After some discussion regarding the accuracy of varying site plans, including the fact that the site plan sent with the notice was incorrect and was not the preliminary plat approved by Council prior to the appeal, Council decided to continue this item for one week in order to clear up the confusion and get agreement about the facts. Staff will provide the correct site plan and at next week's meeting each side will be given five minutes to address the exhibits.

Disposition: Continued to June 7, 1995 at 2:00 p.m.

At 3:10 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council