



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF FEBRUARY, 1996 AT 9:30 A.M.

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

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

Brian Lacey, Director, Community Recycling Center school, described plans for the school to present a yellow bicycle from Portland to President and Mrs. Clinton to mark the importance of bicycling as a non-polluting transportation mode.

Agenda Nos. 255 and 259 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

254 Accept bid of Triad Mechanical, Inc. for secondary diversion modifications at the Columbia Boulevard Wastewater Treatment Plant for \$672,689 (Purchasing Report - Bid 81)

Disposition: Accepted; prepare contract.

256 Vacate a portion of NE Pacific Street, under certain conditions (Second Reading Agenda 223; C-9908)

Disposition: Ordinance No. 169800. (Y-4)

Mayor Vera Katz

257 Confirm appointment of Kevin Scott Welch to the Metropolitan Human Rights Commission (Report)

Disposition: Confirmed.

***258** Pay claim of Kari Ellis (Ordinance)

Disposition: Ordinance No. 169801. (Y-4)

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Commissioner Earl Blumenauer

***260** Authorize the continuance of negotiations for the purchase of five permanent public walkway easements required for construction of the Harney Park street improvement project, authorize the City Attorney to commence condemnation proceedings and obtain early possession (Ordinance)

Disposition: Ordinance No. 169802. (Y-4)

Commissioner Charlie Hales

***261** Authorize escrow agreement to acquire property adjacent to Powell Butte Nature Park and settle claims of Shelley Radmer, Ralph Radmer and Ronald Glazier (Ordinance)

Disposition: Ordinance No. 169803. (Y-4)

***262** Intergovernmental Agreement with Portland Community College for an Emergency Medical Technician basic course at a cost of \$4,800 (Ordinance)

Disposition: Ordinance No. 169804. (Y-4)

***263** Call for bids for the renovation of Pier Park (Ordinance)

Disposition: Ordinance No. 169805. (Y-4)

***264** Authorize a contract and provide for payment for material and labor to construct Wilshire Park improvements (Ordinance)

Disposition: Ordinance No. 169806. (Y-4)

***265** Transfer two real estate parcels deeded in error to the City back to Multnomah County (Ordinance)

Disposition: Ordinance No. 169807. (Y-4)

***266** Agreement with Walker & Macy for \$57,740 to provide design and consulting services for Gabriel Park (Ordinance; waive Code Section 5.68)

Disposition: Ordinance No. 169808. (Y-4)

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Commissioner Gretchen Kafoury

***267** Authorize agreement with EID Services, Inc. for access to the City's 800 MHz trunking radio system (Ordinance)

Disposition: Ordinance No. 169809. (Y-4)

***268** Authorize Intergovernmental Agreement with Clackamas Regional Elected Group for access to the City's 800 MHz trunking radio system (Ordinance)

Disposition: Ordinance No. 169810. (Y-4)

Commissioner Mike Lindberg

***269** Authorize an intergovernmental agreement with the Multnomah County Community Services Division for \$115,000 to provide services for the Block-by-Block Weatherization Program (Ordinance)

Disposition: Ordinance No. 169811. (Y-4)

***270** Authorize a contract and provide for payment for the NE 47th Avenue from NE Everett Street to NE Glisan Street sewer reconstruction (Ordinance)

Disposition: Ordinance No. 169812. (Y-4)

***271** Authorize the purchase of a parcel of land needed for the Columbia Slough stormwater management project, subject to certain conditions (Ordinance)

Disposition: Ordinance No. 169813. (Y-4)

***272** Contract with Change Management to provide professional services for the Bureau of Environmental Services and provide for payment of \$55,000 (Ordinance)

Disposition: Ordinance No. 169814. (Y-4)

***273** Authorize the purchase of 57 computers through the Oregon State Price Agreement for a total of \$150,597 and provide for payment (Ordinance)

Disposition: Ordinance No. 169815. (Y-4)

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274 Amend City Code to provide Water Bureau ownership and repair or replacement of privately owned water meters more than one inch (Ordinance; amend Code Sections 21.12.260, 21.12.265 and 21.12.330)

Disposition: Passed to Second Reading February 28, 1996 at 9:30 a.m.

City Auditor Barbara Clark

275 Report on the verification of signatures on petition to amend City Charter to establish term limits for the City's elected officials (Report)

Disposition: Placed on File.

REGULAR AGENDA

255 Reject all bids for street improvements: NE 21st and Siskiyou; NE 24th and Siskiyou; NE 24th and Klickitat; NE 21st and Regents Dr.; N Denver, Kilpatrick to McClellan; NE 15th at Shaver; and NE 15th at Failing (Purchasing Report - Bid 83)

Discussion: Cay Kershner, Council Clerk, said the Purchasing Agent has requested a one week continuance.

Disposition: Continued to February 28, 1996 at 9:30 a.m.

***259** Authorize the Purchasing Agent to sign a Purchase Order with Balzer Pacific Equipment Co. for one new portable screen plant in the amount of \$82,800 without advertising for bids (Ordinance)

Discussion: Ms. Kershner said the Purchasing Agent asked that this be continued one week also.

Disposition: Continued to February 28, 1996 at 9:30 a.m.

***276** Authorize the Livable City Housing Council to enter into loans secured by first and second deeds of trust with the Housing Authority of Portland not to exceed \$1,855,000 to finance acquisition of property for the development of the University Court Apartments at SW 4th and Harrison (Ordinance introduced by Mayor Katz, Commissioners Hales and Kafoury)

Discussion: Neyle Hunter, Director, Livable City Housing Council, asked for Council approval of a loan to the Housing Authority of Portland for a development to be completed by Carroll Investments. The property is currently a surface parking lot at SW 5th and

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Harrison. The Housing Council struggled with the question as to the appropriate level of housing investment fund involvement in this project, one of three such projects seeking financing. In concept the loan is very straightforward, allowing the Housing Authority to purchase the property and go through the predevelopment process. The question here is the role of the City in furthering the agenda for low-income tenants, specifically through the Housing Authority, which has the ability to go in and build a project, illustrate its effectiveness to private investors and thus stimulate other further development. The total number of units in the three projects would be around 550 units of housing for very low-income. He said with a contingent loan agreement, which was used on the 13th and Market project, the City provides a backstop guarantee in a limited amount to assure the bank and bond holders that the debt will be repaid. He described how this would work and noted that it also calls for the City to reconsider refilling the debt reserve so that it is always current. He said such loan agreements are critical to funding these three projects.

John Carroll, Carroll Investments, developer of the University Court Apartments, noted the important role of the Housing Council in bringing these projects forward and its role in formation of partnerships. He said he strongly believes the private developer community could play a larger role in developing affordable housing, bringing to the table its expertise and understanding of how the market works. It can also perhaps help with site selection and take some of the risk out of affordable housing. He said it is unusual to have a private developer involved in a project such as University Court but there are other opportunities to bring private developers into the fold.

Mayor Katz asked how many units overall the City was up to now.

Mr. Hunter said their initial, informal count is over 2,000. This essentially doubles the number of units produced in Portland.

Commissioner Lindberg asked if the annual goal of 2,500 is still reachable.

Mr. Hunter said, conservatively, he would have to say no right now. The past production level has been between 600 and 900 units per year and it is very impressive to get the 2,000.

Mayor Katz noted that includes all development, including the private sector. She said there is a gap but if the City does the right things, it should be able to get this done.

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Mr. Hunter noted that this ordinance calls for the Office of Finance and Administration (OFA) to do an analysis and then recommend whether or not this financing instrument should be used. He said the 550 units in the University Court project are not a part of the 2,000 count. Without this contingent loan agreement, another \$4 million needs to be found and the Housing Council believes it would be more effective to use the agreement and not spend the \$4 million but promise to consider later refilling a smaller amount if the project does not perform as anticipated. He said if this is approved and OFA returns with a positive analysis within the next month, these three projects can begin this building season.

Commissioner Hales said not only is the City coming close to achieving the numerical goals it set for this public\private partnership, known as the Livable City Housing Council, but it is also seeing such housing projects themselves spark nearby private development and revitalize neighborhoods. He said he believes that will happen with these three projects too and that the intangible effects are at least as important as the numbers. He cited the Belmont Dairy project as one example.

Disposition: Ordinance No. 169816. (Y-4)

Commissioner Earl Blumenauer

277 Consider vacating a portion of NW 90th Avenue and NW Bella Vista Drive at the request of Nauru Phosphate Royalties (Portland), Inc. (Hearing; Report; C-9899)

Disposition: Approved. City Engineer prepare ordinance.

278 Consider vacating a portion of NE Airport Way east of NE 165th Avenue at the request of Iseli Family Partnership (Hearing; Report; C-9900)

Disposition: Approved. City Engineer prepare ordinance.

Commissioner Mike Lindberg

279 Authorize the Mayor to enroll Portland in REBUILD AMERICA: Energy Smart Challenge, a joint venture of the U.S. Conference of Mayors and the U.S. Department of Energy (Resolution)

Discussion: Commissioner Lindberg said the goal of this challenge is to create 250 partnerships nationwide, reduce energy use by 100 trillion btus, reduce CO2 emissions and retrofit two billion square feet of public and private buildings. Portland began an energy

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challenge program about four years ago to see if \$1 million a year could be cut from the City's energy bill, which is now about \$9 million annually. To date, \$1.2 million in annual savings have been identified and projects that save \$870,000 have already been implemented. Since the start of the program the cumulative savings has been \$1.8 million.

Dave Tooze, Energy Office, said his office has now set a higher goal of \$1.5 million in annual savings by the year 2001. That will be more difficult to achieve as the easy stuff comes first. The Energy Office will work with facility managers and continue to provide free energy audits to identify opportunities for savings. They are also "commissioning" new or renovated buildings, such as City Hall and the two community centers, to make sure they are built right and operate as intended. Recently an energy audit of the Justice Center resulted in a retrofitting which produced annual savings of \$71,000 of which the City's share is 26 percent.

Commissioner Lindberg said the focus of the Rebuild America program will move from municipal government to working with major commercial buildings. He said most businesses could cut their energy costs by 15 to 20 percent.

Disposition: Resolution No. 35499. (Y-4)

280

Revise City Code provisions for illegal dumping, the transporting of carcasses and refuse, and operation of City disposal sites (Second Reading Agenda 246; amend Code Chapters 17.102 and 8.36)

Discussion: Theodore C. Coates, Lents resident, supported these provisions as his neighborhood has been heavily impacted by people who dump illegally. He asked who is going to enforce it, what happens in the courts, and the role of the police.

Commissioner Lindberg said he cannot answer all those questions but noted that the Bureau of Environmental Services is now able to grant rewards for information leading to conviction. He directed Mr. Coates to staff for more specific answers.

Disposition: Ordinance No. 169817. (Y-4)

S-281

Contract with Brown and Caldwell Consultants for professional engineering services and provide for payment (Second Reading Agenda 247)

Disposition: Substitute Ordinance as amended No. 169818. (Y-3; N-1, Hales)

City Auditor Barbara Clark

282

Accept Hearings Officer's annual report for 1995 (Report)

Discussion: Elizabeth Normand, Land-Use Hearings Officer, said because of recent legislation there has been concern about how to stay within the 120-day timeline on land-use applications. She said the information in this report about her office's role in this process will provide a starting point to assess the legislation's impact.

Commissioner Hales noted that the number of cases has risen over the past five years and assumes the complexity of the cases has also increased. He asked about the effect of the change in State law that allows more subdivisions to be processed administratively.

Ms. Normand said at this point she has no idea what effect the expedited process will have. She hopes, however, that the rewrite of the Subdivision Code, Title 34, will implement some of what the State law allows and move many subdivisions out of the Type III process. She said what the effect will be depends somewhat on the extent to which objective criteria and standards can be set.

Mayor Katz asked if she had any advice for Council.

Ms. Normand said she hopes there will be a rest from major Code rewrites after the Subdivision Code is completed because they are just now reaching an understanding with affected parties of the ramifications of the 1990 Code rewrite.

Commissioner Hales said he felt the number of cases Council reversed, 10 to 20 percent, was at a healthy level. He said he does not believe the City is getting reversed at LUBA very often. He complimented Ms. Normand on resolving cases so quickly.

Disposition: Placed on File.

283

Assess property for sewer connection contracts processed through the Private Plumbing Loan Program for the period ending February 6, 1996 (Second Reading Agenda 248; P0016)

Disposition: Ordinance No. 169819. (Y-4)

284

Assess property for sewer system development contracts of the Mid-County sewer project for the period ending January 17, 1996 and non Mid-County for the period ending January 17, 1996 (Second Reading Agenda 249; Z0627, Z0628)

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Disposition: Ordinance No. 169820. (Y-4)

285

Assess benefitted property for the costs of the improvement of SE Valentine Drive from 92nd Avenue to the I-205 East right-of-way line and construction of storm sewer (Second Reading Agenda 250; C-9836)

Disposition: Ordinance No. 169821. (Y-4)

At 10:20 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF FEBRUARY, 1996 AT 2:00 P.M.

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

- 287** Consider request of Fisherman's Marine Supply for a Comprehensive Plan and Zone Map amendment from IH, Heavy Industrial, and h, Aircraft Landing Overlay, to EG1, General Employment and h, for property located at 901 N. Columbia Boulevard (Previous Agenda 173; LUR 94-00940 CP ZC - **Rescheduled to February 22, 1996 at 2 PM, Time Certain**)

Disposition: Continued to February 22, 1996 at 2:00 p.m. Time Certain.

REGULAR AGENDA

Commissioner Charlie Hales

- 288** Adopt special design guidelines for the design zone of the River District of the Central City Plan and direct the Portland Design Commission to use the guidelines (Second Reading Agenda 251)
- Disposition:** Ordinance No. 169822. (Y-4)
- 289** Adopt design guidelines for the NW 13th Avenue Historic District (Second Reading Agenda 252)
- Disposition:** Ordinance No. 169823. (Y-4)
- 290** Adopt special design guidelines for the design zone of the Goose Hollow District of the Central City Plan and direct the Portland Design Commission to use the guidelines (Second Reading Agenda 253)
- Disposition:** Ordinance No. 169824. (Y-4)
- 286** **TIME CERTAIN: 2:00 PM** - Appeal of Downtown Community Association against Design Commission's decision to approve the application of Downtown Development Group for a design review to

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construct a new full "half-block" (100' by 200') 10 level, 550 stall parking garage with 1-1/2 or 2 levels of retail space at street level, located at 809 SW Park Avenue (Hearing; 95-00774 DZ)

Discussion: Michael Holstun, Senior Deputy City Attorney, reviewed procedures to be following for land-use appeals. Council members reported ex parte contacts.

Dennis Lachman, Planning Bureau, showed slides and reviewed the issues, noting that the Downtown Community Association seeks to reverse Design Commission approval of this application. He distinguished between approval criteria for a design review as opposed to a use review. Design review issues include whether the design meets the guidelines, conforms to applicable policies, is compatible with the context and promotes pedestrian uses and public art. Another design review, also a Type III, will follow, dealing with openings at the garage levels, the brick color and pedestrian environment around the base of the building. That application has not yet been submitted. A use review -- Central City Parking Review (CCPR) -- is also underway, dealing with offsite impacts such as changes to the overall desired character of the area, street capacity, level of service, access, impacts on traffic, pedestrian and bicycle safety. This application will be heard by the Hearings Officer in April.

Mr. Lachman said there are two approval criteria for design review. The first is compliance with the Central City Plan which has two components: 1) the goals and policies adopted by ordinance; and 2) the action charts and functional maps adopted by resolution. Items in the action charts and urban design maps are approved by Council as a starting point from which to build specific proposals and do not provide a legal basis to deny a use on a site otherwise approved by the zoning. Nor do they provide a basis for requiring improvements that would not otherwise be required under the zoning code. A number of Central City policies are applicable to this case, including urban design and culture/entertainment. A number are not, such as housing and human services. The culture/entertainment policy, which is applicable, calls for promoting the purchase and display of public art. In the accompanying urban design map, which is non-mandatory approval criteria, this site is shown as a continuum of public art and lighting. Staff recommends an additional condition of approval that the maximum value that can be applied toward public art be applied toward the installation of art at or adjacent to the building. Staff also finds that the proposed design meets all the other Central City policies. Even though the action items and urban design maps are not mandatory approval criteria for design review, this block is referenced within them. Two action items relate to the

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site. D-1 refers to widening sidewalks at the site and D-4 talks about establishing a park on the block. They are illustrated in the urban design maps.

Mr. Lachman said the second category of approval is the design guidelines, both the fundamentals and the Downtown Design Guidelines, most of which also appear in the fundamentals. One that does not is the Park Blocks Special District Guidelines which states that "originally the Park Blocks were planned to extend the full length of downtown providing an open pedestrian promenade linking the different areas of the City." When new development located along the Park Blocks, then the amenities depleted. He said the Guidelines specifically talk about new development along the Parks Blocks, not that there should not be new development. The pedestrian guideline caption reads: "The South Park blocks are a major pedestrian promenade and right-of-way changes north of Salmon provide the connection." Once again they are talking about a pedestrian promenade in the public right-of-way and not on private property. While some blocks provide "opportunities for rest and recreation," as called for in the guideline, this block does not and neither do the blocks immediately north and south of it. Although there are no rest or recreation opportunities on the site, the proposal for the garage has a number of features that reinforce the pedestrian promenade. These include having no curb cuts or vehicle access on 9th and Park, requiring street trees to provide a visual link to the Park Blocks, dedicating the entire Park Avenue facade to store fronts and locating store fronts at both corners of 9th Avenue. In addition, awnings, signs, lighting and art may further enhance the area. Therefore staff finds that this design does reinforce the streets as a pedestrian promenade and the guideline is met.

Mr. Lachman showed slides of properties adjacent to the site to put it in context. He said building heights vary considerably and this proposed building, at approximately 131 feet, is higher than the tallest nearby building, which is 108 feet (Studio Arts Building). However, the zoning allows 150 feet on this site and far higher heights are allowed on all the streets immediately around it.

Mr. Lachman said he has submitted substitute findings recommended by staff in support of the Design Commission decision. It contains three items not in the original staff report. The first is the Downtown Design Guidelines approval criteria. Because most are included in the fundamental design guidelines, findings are rarely made against them but in this case they were. All the guidelines were found to have been met. The second item is the Central City Plan Policies and Further Statements which were addressed in a cursory manner in the original staff report but are fully addressed in

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the substitute findings. Staff finds that these were met. Third, staff recommends the additional approval criteria noted above regarding the dedication of the Percent for Art. He said this is a design review, not a use review, and testimony should focus on design issues. In the Central City Plan, only the policies and further statements are mandatory approval criteria. Action items and urban maps are not. Finally, staff and the Design Commission both find all the guidelines are met and recommend approval.

Mayor Katz asked what other issues will be before Council on this site, assuming an appeal.

Mr. Lachman said there could be two other appeals. One would be the additional design review for the ground floor pedestrian area, an additional Type III review. The Central City Parking Review may also be appealed. That is the use review.

Mayor Katz cautioned those testifying that this is basically a design issue, and does not deal with use of this site as a parking lot. She said those present will probably have a chance to return to talk about the use issue.

Lisa Horne, Downtown Community Association President, PO Box 1623, 97207, presented petitions signed by 937 persons opposed to the project.

Bob Shoemaker, 4837 NW Burnside, 97210, attorney representing the Downtown Community Association, the appellant, entered into the record a letter to Council dealing with possible alternative sites for the parking garage, a better use for this block and the controlling criteria. He raised several process issues. He said the applicant sought approval of design review before the proposed use of the space was allowed, a backwards proceeding. Perhaps worse, the building Council is being asked to approve was illegal during the Design Review process as its approval as a parking garage and access from Yamhill depended upon adoption of the new Central City Transportation Management Plan (CCTMP). He challenged the legality of the City's acceptance, preparation of a staff report and scheduling of design review prior to the CCTMP's adoption. He asked Council to dismiss this proceeding until the use review has been completed.

Mr. Shoemaker said the ultimate criteria to be considered in this case is a finding that the proposed parking garage will not significantly lessen the overall desired character of the area as determined by the Central City and Downtown Plans. The Downtown Plan calls for the development of a major pedestrian way along the Park Blocks from

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Portland State University to the retail core and north to Union Station. The Central City Plan calls for all the Park Blocks to be major open space and specifically calls for wider sidewalks and for this particular block to be a plaza. A parking garage with cars constantly crossing the sidewalks on Yamhill and Taylor streets and with narrow 12-foot sidewalks will surely prevent development of a major pedestrian way from the South Park blocks to Union Station and significantly lessen the desired character of this area. The applicants candidly admit that their proposal would extend the wall of buildings from Salmon to Bryant Park, making that entire five-block stretch a nearly continuous retail corridor. This is explicitly contrary to the Central City Plan. Applicants also claim that Yamhill will be strengthened by the addition of this missing building wall. They would like Council to believe that the sidewalks along Park and Ninth will be delightful pedestrian ways even with the addition of trees, furniture, dining tables and chairs and trash cans on 12-foot sidewalks, three feet less than all the other sidewalks downtown. In addition to violating the Central City and Downtown Plans, this proposal violates the Design Guidelines which explicitly apply to Design Review proceedings. He cited those relating to pedestrian issues: B1, maintain an attractive access route for pedestrian travel and recognize the different zones of the sidewalk; and B2, protect the pedestrian from vehicular movement. He said he does not know how that can be done with 550 cars going across Yamhill and Taylor at all hours of the day. Guideline B4 calls for stopping and viewing places and for the provision of safe, comfortable places where people can visit, meet, etc., without conflicting with other street uses. Guideline 11 of the Downtown Guidelines calls for maintenance of the diversity of downtown by providing opportunities for pedestrian activities adjacent to the pedestrian space.

Mr. Shoemaker referred to staff comments that nothing in the building design precludes opportunities for pedestrian-oriented activities. He said nothing precludes them except the building itself which preempts any widening of the 12-foot sidewalks. He cited the special district guidelines which call for reinforcement and protection of the Park Blocks as a pedestrian promenade linking different areas of downtown and providing opportunities for rest and recreation. Even if all the proposed sidewalk uses can be crowded within that 12 feet, all there would be is more of what the City already has downtown, another series of built-upon blocks with sidewalks allowing people to work their way through the downtown. This would be just business as usual in a much more confined space in violation of two Downtown Plan goals which call for diversity in the pedestrian experience and for downtown to be a delightful place to shop and visit and enjoy life. He said opponents believe this proposal violates just about all the guidelines for the use of downtown and for

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what the Park Blocks are intended to be.

Ed Pischedda, Land-Use Chair, Downtown Community Association, PO Box 9032, 97207-9032, asked Council to look to the future as well as the past and fulfill the vision of keeping this space for people, not for cars.

Individuals speaking in support of the appeal and in opposition to the proposal included:

Ray Polani, Citizens for Better Transit, 6110 SE Ankeny, 97215-1245

Irwin Mandel, 1511 SW Park, 97201

Andrew Wheeler, architect, 600 SW 10th, #517, 97205

Frank Whelan, 133 SW 2nd, #400, 97204

Pauline Anderson, #11, Oregon Yacht Club, 97202

John Adams Bright, 2056 NW Irving, 97209

Garry Papers, American Institute of Architects Urban Design Committee

Chair, 315 SW 4th, 97204

Rosemarie Quinn, The Vat and Tonsure, 822 SW Park

Ernie Bonner, 2836 SE Main, 97214

Jerry Powell, 1441 SW Morrison, 97201

Bruce James, 2489 NW Raleigh, 97210

Michael Parker, Territory Rd., Oysterville, WA 98641

Alex Pierce, 650 NW St. Helens Ave., 97210

Saul Zaik, 720 NW St. Helens Ave., 97210

Richard Brainard, 813 SW 5th, 97204

Eleanor Davis, 4295 SW Melville, 97201

Jim Westwood, 3121 NE Thompson, 97212

Thomas Vaughn, 2135 SW Laurel, 97201

Margaret Strachan, 1108 NE Going, 97211

John Gould, 800 Pacific Building, 520 SW Yamhill, 97204

Howard Glazer, 2378 SW Madison, 97205

Lee Lacey, 910 SW Park, #502, 97205

Terrance O'Donnell, 1307 SW Broadway, 97205

Julie Limbocker, 4117 SE 11th, 97202

Tracy Conklin, Box 8981, 97209

Richard Lishner, 2545 SE 37th, 97202

James McQuillen, 4612 NE 18th, 97211

S. W. Conser, 1829 SE 42nd, 97215

Bill Naito, 5 NW Front, 97209

Alvin Ackerman, 1431 SW Park Ave., 97201

Art Lewellan, 27 SE 74th, 97215

B. J. Seymour, 1405 SW Park, #34, 97201

Emiko Takahashi, 2041 SW Madison, #1, 97205

John Feit, 2042 SW Madison. #1, 97205

Al Staehli, 317 SE 62nd Ave., 97215

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Rose Marie Opp, 11135 SE Yamhill, 97216
Lili Mandel, 1511 SW Park, 97201
Gino Pieretti, 1100 SW 6th, #1105, 97204
Ed Pischedda, Downtown Community Association

Opponents testified that building a parking garage here would forever prevent the City from achieving a longstanding vision of connecting the North and South Park Blocks and providing a ribbon of parkway through the city's center. Some opponents suggested alternative sites or building the parking underground and creating a plaza at ground level. Others said providing more parking was inappropriate downtown as it would just encourage more automobile use. Other reasons for opposing the proposal included: the block is too small and the building is out of scale; access on Yamhill does not work well with light rail; the 12-foot sidewalks are too narrow and should be at least 15 feet; the building's height will create a canyon effect, the building negatively impacts the historic plan for the Park Blocks and nearby landmark buildings; and construction will drive customers away from nearby businesses. Criteria cited as not being met included: A5, A8, A9, B1, C3 and D1 regarding the character of the neighborhood, compatibility with existing historic landmark buildings and reinforcement of the pedestrian system. Several architects questioned the accuracy of the renderings, contending that they distort reality.

Steve Janik, attorney representing the applicant, Downtown Development Group, said this is not a hearing about whether this privately-owned piece of property should be a City park. The City has had an opportunity to make that happen for the last 100 years and retains that right in the future. The question of whether there should be a parking garage here is not up for consideration today as that is a separate application and will be considered later. The question today is limited to design considerations, not as broadly interpreted by opponents but as articulated by the City's design guidelines. The issue is whether Council agrees with City staff and the Design Commission that the project meets the design guidelines. He responded to the legal issues raised by Mr. Shoemaker. He said both Mr. Shoemaker and others have used rhetorical words like "keep the faith" and "vision" in expressing their opposition. He said the question is what is the articulated City vision for this block in the Central City Plan. When that Plan was adopted the City could have mandated this block as a park but it did not. Nor did the City take steps to acquire it for a park prior to that. The City was careful in approving the Central City Plan to adopt the action item, which is what opponents are hanging their argument on, by resolution. The Plan itself states that this is not a mandate or binding approval criteria. The City knew the difference between the two and the

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Downtown Community Association should have, too, because in a prior case it brought against the City, the Court of Appeals threw out the entire Downtown Parking and Circulation Policy because it too was adopted by resolution. In that case, the Council readopted it by ordinance to make it mandatory. That is the difference here, not the personalized dramatic vision Council has heard from citizens today. If this is to be a city park it is the only one upon which surface parking has occurred and been permitted for well over a decade. Mr. Shoemaker's argument that there is a better place for this garage is not relevant to the design guidelines. He argued that the Yamhill driveway cannot be approved because it will only be allowable once the CCTMP is in effect. However, no one has yet approved the use of the Yamhill driveway, only the design. Mr. Shoemaker argues that the applicant must not significantly lessen the desired character of the area. That too is for consideration at another hearing. It is not an applicable design approval criteria or guideline. He read the Code definition for CX zoned property: "Development is intended to be very intense, with high building coverage, large buildings and buildings placed close together. Development is intended to be pedestrian oriented with a strong emphasis on safe and attractive streetscape." Finally, Mr. Shoemaker argues that applicant cannot apply for design review of the structure until the parking use is allowed. He said parking is allowed as a use under certain conditions under the old Downtown Parking and Circulation Policy and under the new CCTMP. Applicants will seek approval under the latter. In addition, the Design Commission conditioned the design review approval on subsequently obtaining use approval, a common pattern whenever multiple approvals are required. Surface parking lots are interim uses and in the past Council has stated its desire to convert the interim uses to building structures to create the sense of enclosure the design guidelines call for. That is what is happening now.

Chris Kopca, Downtown Development Group, 715 SW Morrison, #423, 97205, said three factors drove the garage's design: 1) meeting the adopted city regulations governing the property; 2) fitting the project effectively into the area; and 3) fulfilling the needs in a viable way. The site is within the retail district and beside the cultural district. It is unique in that one parking garage is able to comfortably serve both districts. He noted that nearby there are seven buildings with little or no parking that will be provided with a long-term future, meeting the intent of the Preservation Parking policy that Council adopted. It will make those buildings able to compete with suburban buildings. He cited other properties that generate short-term parking needs that the City expects to serve. Street trees will be added to enhance the sidewalks. He noted also that the developer chose to put the elevator in the building center to increase access to Park Avenue and to serve equitably the retail core as well as the cultural section.

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The standard for sidewalks in that area is 12 feet and they see no value in making these sidewalks wider than those on adjoining streets. He said this building has a definite character at street level that will attract viewers and, to avoid the appearance of listing, they have come up with a design that keeps level perimeters around the entire block within a half-block structure. He said this is not typical of half-block parking garages. Architecturally, a lot of relief has been added to the building, including varied materials, insets, medallions, etc. It is a handsome and rich building. Regarding auto entry, they have tried to minimize the automobile impact and maximize pedestrian access. On Yamhill, there is an entrance only, leaving one lane coming into the building. All the exits are on Taylor, where there is also an entrance. They have also designed the building so that queuing goes on within it and not on the street. While the height is 115 feet, it will not appear that tall because of the way the floors were grouped and because pedestrians will see the parapet rather than the top. He cited neighboring buildings, such as the Park Avenue apartments, which are taller and said this building will be in scale and context with its neighbors.

Commissioner Hales asked if the height across the street from the Pythian building at the parapet is 115 feet versus 108 across the street.

Mr. Kopca said it was 119 feet. He said the height measurement, using the City's method, is 131 feet. If you measure a building from the street to the parapet, at the Studio Arts building it is 108 feet. The proposed building is nine feet taller.

Commissioner Hales noted testimony stating that the proposed materials do not reflect the richness elsewhere in the district.

Mr. Kopca said the building is precast at the base with large, dramatic vaulted openings. On the sidewalks they intend to incorporate street lights and trees and will continue the brick along Yamhill. Staff has suggested that they continue concrete sidewalks along Park and Ninth in the interim until possibly other solutions develop for those streets. It also has public art, very likely in the sidewalk area.

Commissioner Hales asked how the art projects will be reviewed.

Mr. Kopca said the Regional Arts Commission will participate in discussions about them.

Mr. Lachman said the Design Commission will give some advice on possible placement of the art but the Regional Arts Commission has

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the authority to decide what actually happens.

Mr. Janik noted a proposed condition in the current staff recommendation that 75 percent of the art budget be used on this site.

Mr. Kopca noted that the Design Commission had asked for further review about how the street will be handled as that part of the project design was not approved. That will be brought back as a subsequent application. The building area design itself was approved by the Design Commission.

Mr. Lackman said the focus of the subsequent design review will be awnings, signs, sidewalk issues and embellishments in the pedestrian area. He said application has not yet been made on that and it would therefore not come to Council on any appeal prior to the use hearing in April.

Mr. Kopca said they agree with the connection of the blocks as suggested in the Downtown Plan and other documents. That should happen at the sidewalk to foster a strong pedestrian connection between the North and South Park blocks.

Individuals speaking in support of the proposal included:

Tammy Hickel, Nordstroms, 701 SW Broadway, 97205

Beth Gillespie, Columbia Sportswear, 6600 N. Baltimore, 97203

Ron Brenner, Prudential Insurance, manager of Pacific First Center,
805 SW 6th, #450, 97204

Michael Robinson, attorney, 900 SW 5th, #2300, 97204, representing
Rembold Properties

Tom Sjostrom, Morgan Park Properties, 720 SW Washington, #330

John Tess, 123 NW 2nd, #200, 97209

Mark New, real estate broker, 621 SW Morrison, 97205

Ron Beltz, 10642 SW Inverness Ct., 97219, representing the Louis
Dreyfuss Property Group, owner of the KOIN Center and other
downtown buildings

Kerry Kincaid, Manager, Zells, 800 SW Morrison, 97205

Wayne Rembold, 1022 SW Salmon, 97205

Doug Bean, commercial real estate broker, 101 SW Main, 97204

Supporters of the project cited the need for parking to maintain and rebuild a healthy retail core and to provide much-needed parking for historic downtown buildings which have trouble attracting tenants when they are unable to provide parking. They said the loss of parking on this block would be disastrous for their businesses and force more to move to suburban areas. Mr. Robinson said the

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language in the action item in Central City Plan Policy 14 (D.4) cited by supporters makes it clear that this is only an idea, not a mandatory approval criteria, and noted that it had not been acted upon in the last eight years. Supporters said calling for a North/South Parks block connection now is unfair, noting that many of the buildings on those streets have historic landmark designations and that opponents of this proposal would likely oppose their demolition to make way for a park. Regarding the Aero Club property, also in the path of a North/South Parks block connection, construction of a new eight-story building on this site will start within months and tenants have already been secured. Extending the Park Blocks would have a devastating effect on the five privately-owned blocks where there are 20 buildings with both commercial and residential uses. Many low-income housing units would be lost if these blocks became a park. Supporters said the design, with its arcade, use of brick and fenestration, is compatible with other historic buildings in the area and praised the inclusion of multi-level retail space. They said if building owners are going to be asked to make seismic improvements up to Code, the City should help in meeting parking needs for tenants.

Ray Boucher, project architect, 209 SW Oak, 97204, disputed testimony that the renderings were incorrect and contended that the perspective is very accurate.

Mr. Shoemaker said he believes City resolutions are policy that can appropriately be considered by Council in making decisions such as this. He said he believes the courts have so held, citing the Kaady Car Wash case. The action items within the Central City Plan are part of the policy of that plan, essentially the guidelines for achieving the plan policies. They cannot just be ignored because they are only adopted by resolution. He cited a memo containing a statement by Michael Holstun, City Attorney, stating that: "a design review application will be approved if the review body finds the applicant to have shown that the proposal complies with the design district guidelines and any applicable area plan adopted by City Council. Action chart items are considered in design review as possible ways to implement the Central City Plan. However, action chart items may need to be refined or replaced by alternative actions found to be better able to implement the vision of the Central City Plan." Mr. Shoemaker said action items then are to be replaced only if a better way is found to implement the vision of the Central City Plan. That vision is for major open space through the Park Blocks and for a major pedestrian way which this proposal does not achieve. He said the action items are relevant and the zoning code, as applied to Central City Parking Review, requires that this project not significantly lessen the overall desired character of the area as

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determined by the Central City plan. He stressed the desired character, not the required character. Certainly the desired character would not be for a parking garage. That zoning code applies. The applicants say the driveway is not an issue because they already have one and therefore have a right of access off Yamhill. That existing driveway is a prior non-conforming use to the Code, which does not allow driveways along light rail. An expansion of a prior non-conforming use, as this is, is essentially a new use. Therefore, he believes the driveway is a relevant design issue. The other buildings along the Parks Blocks will wear out and that is when the vision of the Central City Plan should be achieved bit by bit. There are also a lot of buildings along the Park Blocks that are not safe seismically and when they are retrofitted, that is the time to take them down and do something better with those blocks. But if this proposal is allowed, a precedent will be set for more City blocks with buildings on them. He said economic arguments should not be considered as part of design review. Finally, he noted that not a single architect, other than the project architect, testified in favor of this project while many testified against it.

Mayor Katz distinguished between the design and the use issues. The questions regarding design include: 1) does the design meet the guidelines; 2) does it conform to the policies; 3) is the architecture compatible with the context; 4) does the design promote pedestrian use; and 5) does it promote public art. The use issues, which are likely to come to Council later include: 1) does the parking garage meet all the approval criteria; 2) does parking at this location impact street capacity and service; does parking at this location impact transit operations and pedestrian and bicycle safety; and 3) is the proposed use consistent with the Central City Plan. A lot of those issues were raised today but she is trying to keep them separate.

Commissioner Hales moved to tentatively, subject to findings, deny the appeal and uphold the Design Commission's approval of the project, adopting the substitute findings recommended by staff.

Commissioner Blumenauer noted that the vast majority of testimony today dealt with the use and people will have their say on that later. No strong arguments were presented for overturning the staff and Design Commission recommendations. Their interpretation was not unreasonable and this did meet the standards traditionally established for the City. As a member of Council when the Central City Plan was approved, he believes the intent of the language cited was not a mandate and it was never the intent of Council to force use in the way that is being argued here. In the ensuing seven years since passage, the way that Council has approved the Plan reinforces that view. However, he looks forward to the arguments on use of this

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site. He voted yes on the motion.

Commissioner Hales said he also wants to avoid dealing with the use issues today. He described what Council does regarding land use -- adopting big picture plans and translating them into reality through the zoning code and specific regulations. Capital investments are then made, such as approval of the parks renovation bond measure, that carry out portions of those plans. Finally, Council hears cases based on the rules. He said Council's job is to look at the rules, look at the findings issued by the review body and then decide whether it should substitute its judgment for that decision. He said there was a lot of passionate testimony today about big issues and about why Portland is so successful. One reason is because it makes bold plans and comes together as a community to do great things. The other reason is that it can be relied on to follow its own rules. In this case the rules say, look at the design of the building, its mass, height, relationship to the neighborhood, effect on the pedestrian environment. He said he thinks a two-story retail space would be better than what is there now, enhancing both the safety and vitality of the streetscape. The building environment already there also has to be addressed. He said the Design Commission and staff did a good job in making a difficult call as obviously parking garages are not popular projects. He said he has not heard compelling testimony today that would cause him to reverse the Design Commission.

Commissioner Lindberg said he will vote against the motion. He said the design regulations upon which this decision is based are contained in a lot of documents, i.e. the Downtown Plan, the Central City Plan, and are subject to many judgments and interpretations. He said he firmly believes this project violates many of the criteria and that it is Council's job to look at the big picture. This project is not at all what people had in mind when they approved the Downtown or Central City plans. A person testified today that he was against it because he was so proud of his City. That is an important point. One could look at the project as meeting absolute minimum standards and abandon efforts to strive for excellence in the City. He said this project in its design, not even getting to use, does deny the City's aspirations and smothers its vision. Council needs to step back and look at what is happening in Portland, an award-winning City for its urban design, planning and livability. Much of this has resulted from tough decisions that were made, such as the parking lid or height limits which the private sector felt were far too restrictive 15 and 20 years ago. He noted an article in the New Yorker in the 1980s which found Portland had the best pedestrian environment of any city in the U.S. Another thing Council needs to look at is the way the City markets itself. He noted an APP brochure promoting the arts, Pioneer Square, pedestrians, biking,

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open space, etc. All of those have to do with meeting the design guidelines outlined in the Downtown or Central City plans. Council has a choice between having a downtown of walls and canyons which block the sun or having light and a diverse experience. He said hundreds of visitors have talked to him about their positive feelings for the humane, low-scale pedestrian environment. To be more specific, the Downtown Plan was incorporated into the Central City Plan and there are specific criteria this project violates. He stated the four goals proposed as general statements for the objectives of design review downtown: 1) enhance the existing character; 2) promote the development of diversity in areas of special character; 3) provide for a pleasant, rich and diverse pedestrian experience; and 4) provide for humanization through promotion of the arts and excellence in design. He said this project violates those goals. He said the sentence stating: "this identity can be supported or denied by new development. Buildings which have no relationship to Portland, its setting or its past, which could be located in any modern city, can disrupt Portland by creating spaces without identity." He believes that is what this project does. There are many other guidelines laid out in the testimony which are violated also. For example: "ensure that new development is at a human scale and that it relates to the character and scale of the area in the Central City." He said it is a sad day when he hears this building compared to the Jackson Tower in terms of its design and character. He said he believes the Design Commission lost its way because it did not go back to the true intent of the Downtown and Central City plans. Portland does need parking, as the business community testified, but there are other options nearby and other design options at this location. Perhaps people will have to spend a little more money and make adaptations to keep up the spirit of excellence here.

Mayor Katz said someone said this was a dress rehearsal. She agreed and believes this will come back to Council again. She is also concerned about the improper sequence of review as it would have been better to deal with the use of the building before the design review. She said she is not sure she agrees that only an ordinance carries the binding force of law and that resolutions should be rejected. Resolutions are formal documents by which the Council declares City policy or directs officers of subdivisions of the City to take specific action. They are policy documents and should be taken very seriously in terms of the use of a building. Also, the issue of expanding the Park Blocks is very important to Council. She noted their expansion north of Burnside and the further extension planned once the 511 Building is turned over to the City. They are also working with Senator Hatfield to look at the option of moving the post office to the airport so the Park Blocks can be tied in with the opening of Tanner Creek. The desire of Council is certainly to

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provide additional open spaces. Having said all that, she will support the motion as the building does meet the design standards. It is not a great building, it is a decent building. She said she heard some compelling arguments against it but on the use, not the design.

Disposition: Tentatively deny appeal; applicant prepare findings for March 13, 1996 at 2:00 p.m. (Y-3; N-1, Lindberg)

At 5:55 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 22ND DAY OF FEBRUARY, 1996 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; Linda Meng, Chief Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

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TIME CERTAIN: 2:00 PM - Consider request of Fisherman's Marine Supply for a Comprehensive Plan and Zone Map amendment from IH, Heavy Industrial, and h, Aircraft Landing Overlay, to EG1, General Employment and h, for property located at 901 N. Columbia Boulevard (Previous Agenda 287; LUR 94-00940 CP ZC)

Discussion: Linda Meng, Chief Deputy City Attorney, outlined the guidelines to be followed for a quasi-judicial hearing.

Steve Gerber, Planning Bureau, showed slides of the site. He said a Comprehensive Plan amendment and zone change have been requested by Fisherman's Marine Supply which is presently in conflict with City Codes regarding the type of uses allowed in a heavy industrial zone. When it first moved to this location, there is every indication that it was a wholesale business as allowed in the IH zone. However, as the commercial fishing industry waned, it shifted its emphasis to retail, which predominates today and was the impetus for this request. Even as a legal non-conforming use, limitations would be placed on development of the site for this use. As an illegal use, it may appropriately only move to another site. The City's position is that a business decision was made which created a new retail use here without the appropriate change of occupancy review. A violation has been charged against this use and action on that charge is pending the outcome of this land-use proposal. He described the site, accessed off Columbia Boulevard and adjacent to the I-5 freeway, the gateway to this industrial sanctuary. He noted that a shared access easement allows egress only from the site and runs north and south between the subject site and businesses adjacent to the West, which share the access easement. He noted that none of the three parking areas display any interior lot landscaping, a non-conforming aspect of the present development. The smaller site sizes, the intensity of development and shorter setbacks evidenced in this area would argue for EG zoning if it can be found that a Comprehensive Plan amendment is approvable. The applicant has requested such zoning to implement the requested

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mixed employment, Comprehensive Plan designation. To approve this request, the proposal must be in compliance with Section 33.810.050 approval criteria which in turn requires that the proposal equally or better supports the applicable goals and policies of the Comprehensive Plan and Base Zone changes. It must also show compliance with the applicable elements of the State Transportation Planning Rule and the Albina Community Plan. This site and the surrounding area has for over 25 years been zoned for heavy industrial activities. It became a part of the Industrial Sanctuary of the Comprehensive Plan when it was adopted in 1980 and that status was reconfirmed with adoption of the Albina Community Plan in 1993. This proposal fails to show that it equally or better supports a number of Comprehensive Plan goals and policies, including Policy 2.2, Urban Diversity; Policy 2.14, Industrial Sanctuaries; Policy 2.25, Albina Community Plan; Policy 5.1, Urban Development and Revitalization; Policy 5.8; Diversity and Identity in Industrial Areas; Policy 6, Transportation; and North District Policy 6 and 7. He said it encourages vehicle miles travelled and contributes to an absorption of the capacity of Columbia Boulevard to accommodate truck traffic. Because this proposal is not equally or more supportive of the key applicable Comprehensive Plan goals and policies, it cannot be approved. Both staff and the Hearings Officer recommend denial. Since the Hearings Officer's recommendation, the Water Bureau has indicated that water service is available and ODOT has reiterated its support of the denial, citing both existing and potential problems with a commercial use at this location.

Mr. Gerber said this use would insert customer-oriented employment zoning into an area where the practices of heavy industry are specifically protected from such potential conflicts. Policy 2.14, Industrial Sanctuaries, encourages preservation of industrial land for manufacturing purposes. The applicant argues that the word "primarily" appearing here means that some incursion of non-manufacturing uses is permissible. However, that modifier primarily allows non-manufacturing uses that are supportive of heavy manufacturing uses. The Hearings Officer noted that previous City actions, including a decision on the Costco case, support the intent of the policy to allow only small commercial uses supportive of the industrial uses and that allowing commercial uses to compete for industrial lands can cause problems for industry retention through escalating land values and extra demands on public facilities. The request also conflicts with Policy 2.25, the Albina Community Plan, by encouraging increased vehicle miles travelled and by not accommodating concentrations of commercial and employment businesses. Policy 5.1 is violated because there is no satisfactory answer to the loss of inventories of commercially and industrially zoned land. Also the suggestion that 2.66 acres is neither usable nor

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of significant value to the industrial sanctuary area is not substantiated. Policy 5.8, Diversity and Identity in Industrial Areas, is also not complied with. He displayed maps to show the zoning. This retail use also does not support Goal 6, Transportation, because it contributes to an absorption of the capacity of Columbia Boulevard to accommodate truck traffic.

Steve Pfeiffer, attorney representing Fisherman's Marine Supply, said this is not a hearing on zoning enforcement. He said they do not agree with Koldkist's charge that this is an illegal use. Rather, Fisherman's Marine needs to prove they are a legal use and why they need this wholesale\retail split. He noted Koldkist's complaint over a year ago that Fisherman's Marine was primarily no longer a wholesale but a retail use. He said Fisherman's Marine had a 15,000 foot proposal for a warehouse and office immediately north of the existing building but they did not want to proceed until this was resolved. As their attorney, he advised them, since retail use here goes back to the late 1940s, to attempt to resolve the subjective retail\wholesale call and go forward with a non-conforming use determination and ask Council to determine what the mapping should be on this site. That is what they are doing today. He said the Hearings Officer erred in denying this proposal in a number of ways. First of all, the Industrial Sanctuary Policy does not apply here in the same way it did in the Costco case. There the Industrial Sanctuary remains in place and the issue is whether the conditional use should be allowed. In this case, they are asking that the Industrial Sanctuary designation be removed. The only question here is the extent to which a zone change to EG1 on this site will adversely affect surrounding industrial uses in the Sanctuary that is retained. That is a very legitimate issue and concerns mostly traffic. He said he does not see how the zone change could conflict with the industrial sanctuary because otherwise you could never have a zone change from an industrial sanctuary category. Second, staff and the Hearings Officer suggest there can be no deficit in the industrial land base. Council should not adopt that as policy as the Comprehensive Plan is a fluid document, not locked in stone. Nor is there a policy, as the Hearings Officer suggests regarding Policy 2.2., Diversity of Land Uses, that you cannot have a zone change unless you can show there is no other land in the city that is appropriately zoned for this preferred use. Yes, the Industrial Sanctuary needs to be preserved but the "primarily" reference should not be read as requiring retention of the existing amount of industrial acreage throughout the City. The issue really hinges on the extent to which there is a traffic impact in the industrial sanctuary. The significant impact cited by the Hearings Officer relies heavily on a worst-case analysis. Robert Shulte, who did the traffic analysis for Fisherman's Marine, found in his worst case analysis that if both the 22,000 square feet of existing

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use and the 15,000 square foot addition were wholly retail, that the intersection remains essentially at the same level, as do the through movements. What possibility there is for conflict can be easily resolved. The City's Bureau of Traffic Management concluded that there will be no adverse impact on intersections in the vicinity. The Bureau of Traffic Engineering concluded that no further improvements are called for at this site if the zone change is approved. ODOT's statement that the I-5 intersection is too close is a truism and is also a function of later design standards for intersections which will not change if this request is denied. The Hearings Officer relied fairly heavily on Policy 5.8, citing the need for an industrial sanctuary land base. They agree with the need but disagree that approval will serve as a precedent for future rezone applications in the corridor and lead people to convert current industrial uses to retail. He said that could not happen except on a case-by-case basis. He said Council's decision should be based on the facts at hand, on the circumstances and interpretation of the policies as applied to that particular site. He noted a request from the Kenton Neighborhood Association that, if the worst case scenario is a problem, the EG zone site be approved on the existing warehouses and offices today (about 1.8 acres), not the undeveloped piece to the north.

Robert Shulte, Traffic Engineer, DKS, 921 SW Washington, 97205, described the findings of the traffic analysis his company did of the impact on nearby intersections and access points. He said in 1990 there were a total of 10 accidents on Columbia Boulevard in the site vicinity and that dropped to two in 1993, during an increase in business activity for Fisherman's Marine. The project would generate an additional 160 daily trips, 20 at peak hours. He outlined the service levels at the access approaches and said it does not appear that the proposal will have a significant safety or operational impact on Columbia Boulevard. Opponent claims that currently traffic for other tenants is seriously hampered along the easement road because of Fisherman's Marine operations. His observations did not reveal any significant operational conflicts or safety problems and no evidence has been provided by the opponent. Also, the recommended mitigation measures would lessen the likelihood of this occurring in the future through better signing and the control of access to the easement road from the Fisherman's Marine parking lot. Koldkist also claims that there are currently serious conflicts between vehicles turning out of the easement road and traffic on Columbia Boulevard. Again, no evidence about the frequency or severity of these conflicts was provided and were not observed in his analysis. The accident data supports those field observations as only two accidents occurred in the vicinity in 1993. The opponent also claims that this zone change will result in safety and operational problems in the future

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due to additional traffic volume. Again, no evidence has been provided that there is an existing problem, and the accident rate decreased during the period from 1990 to 1993, during a time of increased business activity for Fisherman's Marine. Finally, the opponent claims that the current operation generates several hundred more trips per day than would a warehouse under the existing zoning. This claim is true but the warehouse operation would still generate about 250 trips per day, 45 during the peak hours. Most would be truck trips which could have a significant impact on the easement road and Columbia Boulevard.

Mayor Katz asked if the analysis was based on a full buildout of the site.

Mr. Shulte said they did two scenarios, one for the project as proposed and one with a full buildout of retail on the site as it exists today, with the exception of 4,000 square feet of floor area that would be retained as office. The level of service on Columbia Boulevard at the I-5 ramp would remain Level B as would Level Service A on Columbia at the easement road and east driveway. Level Service E and F would occur on the easement road and east driveway approaches going south.

Mayor Katz cited the Hearings Officer's decision which states that the applicant's traffic analysis did not consider a full buildout as allowed in the EG1 zone and full potential traffic impacts have not been analyzed and it cannot be determined if the transportation capabilities are adequate for the proposed zone.

Mr. Shulte said that assumes conversion of the 4,000 square feet retained as office/warehouse to 100 percent retail for the entire site. That would add about 16 more trips during the peak hours compared to their full buildout projection, a fairly insignificant increase.

Gerald Martin, Distribution Center Manager, Yellow Freight Systems, 10510 N. Vancouver Way, 97217, said he has a minimum of one or two semis operating in this area everyday. He said his drivers believe the traffic generated by Fisherman's Marine is no more or less a hindrance than that imposed by any other existing businesses in the Columbia Boulevard area. His business had no adverse impact as a result of Fisherman's Marine being in that area.

Verne Ericson, representing the Kenton Neighborhood Association, 7628 N. Mississippi, 97217, said the neighborhood is very concerned by the loss of a good business which attracts people to other Kenton area businesses and is a much cleaner operation than many along Columbia Boulevard. He said neighbors of Fisherman's Marine are

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not heavy industry but wrecking yards, topless bars, and used tire and used battery dealers. He said the industrial sanctuary is not being maintained and opposition to Fisherman's Marine reflects the hidden agenda of the complainant. To zone out a company that has been here for 20 years is absurd and will result in a loss of jobs for an area that badly needs them. He said traffic around Fisherman's is not a problem and suggested that Koldkist trucks slow down.

Paul Stehlik, 19310 NE 192nd Ave., Brush Prairie, WA, 98606, said he operated Roadrunner Trucking near this site from 1985 to 1993, and ran about 70 trucks a week, using Columbia Boulevard extensively. He said Fisherman's Marine is a bright light in this part of town and should not be turned out.

Mark Fahey, The Halton Company, PO Box 3377, 97208, said they operate three facilities on Columbia Boulevard to the east of Fisherman's Marine Supply. He stressed the need for more jobs in North and Northeast Portland and said it does not make sense to lose a stable business with 35 employees.

Liz Hamilton, Executive Director, Northwest Sports Fishing Industry Association, PO Box 4, Oregon City, 97045, outlined the Evans' family business operations at this location since 1947. She said it has been a strong supporter of the community and it would be wrong to remove such a good neighbor.

Larry Mills, Kenton Neighborhood Association, said Fisherman Marine is a success story for a community that is working very hard to strengthen its business district and foster economic development. He said the Kenton Neighborhood Association listened to all sides in this dispute and initially voted to remain neutral. When the Hearings officer denied the zone change request, the land-use chair reexamined the issue and has made suggestions for compromise. Kenton does not want to lose this valuable asset and drive businesses away, sending a negative signal to prospective investors. He said this should not be compared with the Costco case in the Northwest Industrial Sanctuary as this company has been in this location for decades, having simply shifted its business to address market changes. He asked Council to try to reach a compromise and suggested that the zone change be limited to just the store and the area surrounding it and allow the rest of the property to remain in the industrial sanctuary zone.

Vicki Grigsby, President, Lombard Business Association, said a viable business is being driven out because of a zoning conflict. North Portland already has a bad reputation as a business community and they would hate a supportive one to be lost.

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David Meters-Eatwell, Executive Director, Kenton Action Plan, said the loss of Fisherman's Marine is a major one for the neighborhood and a harsh way to reward a responsible company.

Peter Manson, Romar Transportation, operators of a warehouse and distribution center about four miles west of this site, said they see no negative impact from having their trucks enter and exit at this intersection. Adding more trucks here through a heavier industrial use, however, could mean gridlock. He said retail is probably the best possible use of the site.

Peter Fry, 722 SW 2nd, Room 330, representing the North/Northeast Business Association, cited the Association's support for this proposal. He said they initially recommended that Fisherman's Marine explore the non-conforming or conditional use options but then became aware that it would be virtually impossible for that to be successful. He said he worked on the industrial zoning code when he was involved in the Albina Community Plan and what they have today is not what they wrote earlier with the business community and the City. What they wrote would have worked here but, because of the Costco case, many distribution companies in industrial sanctuaries throughout the City have been put at risk. He said very few of them can meet the conditional-use requirement that calls for the majority of business to be done with other businesses in the area. Because of this and other Code changes, businesses are having increased difficulties in adapting to changing markets. In the past there was wholesale and retail but nothing called distribution, which is a melding of the two and is permitted in the industrial sanctuary. He said the solution presented today may not be the best solution but results from the fact that the Code is not working very well.

Tom Kelly, Neil Kelly Co., said he has a hard time believing claims about the negative impact Fisherman's Marine has on traffic. He said denial will send a negative message to all North Portland businesses.

Ed Sullivan, attorney representing Koldkist, Inc., said this application results from a zoning violation found by the City four years ago. Since that time Fisherman's Marine has vastly increased its retail use here and is now asking the City to save it from the predicament it created through this unlawful use. He said neither the possibility of their leaving the area nor the endorsements by customers or friends are relevant. He said there is no cogent basis in the City's Comprehensive Plan or Code for the proposal, which was rejected by the Hearings Officer who agreed with the staff recommendation of denial. He said the Industrial Sanctuary and Transportation elements of the Comprehensive Plan, as well as the

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Albina Community Plan, were found to be relevant here. He said, based on the industrial designation, Koldkist relocated here from Northeast Portland and made substantial investments, relying on the rules limiting commercial uses in industrial uses. This is worse than Costco because it directly conflicts with plan policies, including the Albina Community Plan, which call for a continuous pattern of industrial zoning along Columbia Boulevard. He cited four reasons for denial: 1) failure to protect the integrity of the industrial sanctuary; 2) failure to show that other land is not available for commercial use or that the industrial lands are surplus; 3) violation of existing transportation policies because of the mix of retail and industrial; and 4) insupportive of City plan goals and policies and is inconsistent with the uniform industrial land-use pattern of the area north of Columbia Boulevard in the recently adopted Albina Community Plan and the Transportation Plan North District. He said the evidence for denial is overwhelming.

Rob Murray, attorney representing Koldkist, Suite 1150, Pioneer Tower, said his client's company has tried to accommodate entrances and exists from this easement but approval of this proposal would take Koldkist's property interest in an easement and convert it from industrial to commercial use. He said the company has invested millions in this location and cannot move. There is already so much congestion in the easement area that their trucks are often backed up, particularly around the summer holidays which are crucial to Koldkist's business. He said the physical difficulties this approval presents cannot be quantitated in a traffic study done on January 5, probably the slowest day in the year on Columbia Boulevard. He said Koldkist did not initiate any enforcement action until the Comprehensive Plan amendment was pushed in their face and at that point felt they did not have a choice.

Lee Porcelli, Chair, Koldkist Beverage Ice Company, said he should not have to ask Council to protect property that was zoned heavy industrial. He said Fisherman's Marine made a business decision to stay here and has been out of compliance for four years. Koldkist relocated here in 1986 from its previous location at 37th and Broadway at the request of the City and has invested millions in the Columbia Boulevard location. The easement is not large enough to handle both cars and trucks. He said he discussed this with Mr. Evans many times because cars were parking in the easement, making it hard for the trucks to get through but nothing happened. He said Koldkist is also a good neighbor, one of the finest ice plants in the nation, with 70 employees.

Robert Bernstein, consulting traffic engineer, 507 18th Ave. East, Seattle, WA said the easement is in a very poor location, too close to

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the I-5 interchange, and violates federal safety standards which are based on nationwide experience with connections that are too close to interchange ramps. In this case, it means the City should not make land-use decisions that exacerbate the problem by allowing development that increases the amount of traffic using a sub-standard easement. He said Fisherman's generates a significant amount of traffic over that of an allowed use, about 2-1/2 times what would be generated by a 3,000 square foot retail use and five times the amount generated by a warehouse. He also challenged the correctness of Fisherman Marine's technical traffic capacity analysis. He said it is unreliable because counting volumes in dead winter is unfair and there is no worst case scenario. The methodology is also incorrect and does not account for the backed up queues on Columbia Boulevard or the trucks in the traffic stream.

Jim Porcelli, President, Koldkist, said the company moved here 10 years ago because City planners told them this was where industrial businesses belonged. He also cited increased congestion and delays at the I-5 interchange due to the traffic generated by Fisherman's Marine. He described some of the problems they have experienced and cited three accidents which have been caused as a result. To increase the volume of cars here creates an impossible situation for them and other industrial businesses as safe, efficient truck traffic is essential to their success. He said when Fisherman's was warned four years ago about exceeding the limits on retail space, instead of locating a retail operation at an appropriate nearby location, they continued to expand in violation of the zone.

Don DuShane, commercial real estate broker with Norris, Beggs and Simpson, said he found that the Fisherman's Marine facility could easily be sold or leased in today's market, particularly because it would lend itself to a variety of different uses and because of its access to a major interchange and Columbia Boulevard.

Richard Hayter, operator of Pacific Cold Storage and Culligan Bottled Water, said he operates both these businesses on the same easement and depends on the access of large trucks coming and going down this easement. He said cars and trucks do not mix well here.

In rebuttal, Mr. Pfeiffer said Council has heard from supporters who actually use the roadway, including truckers and others who suggest there is no impact from Fisherman's Marine, one way or the other. Others testified that encouraging more truck trips will destroy their business. He said any negative impacts, if they did occur in the worst case scenario, would be from an industrial use on this very odd site in very close proximity to an existing intersection. He said Mr. Sullivan cited absolutely no evidence whatever as to what the

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impacts would be, other than their own testimony from their own single opponent, who uses and shares this easement. Mr. Bernstein suggests that their traffic analysis is not correct or credible but the Porcelli's have testified that after they bought the property, they were shocked that Fisherman's Marine was there. However, Fisherman's Marine was there long before Koldkist. He said Koldkist offers no testimony beyond their own experience regarding off-site users who would be affected in an industrial sanctuary analysis. He said contrary to the opponent's assertions, they did offer a worst case scenario and justification, corroborated by the Office of Transportation, that there are no impacts from this use to that intersection in the immediate road system.

Mr. Schulte said the ODOT design standard cited is one applied to newly-constructed interchanges and the intent is not to retroactively apply that standard to existing interchanges. He said no existing problems with the interchange would be exacerbated with this proposal, noting that accidents were down to two in 1993 with increased business activity at Fisherman's Marine. The intersection level of service for Columbia Boulevard and both access periods is well above City standards. He challenged Mr. Bernstein's criticisms of his analysis.

Commissioner Lindberg, citing page 20 of the Hearings Officer's report, asked what testimony supported her conclusion that there are conflicting traffic uses here. Was it from the Office of Transportation or the consultants on each side?

Mr. Gerber said the evidence was submitted mostly by the interested parties but he believes the information submitted by the City did contribute to that conclusion.

Commissioner Lindberg asked if the Hearings Officer's statement also reflected the views of staff.

Mr. Gerber said he did not have a similar conclusion at that point in his report.

Mayor Katz asked why the zone change issue was not raised when the Albina Community Plan was adopted in 1993.

Mr. Pfeiffer said he does not know where the assertion that they knew about this violation four years ago comes from. He said he first heard about this 1-1/2 years ago. He said the Albina Plan was not intended to be a site-specific disposition of every parcel of property in Albina.

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Commissioner Hales moved to deny the appeal. Commissioner Kafoury seconded.

Commissioner Hales said this is an unfortunate conflict between neighbors but the City needs to stick by its Zoning Code so that people can rely on it. This is a tough test but on balance he believes the applicant cannot meet the burden of showing that the change is equally or more supportive of the Comprehensive Plan.

Commissioner Kafoury said the policy call is clear. This is a wonderful business but in the wrong location.

Commissioner Lindberg said he will vote in favor of the motion, based on the correctness of the zoning, equity and the investment made by Koldkist based on it.

Mayor Katz said this is unfortunate but this is about protecting the industrial sanctuary, not about zoning out a company or loss of jobs. She said the City has very limited industrial areas for businesses that are incompatible for other places and land needs to be available for them.

Commissioner Hales said his motion assumes that the Hearings Officer's findings were adopted as Council's.

Disposition: Appeal denied. (Y-4)

At 3:40 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner
By Cay Kershner
Clerk of the Council