



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 22ND DAY OF MAY, 1996 AT 9:30 A.M.

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

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

Agenda Item Nos. 800 and 822 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

797 Accept bid of Courtesy Ford, Inc. to furnish one utility service van for \$48,664 (Purchasing Report - Informal Bid)

Disposition: Accepted; prepare contract.

798 Accept bid of Proline Industries to furnish television studio equipment for \$148,023 (Purchasing Report - Bid 138)

Disposition: Accepted; prepare contract.

799 Accept bid of Automated Office Systems to furnish annual supply of 32CPM copiers, 17-20CPM copiers and copier maintenance for \$115,961 (Purchasing Report - Bid 142-A).

Disposition: Accepted; prepare contract.

801 Accept bid of Wilbur Ellis Company to furnish an annual supply of herbicides for \$36,282 for two years (Purchasing Report - Bid 169-A)

Disposition: Accepted; prepare contract.

802 Accept bid of East Wind for N Willis sewer reconstruction for \$87,387 (Purchasing Report - Bid 171)

Disposition: Accepted; prepare contract.

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803 Accept bid of Davidson Utilities, Inc. for NE 67th Avenue sewer reconstruction for \$69,537 (Purchasing Report - Bid 173)

Disposition: Accepted; prepare contract.

804 Accept bid of TEC Equipment Co. to furnish one 50,000 gvw cab & chassis with 12 cy dump body for \$74,573 (Purchasing Report - Bid 179)

Disposition: Accepted; prepare contract.

805 Accept bid of NTA Contracting for Insley Basin CSO sump Unit 2 Phase 1 for \$213,425 (Purchasing Report - Bid 180)

Disposition: Accepted; prepare contract.

806 Accept bid of S-2 Contractors, Inc. for St. Johns sewer extension No. 1 for \$258,386 (Purchasing Report - Bid 181)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

807 Accept completion of contract with Moore Excavation, Inc. for the Bloomington sanitary sewer project and provide for final payment (Report; Contract No. 29578)

Disposition: Accepted.

808 Set hearing date, 9:30 a.m., Wednesday, June 19, 1996, to vacate a portion of N Detroit Avenue south of N. Skidmore Court (Report; C-9909)

Disposition: Adopted.

809 Accept completion of 16- and 6-inch water main construction in SE Madison Street, SE Cooper Street, SE 87th Avenue and SE Barbara Welch Road and authorize final payment to Marshall Associated Contractors, Inc. (Report)

Disposition: Accepted.

***810** Contract with Davis Landscape Nursery for the sum of \$46,500 to provide construction services at Oaks Bottom Wildlife Refuge north parking lot and provide for payment (Ordinance)

Disposition: Ordinance No. 170116. (Y-5)

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- *811** Authorize appointment of Sue Klobertanz to the position of Program Manager II to manage the Business Development Division in the Bureau of Purchases and Stores at a rate of pay above entry (Ordinance)

Disposition: Ordinance No. 170117. (Y-5)

- *812** Authorize a contract with Fisons Instruments, Inc. to furnish and install a inductively coupled plasma spectrophotometer/mass spectrophotometer (ICP/MS) for the Bureau of Environmental Services Water Pollution Control Laboratory and provide for payment (Ordinance)

Disposition: Ordinance No. 170118. (Y-5)

- *813** Authorize Agreement with the Oregon Community Foundation in the amount of \$169,000 to support the Neighborhood Partnership Fund programs to assist non-profit housing development organizations and provide for payment (Ordinance)

Disposition: Ordinance No. 170119. (Y-5)

- *814** Authorize the Purchasing Agent to sign a Purchase Order as a contract with Digital Biometrics, Inc. for live scan equipment in the estimated amount of \$96,415 without advertising for bids and provide for payment (Ordinance)

Disposition: Ordinance No. 170120. (Y-5)

- *815** Authorize the Purchasing Agent to sign a Purchase Order as a contract with XIMAGE Corporation in the estimated amount of \$77,265 without advertising for bids and provide for payment (Ordinance)

Disposition: Ordinance No. 170121. (Y-5)

- *816** Apply for a \$146,597 grant from the Edward Bryne Memorial Grant for the Enhance Safety Properties program (Ordinance)

Disposition: Ordinance No. 170122. (Y-5)

- *817** Authorize application to North American Wetlands Conservancy Council for a grant in the amount of \$50,000 for Brookside wetland and stream enhancement project (Ordinance)

Disposition: Ordinance No. 170123. (Y-5)

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***818** Amend contract with Confluence Northwest to provide professional services for a Stewardship Program Coordinator (Ordinance; amend Contract No. 30245)

Disposition: Ordinance No. 170124. (Y-5)

***819** Contract with Henkels & McCoy, Inc. for \$44,850 to upgrade the street lighting system on various arterial streets and provide for payment (Ordinance)

Disposition: Ordinance No. 170125. (Y-5)

***820** Amend contract with Sylvia Gillpatrick for IBIS and system analysis services (Ordinance; amend Contract No. 28170)

Disposition: Ordinance No. 170126. (Y-5)

821 Pay claim of Ella Mae Bolton (Ordinance)

Disposition: Ordinance No. 170127. (Y-5)

***823** Amend purchase order with Moore Excavation to increase the purchase order amount by \$21,961 (Ordinance; amend Purchase Order No. 1019249)

Disposition: Ordinance No. 170128. (Y-5)

***824** Increase Agreement with the Private Industry Council, Inc. for the Comprehensive Youth Employment Program by \$5,000 and provide for payment (Ordinance; amend Contract No. 30149)

Disposition: Ordinance No. 170129. (Y-5)

***825** Amend contract with Preston Gates & Ellis (Ordinance; amend Contract No. 29692)

Disposition: Ordinance No. 170130. (Y-5)

***826** Amend contract with Ater Wynne Hewitt Dodson & Skeritt (Ordinance; amend Contract No. 29693)

Disposition: Ordinance No. 170131. (Y-5)

***827** Amend contract with Arbitrage Compliance Specialists, Inc. (Ordinance; amend Contract No. 30160)

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Disposition: Ordinance No. 170132. (Y-5)

- *828** Authorize contracts for the completion of Federal Highway Administration funded flood damage repair work to be informally bid to a maximum value of \$80,000 (Ordinance)

Disposition: Ordinance No. 170133. (Y-5)

- 829** Consent to transfer of Columbia Sanitary Service, Inc. solid waste and recycling franchise to Moreland Sanitary Service, Inc. (Ordinance)

Disposition: Passed to Second Reading May 29, 1996 at 9:30 a.m.

- 830** Authorize the Water Bureau the right to declare two modular trailers as surplus for sale (Ordinance)

Disposition: Passed to Second Reading May 29, 1996 at 9:30 a.m.

- *831** Authorize contract with Trudy Cooper to perform group development work with the Portland Water Bureau management team, mid-managers and its labor-management partnership group, including assessment, training and "new manager transition" (Ordinance)

Disposition: Ordinance No. 170134. (Y-5)

- *832** Accept an Intergovernmental Agreement between the Bureau of Environmental Services and Portland State University to conduct a study of residential disposal and recycling services in the amount of \$73,828 (Ordinance)

Disposition: Ordinance No. 170135. (Y-5)

- 833** Amend Comprehensive Plan goals, policies and objectives to implement Phase I of the Transportation System Plan (Second Reading Agenda 753)

Disposition: Ordinance No. 170136. (Y-5)

REGULAR AGENDA

- 800** Accept bid of Cedar Landscape, Inc. for Lairhill Park improvements for \$197,815 (Purchasing Report - Bid 156)

Disposition: Continued to May 29, 1996 at 9:30 a.m.

S-*822 Pay claim of Bjorn Christianson (Ordinance)

Discussion: Commissioner Hales moved the substitute ordinance and Commissioner Lindberg seconded.

Disposition: Substitute Ordinance No. 170137. (Y-5)

794 **TIME CERTAIN: 9:30 AM** - Amend Title 17 of the City Code to revise solid waste and recycling collection rates and charges in accordance with the 1996 Extraordinary Rate Review (Ordinance introduced by Mayor Katz; amend Code Chapter 17.102)

Discussion: Commissioner Lindberg said there was another ordinance today to adjust the rates slightly upward. The increase for most customers is \$.30 per month and totally attributable to the recycling markets for newspapers which have gone down considerably. This increase would have been much higher except for some good changes: increased efficiency in the industry, more recycling by customers and lower franchise fees. He said there has been stability in the rates since the introduction of the franchise system and this increase raises rates to the 1992 level. In comparing Portland's rates with other cities, he pointed out the quality of our service. About 80 percent of the City's households are involved in recycling and there are as many items that can be recycled as anywhere in the country. Both the Solid Waste Advisory Committee and the Portland Utilities Review Board (PURB) Solid Waste Subcommittee support this rate increase.

Sue Keil, Bureau of Environmental Services (BES), Business Services Group Manager, said the rate-making process included the random selection of 20 companies for review by an independent CPA, as well as the two recycling districts. This very strong sample included companies' surveying 63 percent of the solid waste customers and 94 percent of the recycling customers. The longitudinal can weight sampling of garbage and yard debris has been continued to find the weight of the different levels of service and different kinds of containers throughout the seasons of the year. Because of the importance of recycling revenue to rate-making, BES contracted with a recycling market consultant to assist in forecasting paper fiber markets through FY 96-97. She said other economic data was used, including Consumer Price Index, actual labor contracts and health and welfare package costs. Upward pressure on the rates came from significantly lower market prices paid for recyclable materials, especially newspaper, cardboard and scrap paper and modest inflation in labor costs adjustments, averaging about 8.2 percent. Downward pressure is lighter solid waste-can weights in all classes of service, stable yard debris tipping fees, improved hauler efficiencies and BES' internal trimming--to pass onto the customer-- in the proposed reduction of the

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franchise fee from five to four percent. The greatest influence is the change in the recycling market contribution.

Bruce Walker, BES Residential Recycling Manager, said one positive last year was high recycling markets, with an average of \$1.57 returned per customer to the rate base. Since then, there has been a significant drop-off. Recyclables are a complex, international market, a commodity traded on the Chicago Board of Trade.

Ms. Keil said the gap is essentially \$.87 but productivity improvements, reduced can weight and dropping the franchise fee allow for the \$.30 increase. In going into the next five-year period, a risk-sharing formula needs to be developed for the market aspect of the rate to reduce volatility and help stabilize the rate for customers. The 60- and 90-gallon yard debris roll carts are services people can subscribe to and they are a heck of a deal. She said they plan to market this more heavily.

Commissioner Kafoury asked about the mini-cans going up, as she understood they were to be kept as low as possible.

Ms. Keil said the subsidy to the mini-can had to be increased to keep it at the \$.30. Savings have primarily related to solid waste and this container has less quantity. BES has tried to strike a good balance to even out disproportionate revenue going to companies that have a larger number of roll carts and those who have more mini cans.

Commissioner Blumenauer asked if most of the cost is in collection, rather than disposal.

Ms. Klein said the increase is still well below the simple cost of inflation over four years and customers are very satisfied with the service.

Commissioner Lindberg asked about an earlier concern about increasing rates in order to have weekly yard debris service.

Ms. Keil said this was the third year of sampling, where selected loads were actually sorted through to determine the percentage of yard debris in the garbage. Every year there has been a decrease in the amount: the first sampling came up with about 20 percent and this year there was 3.7 percent. The biweekly program and customer behavior is good enough to be able to keep the biweekly program. Were a weekly yard debris called for, it would be another \$1.25 per customer. She noted about 42 percent of those surveyed are composting.

Doug Morgan, PURB Chair, said most of the work they have done in the past

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year has not focused on specific rates but on large policy questions which have an impact on rates.

Chris Taylor, PURB Solid Waste Subcommittee, said the 1995 recycling market had a boom year. This is a commodity market, materials that are traded nationally and internationally, so there is no way to control that on a City-wide level. This year the prices are down, especially in the paper markets which is where most of the recycling revenue comes from. Solid Waste and Recycling put aside the \$400,000, rather than allaying a rate increase, to invest in future improvements, technologies and efficiencies which, in the long term, will deliver lower rates and better service. He said one goal is for customers to be able to combine more of their recyclables in the future. His committee is talking about trying to create a stabilization fund to offset the poor recycling market years with the good ones.

Mike Hutchins, Portland Public Schools (PPS) Director of Purchasing and Solid Waste Advisory Committee (SWAC) Chair, said SWAC supports the rate increase because it is legitimate and the recycling market is a fluctuating one. Yard debris is a major issue and staff and citizens deserve commendation for making it work.

David White, Regional Representative for the Oregon Refuse and Recycling Association and Tri-County Council of Garbage Haulers, said he reaffirms the haulers' commitment to work with the City and customers to create a more efficient program, work with the technology group for improving the system's components and work on various ways to stabilize the rates.

Mayor Katz asked Ms. Keil to speak to rate stabilization, even though BES is not ready to make a formal recommendation.

Ms. Keil said one thing customers are telling them is that they spend a lot of time sorting recyclables. Other cities that have comingled recycling report it saves labor at the curb, that being the most expensive component of the system. Ideally customers will have a mechanism that calls for less sorting.

Disposition: Passed to Second Reading May 29, 1996 at 9:30 a.m.

795 Amend Title 17 of the City Code to revise sewer and drainage rates and charges in accordance with the annual sewer user rate study (Ordinance introduced by Mayor Katz; amend Code Chapter 17.35 and 17.36)

Discussion: Dean Marriott, BES Director, said they talked about their five-year financial plan during the January Core report to Council and projected the capital program impact on rates. This ordinance is basically consistent with that report with subtle differences, such as the major variable of actual

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water consumption. There are slight increases in the account service, sanitary service and drainage charges. The average residential customer will pay \$24.81 per month, equating to an 11 percent increase on the bill from this year. Sewer and drainage rates for residential customers will approximate \$300 per year. In response to Council's direction, BES is increasing funding of the low-income assistance program, from the current 15 percent to 25 percent, which will provide an annual benefit of approximately \$96.

Commissioner Blumenauer asked how many accounts there were and what the split is between residential and commercial, particularly on the \$83.7 million projected revenue.

David Gooley, BES Financial Manager, said about 45 percent of the flow comes from commercial customers.

Doug Morgan, PURB Chair, said they did not directly deal with a rate proposal from BES. They focused on the utility license fee which, over a five-year period and with the projected rate increase, will generate about \$40 million. They also focused on the Combined Sewer Overflow (CSO) project where there may be major opportunities to achieve some rate savings. However the license fee has the greatest impact.

Clifford Paulsen, Apostolic Faith Church, 6615 SE 52nd Avenue, 97206, expressed concern about the potential discontinuation of the stormwater sewer discount plan. He said the church had an impervious surface area of about 147,000 square feet and currently receives the maximum 34 percent rate discount. They would obviously like to keep that discount. Across the street from their church is a 10-acre campground/convention center which has as much as 200,000 square feet of impervious surface. Another property across from the church is their international headquarters and publishing departments. The latter two properties will be connected to the sewer in the next two years. Without the discount and with the new sewer charges, he estimates the three properties will pay \$5,700 more a year than they do now.

Commissioner Lindberg asked Mr. Paulsen to talk to staff about his situation. Staff could report back next week to discuss the policy issue.

Mayor Katz said discussion on the other rate items today will bear on policy.

Mel Shulevitz, President of Indoor Billboard and Industrial Laundry, Swan Island, said they own approximately one acre. The building facility was expanded by 150 percent last year and the authorized exemption was possible because they installed a total drywell drainage system. He does not understand why they need to be involved in the stormwater drainage program at all.

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Commissioner Lindberg said a year ago an appeal and hardship case process was provided. Those who made large investments based on policies of that time had an appeal process. He asked Mr. Gooley if that were still in place.

Mr. Gooley said it is and PURB recommended that commercial customers also have an appeals process.

Mayor Katz said she would bring Item No. 844 up next. The discount is incorporated in the fee structure but it is a policy decision which appears elsewhere.

Ernest Marbott, Marbott Greenhouse, 1808 NE Columbia Blvd., 97211, said Columbia Boulevard had very poor drainage. When he built his parking lot, drywells were put in, and the one or two sinks and toilets drain into cesspools. He said his type of business should be taken into consideration with appropriate charges.

Disposition: Passed to Second Reading May 29, 1996 at 9:30 a.m.

844 Amend Title 17 of the City Code to eliminate the Drainage Fee Discount Program for commercial properties (Ordinance; amend Chapter 17.36)

Discussion: Dean Marriott, BES Director, said in Spring of 1994, Council asked PURB to look at the drainage discount program. PURB recommended ending the residential discount program as it strongly impacts the rate base, and Council concurred. It further recommended ending the commercial/industrial program which will affect about 288 customers. Continuing the discount through the end of the calendar year is recommended as is establishment of a claims process. If current discount holders can demonstrate that they made investments specifically to qualify for the discount, BES will reimburse those claims.

Mayor Katz asked, out of the 288, how many might qualify.

Mr. Marriott said through a similar claims process, out of 9,000 residential discount holders, they received a total of 12 applications, one of which is outstanding and the other 11 were denied.

Commissioner Hales asked about the rate-making rationale and if they were being equitable in respect to different business situations.

Mr. Marriott said they have wrestled with the quandary of how to move closer to perfect equity without having to raise everyone's rates to do so. An analogy is if a four-lane highway is in place but people, doing the right thing, drive less, two lanes would not be dug back up. While BES wants to do the right thing

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with stormwater, there are certain fixed infrastructure costs to pay for and maintain. BES has thought of lowering systems development charges (sdc) if stormwater is managed with development.

Commissioner Lindberg said how to design a perfect system has been discussed before. There are certain costs to maintain the city-wide stormwater system-- pipes, culverts, etc.--which go on anyway and are not really affected by the individual property. Perfect equity is not economically feasible.

Doug Morgan, PURB Chair, said examination of the residential drainage discount program showed a potential loss of \$16 million (as compared to \$400,000 for commercial) so, because of the fixed costs, any incentives need to address the system's operation. When PURB was considering the commercial/industrial discount, the sdc issue came up but they decided to put that aside and to unanimously recommend discontinuation of the discount program. They formed a committee to look at the sdc, however. It will deal with the issues such as right-of-way and the methodology for calculating the charges--square/linear footage. As to the equity issue, there are fixed costs that are not being recovered and that commercial customers, as well as residential, need to pay for.

Commissioner Hales said he understands that most costs are fixed costs, however shared. This bears differently on the sdc issue versus the rates.

Commissioner Hales said the new code requires double-glazed windows and energy costs are reduced as a result so it goes into the pro forma even though there is no direct credit from the utility company. For commercial development to qualify for the discount, there was an implied bargain.

Mr. Marriott said he had some concern about a situation which came up when the residential portion of this was before Council. The testifier said, in order to build an apartment complex, he spent a substantial amount for stormwater disposal, although there was in fact no other alternative. He questioned paying someone who had no option as opposed to someone with choices who incurred extra expense to handle stormwater on site.

Commissioner Hales wondered how someone had no other option in development.

Commissioner Lindberg said, in terms of the claims process, Council thinks there will be more flexibility with incentives and rewards.

Mr. Morgan said PURB's ad hoc view was that someone should not be compensated for doing what was legally required. If more was done than legally required (which begs the question of proof and evidence of having done

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so), as a policy position, reimbursement should be in excess of what was required at the time of construction.

Mayor Katz said if people had choices and, to be good stewards, did something extra, that ought to be reimbursed.

Commissioner Hales said this is as if the fire department told everybody they had to have sprinkled buildings and would get a water discount. And then a year or so later told those who put in sprinklers they had to pay into the non-sprinkled system costs anyway.

Mr. Gooley said, when they come back, it might be useful to present more information about what exactly the stormwater utility does. In some cases, a frustrating aspect for equity, it is not intended to serve private property. In essence, the stormwater utility is a right-of-way that the property is paying for -- a linkage to what is on site.

Commissioner Lindberg said Council, by supporting the discount program, fostered the property owners' impression they could control their destiny.

Mr. Shulevitz asked how putting in drywells could add to the cost of doing business with the water department. This sends a message to business that they should not do anything to help. He said the logic of denying or discouraging businesses disposing of stormwater responsibly escapes him.

Mayor Katz said the issue they have been struggling with is the operation of the system. To what extent are the costs for the entire system being relieved.

Commissioner Lindberg asked Mr. Marriott to describe what a stormwater utility is in next week's Council presentation.

Commissioner Hales said, with the focus on rate-making and equity issues, they need to address the signal being sent out--the intangible side.

Mr. Paulsen said even though properties have stormwater drainage systems, they are asked to share in the fixed cost. Although their costs and rates were not directly incurred because of the incentive program, at least they did not add to the City's burden.

Commssioner Lindberg said when this comes back for second reading, Council should be given all the options--it is not equitable now.

Mayor Katz said this was a good government lesson, the flat tax really does not work.

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Commissioner Hales said both ordinances should state "inside the City's urban services boundary." Over the long run, the City is incurring storm drainage, water and sewer capital costs for new development built inside the urban services boundary and they should be charged the sdc. Both equity and money are not being addressed if people just outside the city limits can connect to the City's system with no sdc. This is the wrong message to send to areas slated for future annexation.

Mayor Katz said the time crunch on the rates' effective date of July 1st needs to be considered when options are brought back to Council.

Disposition: Passed to Second Reading May 29, 1996 at 9:30 a.m.

796 TIME CERTAIN: 9:30 AM - Prescribe the rates and charges for water and water-related services by the City of Portland during the fiscal year beginning July 1, 1996 to June 30, 1997 and fix an effective date (Ordinance introduced by Mayor Katz)

Discussion: Michael Rosenberger, Water Bureau Director, said what is in the rate ordinance was discussed as part of the budget process. The components for the 4.3 percent average effective retail rate increase have been thoroughly discussed. That number bounced around quite a bit, from a projected 6.2 percent to 8.2 percent. It is now about \$.80 for the average residential customer. At Council's direction, the Water Bureau and BES increased the low-income discount from 15 to 25 percent. The rates take into account the low-income discount, the change recommended by PURB in the cost-of-service methodology to deal with the service charge that Council adopted last week and the first of the five-year reduction in the utility franchise fee on retail water sales. Mr. Rosenberg said the City compares very well with various other cities and water districts on their average monthly billing.

Mayor Katz said increases in sewer, recycling and water rates total approximately \$42.60 annually. She said the increases may appear to be small, but have a cumulative impact.

Commissioner Kafoury asked for confirmation that the Water Bureau was going to absorb the 15-25 percent low-income discount.

Commissioner Lindberg said yes, along with other bureaus. He noted that the driving force for BES' is the amount of capital available for the CSO.

Commissioner Hales said he hopes the change in Section 9.a will be made to include properties in the urban services boundary. The City incurs capital costs and it is wrong for Portland's rate payers and residents to subsidize sprawl.

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Mr. Rosenberger asked for clarification regarding the Water Bureau's present contractors.

Commissioner Hales responded that it was a building permit matter, not involving the contracts. When a person applies for a building permit inside the City's urban services boundary the water and sewer sdc will be charged, as it should.

Mr. Rosenberger said as he understands the policy, any new construction hooking on to the City's urban services boundary water system, would pay an sdc to Portland.

Commissioner Hales said the policy, in annexing into the City, is to sunset the previous district.

Mr. Rosenberger said, in the past, the policy has varied: in some cases the service is withdrawn and provided directly; in some the entire district is taken over; and in some the service is not withdrawn and the Bureau contracts with the previous provider.

Commissioner Hales said the sdc policy should be applied wherever there is intent to withdraw the service.

Mr. Rosenberger said in terms of equity and of generating money, the Bureau is getting depreciation paid in its rates by the wholesale contracts as well as a rate of return on its investment, which is the purpose of the sdc.

Commissioner Lindberg asked about the process and its legality.

Mr. Rosenberger said the legality could be simple, but the process is important and the Bureau would definitely need to talk to its contractors.

Mayor Katz directed Mr. Rosenberger to contact the contractors about this policy issue.

Mr. Rosenberger said he understood the distinction to be that new construction inside the urban growth boundary falls into one of two categories: being in and being served by the City; and not being served by the City. One would be charged the sdc, but not the other. This requires the Bureau to know exactly how all the services would be provided.

Commissioner Hales said an adopted Public Facilities Plan has been around for years and the Urban Services Boundary has been on the map since the adoption of the Comprehensive Plan in 1980.

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Mr. Rosenberger said the three ways the Bureau provides annexations were previously noted and he emphasized some are served by a contract between the City and the former provider. As the latter would not be charged an sdc, the Bureau would have to know who the logical provider of service would be in the longer run.

Doug Morgan, PURB Chair, said PURB's review of the water utility rate recommendation occurred in the context of a very detailed cost-of-service reexamination. It was incorporated in the recommendation to reallocate the rates among customer classes based on cost-of-service principles.

Jim Schwager, representing Chief Wall of the Fire Bureau and Fire Marshall Jim Crawford, said they support the new methodology in the rate ordinance, especially as it more fairly and accurately reflects the cost of fire line services. Mr. Schwager also read comments by Robin White, Building Owners and Managers Association (BOMA) Executive Director, stating that the organization is uncomfortable endorsing any proposal to increase rates, but recognizes the importance of deleting disincentives to building owners to incorporate sprinkler systems. The sprinkler cost cannot be offset by increased rental rates and insurance rates are not significantly reduced. Standby fees for sprinkler buildings are an added cost, act as a disincentive and are counterproductive to public safety.

Disposition: Passed to Second Reading May 29, 1996 at 9:30 a.m.

845 Amend contract with Sverdrup Civil, Inc. to provide program management and technical expertise to the Combined Sewer Overflow Program for a third year at a cost of \$2,282,974 (Ordinance; amend Contract No. 29404)

Disposition: Passed to Second Reading May 29, 1996 at 9:30 a.m.

847 Assess benefitted property for the cost of improvement of the SW Pasadena/37th Avenue LID (Second Reading Agenda 793, C-9820)

Disposition: Ordinance No. 170138. (Y-3)

846 Grant a limited ten-year property tax exemption to GSL Properties, Inc. for the new multiple-unit rental housing (Second Reading Agenda 786)

Disposition: Ordinance No. 170139. (Y-3)

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***834** Expand the City Employee Trip Reduction Incentive Program to include all non-seasonal, non-temporary City Employees (Ordinance; amend Ordinances 167969, 167970 and 167971)

Disposition: Ordinance No. 170140. (Y-4)

***835** Accept additional grant funding in the amount of \$184,066 from the Center for Substance Abuse Prevention on behalf of the Regional Drug Initiative (Ordinance)

Disposition: Ordinance No. 170141. (Y-4)

***836** Contract with Ecology and Environment to develop and implement interim sediment remediation actions in Wapato Wetland in the Columbia Slough and other high priority areas (Ordinance)

Disposition: Ordinance No. 170142. (Y-4)

***837** Agreement with Multnomah County District Attorney's Office for child abuse multidisciplinary intervention (Ordinance)

Disposition: Ordinance No. 170143. (Y-4)

***838** Authorize the Purchasing Agent to sign a purchase order as a contract with John L. Jersey & Son, Inc. for silt removal for an amount not to exceed \$91,944 without advertising for bids and provide for payment (Ordinance)

Disposition: Ordinance No. 170144. (Y-4)

***839** Contract with Century West Engineering, Inc. for overflow materials testing services (Ordinance)

Disposition: Ordinance No. 170145. (Y-4)

***840** Authorize appropriation of additional funds for FY95/96 for construction services provided by Construction Management and Inspection, Inc. (Ordinance; amend Contract No. 29874)

Disposition: Ordinance No. 170146. (Y-4)

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***841** Amend contract with Construction Management and Inspection, Inc. to extend the contract time and appropriate funding for FY96/97 (Ordinance; amend Contract No. 29874)

Disposition: Ordinance No. 170147. (Y-4)

***842** Amend contract with CMTS to extend contract through June 30, 1997 and appropriate funding for FY 96/97 (Ordinance; amend Contract No. 29875)

Disposition: Ordinance No. 170148. (Y-4)

***843** Amend contract with Suzanne Crane Engineering, Inc. dba Crane & Merseth Engineering/Surveying to extend the contract time, make contract modifications and appropriate funding for FY 96/97 (Ordinance; amend Contract No. 28994)

Disposition: Ordinance No. 170149. (Y-4)

SUSPENSION OF RULES

***847-1** Establish the nonelective contribution (Employee Benefit Allowance) for the Cafeteria Fringe Benefit Plan known as "Beneflex" for the plan year beginning July 1, 1996 (Ordinance introduced by Mayor Katz)

Discusssion: Commissioner Kafoury moved to designate the Four Fifths Agenda item as a Suspension of Rules item and Commissioner Lindberg seconded.

Disposition: Ordinance No. 170150. (Y-4)

At 11:30 a.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 MAY, 1996 AT 2:00 P.M.

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

OFFICERS IN ATTENDANCE: Britta Olson, Acting Clerk of the Council; Adrienne Brockman, Deputy City Attorney; and Chuck Bolliger, Sergeant at Arms.

848 TIME CERTAIN: 2:00 PM - Recommendations of citizen advisory committee to the Police Internal Investigations Auditing Committee on three appeals: #95-13, #96-04 and #96-05 (Report introduced by Mayor Katz)

Discussion: Lisa Botsko, Police Internal Investigations Auditing Committee (PIIAC), said Citizen Advisor Gerald Kling also reviewed case #96-04 but was not able to attend. The complaint is that when a Portland officer took the appellant's adult daughter into custody, he handcuffed the daughter, apparently in an inebriated state and transported her to her relatives' home and released her into their custody. Appellant also said the officer put her daughter into some kind of choke hold. The appellant said her daughter was wearing a diamond ring belonging to appellant and suspects the officer stole the ring. The complaint was filed approximately nine months after the incident, at the same time as a different complaint. Appellant said she did not file it until then because she did not want to believe an officer was capable of such a thing. Appellant also received a series of hang-up calls from a caller with the same ethnic-background accent as the officer. An Internal Affairs investigator interviewed the daughter as part of the other complaint and when asked about the ring, the daughter said she did not want to discuss or pursue the incident. At the Advisory meeting, appellant said her daughter did not want to discuss it then because she was ill. Internal Affairs declined to investigate, based on the elapsed length of time, the circumstances of the incident, the fact that something else may have happened to it, and because of the daughter's refusal to pursue it. PIIAC recommends affirming the Police Bureau's decision to decline this complaint.

Yvonne McKee, appellant, said witnesses saw a scuffle at her daughter's sister's home where she was handcuffed, at which time the ring disappeared.

Captain Bennington, Police Bureau Internal Affairs Division, added that in the intake interview with appellant's daughter, when asked about the ring, said "just forget it." When the interviewer said the allegation against the police officer was serious, she replied that in the process of the officer grabbing her and making the arrest, the ring disappeared.

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Ms. McKee said the ring did not just fall off her finger. It had to be removed. At the time she spoke to the Internal Affairs interviewer, her daughter was extremely ill. The reason she said she would not pursue it was because she knew appellant was going to.

Commissioner Kafoury moved to accept PIIAC's case #96-04 recommendation and Commissioner Hales seconded. The motion carried, Y-4.

Ms. Botsko addressed case #96-05 regarding appellant's complaint about his treatment by female police officers and the female ride-along during their response to his former girlfriend's 9-1-1 call that he had been at her front door ringing the bell for 45 minutes. He objected to being searched, handcuffed and yelled at. The Advisors felt appellant's objections were mainly about standard officer procedure and yet were concerned about the perception that this was a racist response and an example of poor officer attitude. The Advisors wondered how some of those issues could be resolved and Internal Affairs offered to have the supervisor discuss this with the officers as a training exercise, which has been done. The Advisors recommend that PIIAC affirm the findings.

Mayor Katz asked about the conduct of the ride-along.

Ms. Botsko said Internal Affairs did not look into who the ride-along was. Citizen Advisors said that while police may be in a situation where they could not immediately address poor ride-along behavior they should later. Inappropriate behavior from a ride-along could exacerbate a situation.

Mayor Katz said the Citizen Advisors' recommendation regarding ride-alongs is important.

Joe L. Johnson, appellant, physically demonstrated how the female officers treated him.

Mayor Katz said the only information the officers had was the 9-1-1 dispatch call made by the woman who wanted him to go away. She observed that this would have been a good case for mediation.

Captain Bennington said that Mr. Johnson had declined mediation.

Mr. Johnson asked why five females responded to a call about one black man. He would like an apology from them.

Mayor Katz said that could have been the result of mediation.

Commissioner Lindberg asked if it would be possible to go back for mediation at this stage.

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Captain Bennington said this had already been used as a training opportunity and he did not know what the response would be to a mediation request.

Mayor Katz said the training was positive, but the value of mediation is to have a dialogue between the appellant and the officers.

Commissioner Hales brought up the fact, aside from possible racism or sexism, that appellant had walked away from the door. He asked about police procedure for handcuffing people.

Captain Bennington said handcuffs are used for officer safety. He noted the entire incident only took 22 minutes.

Commissioner Hales expressed concern about the appropriateness of using handcuffs in this case and in general.

Mayor Katz asked if the handcuffing had been discussed during the training session.

Captain Bennington said he was not at that session but he did not ask them to get into that aspect.

Mayor Katz requested that the case be remanded back to PIIAC for mediation and Council concurred.

Todd Olson, PIIAC Citizen Advisor, introduced case #95-13. The appellants' complaint is about the felony arrest of their 14 year-old son in the Spring of 1995. They protest the detective's decision to arrest the boy at school without first contacting them. The detective did not contact the parents until after he had interviewed the boy and obtained a confession. They believe this was illegal and that the detective deliberately created the most intimidating atmosphere possible to extract involuntary statements. Appellants question how their son could have understood his Miranda rights under these conditions and further state that the detective made demeaning remarks to both son and mother. Internal Affairs Division (IAD) initially declined to investigate the case on the grounds the complaint was about procedural matters rather than specific officer misconduct. The deputy district attorney handling the case did not think the detective did anything wrong and the complainants' defense attorney had not filed a motion in court. However, because IAD never interviewed the complainants, PIIAC returned the case to examine the rudeness allegations and possible violation of the General Order (GO) that states an arresting officer will contact the school principal and the child's legal guardian when possible before leaving school premises. PIIAC also protested IAD's reliance on the deputy district attorney's opinion in lieu of independent investigation. The IAD investigator was the detective's immediate supervisor

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who, after the investigation, recommended that the detective be exonerated (meaning the actions were justified) with respect to procedure and also recommended the finding of unfounded (meaning allegations were false) regarding allegations of rudeness and unprofessionalism (communication). The Commander of Detectives and the Commander of Internal Affairs accepted and signed off, respectively, on the findings.

The Citizen Advisors heard the appeal again after reviewing the completed investigation and found serious problems with the complaint investigation itself, but are not recommending further investigation. The Advisors felt the deputy D.A.'s opinion--that there was no legal basis for the parental notification requirement of the Bureau's General Order--was improper. Also many General Orders require stricter standards than what is legally required.

Mayor Katz asked if that meant more stringent standards than the State law.

Mr. Olson said yes. The supervisor's report states the detective technically violated the parental notification General Order and yet should be exonerated for a number of reasons. Reasons the Advisors felt were weak. Each individual Bureau member is responsible to know and follow General Orders. At the April 9th PIIAC meeting the supervisor and the IAD Commander suggested that no technical violation of the GO occurred after all as the "when possible" clause gave the detective discretion but the Advisors strongly disagree. They also believe it improper for a commanding officer to exonerate a procedural violation because s/he disagrees with the merit of Bureau policy. The Advisors request, with respect to the procedural complaint, that PIIAC inform the Chief in writing that the exoneration is not supported by the evidence and the findings should be sustained. With respect to the unfounded finding regarding the communication complaint, nothing in the investigation indicates the allegation is false.

Several days after the arrest, the detective returned to the school and attempted to interview the boy's friend. School officials contacted the friend's mother and she was interviewed as part of the complaint investigation. She described the detective as rude, unprofessional and condescending.

Mayor Katz recognized that this is a sensitive case dealing with an allegation of a sexual offense against a four year-old member of the appellants' friend's family which she understood was proven correct.

Emily Simon, PIIAC, said PIIAC elected to deal with the sensitive nature of the case in executive session.

Mayor Katz said, while the nature of the case is not relevant to the behavior of the detective, she raised it because it may be a reason why he ignored the GO.

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Ms. Simon said the case's sensitive nature was never even raised as a possibility and never given to PIIAC in all the voluminous material. She said the committee unanimously decided to come to Council instead of sending this case back to Command Review. PIIAC firmly believes there is no additional information that would change their perception of this case. Also, the second time around, the investigation was approved by the head of the detectives and two assistant Chiefs--the functional equivalent of Command Review. The case needs to go to the Chief on both issues. Ms. Simon said on the communication issue, the committee--to a person--found it galling that it was considered unfounded. It appeared to the Committee that the investigating officer, the detective's supervisor, was protecting the detective.

Captain Bennington said the Review Level is open discussion with many people involved and there is a dynamic to thoroughly evaluate all parts of the case. The Chief has never formally had the case presented to him or reviewed it with internal recommendations. City Code allows, on a case-by-case basis, a Citizen Advisor to serve as a member of the Review Level Committee. Code also allows Citizen Advisors the option of reviewing the case after a Review decision.

Mayor Katz noted that one reason for the recommendation to have the Advisors be part of Command Review is to educate them.

Ms. Simon said the Committee was bypassing that opportunity as they sent the case back once before.

Adrienne Brockman, Deputy City Attorney, read the ORS authorization, 192.660.1B, and Council went into Executive Session.

Council reconvened at 3:10 p.m.

Mayor Katz asked for a legal definition on parental notification.

Ms. Simon said the standard was stricter under the General Order, which says to notify when "possible." She said the Advisors, to a person, felt that not notifying the parents that the child was in police custody for 2-1/2 hours is what was so problematic. The Oregon Statute says to notify the parents as soon as "practicable."

Mr. Olson said PIIAC's recommendation is to sustain the finding for procedure which was exonerated; and the finding for communication, which was unfounded, also be sustained. PIIAC is asking Council to agree with this recommendation and ask the Chief of Police for a response in writing.

Mayor Katz said she has a problem with that. She would like to give the Chief

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an opportunity to come back to Council with a review and decision rather than have Council telling him what it should be.

Commissioner Kafoury said she objects as there has been plenty of opportunity for more than a year for that kind of activity. She moved to adopt the PIIAC recommendation and Commissioner Hales seconded.

Disposition: #95-13: Accepted; Y-3, N-1, Mayor Katz. #96-04: Accepted; Y-4. #96-05: Remanded for mediation.

849 Appeal of Emily Cohen, applicant against, Hearings Officer's decision of denial with approval of a revised plan on an application for a subdivision at 10535 NE Shaver (Previous Agenda 696; Hearing; 95-00909 SU)

Discussion: Marguerite Feuersanger, Planning Bureau, said during the May 1st Council appeal hearing, Council voted to continue the hearing so staff and appellant could provide information about existing development as well as the existing lot pattern of the subject block. Further, staff and appellant were directed to explore other development options in order to provide connectivity, a public street and avoid double frontage lots. She said Council was concerned at the May 1st hearing that there was no map showing all the lots and houses and she has now provided one. Ms. Feuersanger said if a private street were to be developed on the site, the City would likely abandon the public street proposal and there would be a series of either flag lots or private streets serving two to four lots. This does save the trees along the east side of the site, a concern at the first hearing. A disadvantage is that it only produces nine lots. There are four more existing lots that could be divided but cannot because of the narrow frontage and positioning of existing homes.

Ms. Feuersanger said Options B and C reflect the Office of Transportation's and Planning's meeting with the applicant to narrow the right-of-way, which provides a little less improvement and dedication. They do not save the trees, but afford 13 lots, four more than the private street would provide. It provides for a moderate level of connectivity, connects beyond the site (without an outlet), but does not create double frontage lots. Option D is for a public street on the west side of the property. She noted that staff in its memorandum recommended B or C, but at this point, would accept either D or E which save the trees and produce the maximum number of lots. However, in Option D, there is a good chance applicant would get only three, not four, lots because the burden of dedication and improvement is so great and there is the disadvantage of creating double frontage lots. Option E is the most creative: it is curvilinear, avoids the trees and creates irregular lots but does keep the proposal within four lots. She said staff recommends the Hearings Officer's decision and/or the reduced right-of-way as shown in Option C, or Options D and E.

Mayor Katz asked about staff problems with Option E.

Ms. Feuersanger said staff took into account how much right-of-way applicant would have to dedicate and considered intersection spacing. These issues fall into the double frontage lots, but are not of highest priority.

Emily Cohen, applicant, said although the City Planning staff has really tried to come up with a proposal to meet both their needs, they are at an impasse. Ms. Cohen said her proposal was consistent with development in the neighborhood and the proposals added by the City increase the cost of the project to the extent it cannot be done. She, also, is concerned about saving trees but to put a street along the east side of her property would place it three feet from the side of her house and also destroy her neighbor's privacy and devalue their properties.

Commissioner Kafoury said she did not quite understand Ms. Cohen's objection to Options D or E.

Ms. Cohen said Option D runs the public street along the west side, where all along she said there was room. However, it reduces the number of lots from three to two, which Council could waive. It adds the cost to her of a 35-foot public street. Even though the City says the street in the back of the lots would not need to be developed right now, it would still leave her with a lot she could not sell. No one would buy it knowing they would have to put a street in the back, especially as they would have access in the front.

Commissioner Kafoury said that last time Ms. Cohen said she would rather have two lots and the street on the other side.

Ms. Cohen said she suggested just a private drive to serve two, rather than three, homes in the back. But Planning staff told her she is stuck with the subdivision rules and the only way for her to avoid doing the street would be to do a flag lot with one home. City staff told her changing from three lots in the back to two is not acceptable--it does not accomplish the City's desired density and she is still under the subdivision rules. She said there are two other lots that could be developed for a total of 11, not nine. The downside for Options D and E is that they are not financially feasible. Therefore, she cannot develop her property and the City loses three new lots and three affordable homes.

Commissioner Hales said Ms. Cohen's use of "impasse" is a good description of the City policy and her situation. He appreciates her time and effort in working with staff to find a hybrid that would work. The objective in meeting growth responsibilities is to allow a higher density than in the past using things like flag lots, cul-de-sacs and private streets. He said Council's decision should be to uphold the Hearings Officer's decision and to allow Ms. Cohen to

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proceed in the future with any of the Options presented today.

Commissioner Kafoury asked about the cost to do the street.

Ms. Cohen said the cost of a 33-foot street would be around \$90,000, so the 35-foot, west-side street, including sidewalks and planter strip, would be more.

Mark Gardner, 11807 NE Prescott, 97220, Ms. Cohen's contractor, noted that the streets of 100 years ago accommodated horses, and the streets put in today may have nothing to do with the transportation mode of 100 years from now. Areas such as Ladd's Addition would not meet today's requirements, but they meet the fine character of the city. Mr. Gardner said there was a potential for 16 to 18 lots, using private streets, instead of the nine, which is at least six more lots than the major street proposal produces. Along the north/south property line, there are some oak and other trees over 100 years old, which would be destroyed by a major street.

Ms. Cohen said approval of her proposal would not necessarily preclude future development of the City's plan.

Commissioner Hales asked if there was anything to preclude use of the City's "skinniest street" program.

Glen Pierce, Bureau of Transportation Engineering, said they were proposing to use that. Due to the cul-de-sac's length and to ensure adequate fire access, a 28-foot street is the standard, with parking on one side. Regarding Option C, they looked to see if the width of the initial segment off Shaver could be restricted, making a section with no parking and eventually bring the street down to 20 feet. That has implications for Ms. Cohen's property and for on-street parking ability. That would be the absolute minimum for the skinny street standard.

Commissioner Hales moved to uphold the Hearings Officer's decision as there is an impasse, as well as to make the record clear that the Options are available to the applicant. Also, under current rules, Ms. Cohen could still do a single flag lot, but not two. Commissioner Kafoury seconded.

Disposition: Tentatively deny appeal. Prepare Findings for June 12, 1996 at 2:00 p.m.

At 3:45 p.m., Council recessed.

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

OFFICERS IN ATTENDANCE: Britta Olson, Acting Clerk of the Council; Mike Holstun, Senior Deputy Attorney; and Officer Sean Pritchard, Sergeant at Arms.

850 TIME CERTAIN: 2:00 PM - Appeal of Downtown Community Association against Hearings Officer's decision to approve application of Downtown Development Group for a Central City Parking Review for a 550-stall parking garage located on a full "half block" bounded by SW Park and 9th Avenues and SW Yamhill and Taylor Streets (Hearing; 96-00074 PR)

Discussion: Mayor Katz announced the time schedule recommended by the City Attorney's Office for the hearing. She noted that the public testimony would alternate between the arguments for and in opposition, rather than the traditional sequence. The opponent and appellant may be allowed 20 minutes at the end if there are objections to new information.

Mayor Katz asked about Council conflict of interest or ex parte contacts.

Council members described their ex parte contacts, including dates, names and discussions.

Mike Holstun, Senior Deputy Attorney, outlined the procedures to be followed for On The Record testimony. He noted that because this was not an evidentiary hearing, persons addressing Council should confine their remarks to evidence already submitted in this matter and they may be questioned as to whether their submission is new evidence or not. Because questions of Zoning Code and Comprehensive Plan interpretation have been raised in this appeal, Mr. Holstun briefly addressed Council's scope of interpretive discretion. Council is given very broad deference by the Land Use Board of Appeals (LUBA) and by the appellate courts when Council interprets its own Comprehensive Plan, unless the court concludes the interpretation is clearly wrong. He said one criterion, which he will refer to as Criterion A, seemed to be the focus of this appeal: City Code 33.808.100.a; the standards that govern Central City Parking Review. Whatever interpretation of Criterion A is adopted, whether that of the Hearings Officer or a different interpretation, it will have to be applied to the specific application presented in this case.

Commissioner Lindberg stated it was his understanding that Council may consider any relevant City-adopted area plan, neighborhood plan or

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development plan in reviewing the applicant's proposal, which led to the assumption they could look at the Downtown Plan goals and guidelines, the transportation element of the Comprehensive Plan, Central City Plan and the Central City Transportation Management Plan (CCTMP). He asked if it were the City Attorney's opinion that they were not limited to looking at only the criteria and policy that the Hearings Officer decided to review.

Mr. Holstun said it was the City Attorney's position that Council has been presented with two competing interpretations to Criterion A. One of those interpretations would have Council look beyond those policies the Hearings Officer identified and include some of the policies just mentioned. Mr. Holstun said, in his opinion, if Council accepted that interpretation, in view of the deference LUBA and the Court of Appeals give Council's interpretations, it likely could be defended. Mr. Holstun said that is not the same as saying Council should or must adopt that interpretation, however. Effectively, the deference the courts extend to Council's interpretations indicates they want it to make that call.

Commissioner Lindberg said the reason he asked was because a number of people told him the Council had to no legal authority to deny this. He said the Hearings Officer acknowledged that they could rely on the Downtown Plan, but it was a quagmire.

Dennis Lachman, Bureau of Planning, said this was an appeal of the Hearings Officer's approval of parking review. He showed slides to give a quick look at where this proposal is in the review process. Mr. Lachman said the proposal was subject to two different types of review: a design review and a use review. The design review was approved by the Design Commission and upheld on appeal by Council. A secondary design review for the ground level pedestrian environment was required by both the Design Commission and Council. Today, the use review (the parking review) is being looked at. The purpose of today's hearing is to determine if the Hearings Officer violated any of the approval criteria in approving the proposal. The approval criteria are found in City Code 33.808.100, General Approval Criteria for Central City Parking Review. It states that a proposal will not, by itself or in combination with other parking facilities in the area, significantly lessen the overall desired character of the area. The desired character of the area is determined by City-adopted area plan, zoning and allowed densities. Mr. Lachman said he first looked at the zoning and densities in a 25-block area, two blocks on either side of the site, and said it was representative of the area's character. There is a MAX line, Pioneer Square, the Park Blocks with the garage site at the center. The zoning is CXd, Central Commercial with design overlay. The character of this zone is intended to provide commercial development within Portland's most urban areas and development is intended to be very intense with high building coverage, large buildings placed close together, pedestrian-oriented and with a

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strong emphasis on a safe and attractive street. The adopting ordinance for the CCTMP also adopts the commentary as legislative intent, yet the commentary does not suggest that the determination of desired character requires a complete review of all adopted goals and policies of the area and, conversely, does not preclude other parts of the Central City Plan to determine the desired character. Staff and the Hearings Officer conclude that nothing significant would be gained by wading through the myriad policies in the Central City Plan. Those policies are implemented through parking review regulations, which are the most current regulations adopted to implement the Comprehensive Plan. In the Central City Plan District, there are eight subdistricts, one of which is downtown. The downtown sub-district description, Policy 14, reads: strengthen the downtown as the heart of the region, maintain its role as pre-eminent location in the region, expand its role in retailing, housing and tourism and reinforce its cultural, educational, entertainment, governmental and ceremonial activities. Putting all the pieces together, the overall desired character is most clearly defined by the base zone--Central Commercial with design overlay. In order to fully comply with the character, the Hearings Officer approval conditioned that the ground level pedestrian environment must receive an additional design review. Mr. Lachman said this proposal adds retail, provides parking to support cultural entertainment and meets the design guidelines. Staff and the Hearings Officer conclude that the proposal will not significantly lessen the character of the area and therefore Criterion A is met.

Kevin Hottmann, Bureau of Traffic Management, said the applicant, per approval Criterion A, was required to provide information about the ability of the transportation system to safely support the proposal. The traffic study analyzed a number of operational impacts to vehicles, pedestrians, bicyclists and the light rail line. The study included actual traffic counts of vehicles, pedestrians around the site, bicycle trips during peak a.m. and p.m. hours and light rail trains--also projecting the number for the future west side connection. The study covered the weekday, peak times and weekends when the building would be used for retail, high turnover traffic. In terms of traffic impacts, the study determined the area was capable of supporting the parking garage and the Office of Transportation agrees. He said if some unforeseen problems arose, Traffic Management would address them at those times.

Commissioner Lindberg asked if an analysis had been done on the 30-day Christmas holiday period.

Mr. Hottmann said the analysis assumed the parking garage would be full, especially on the weekends' high turnover, but there was nothing specific to a holiday.

Commissioner Lindberg asked about the cumulative effect of existing garages

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and planned future garages. For example, the 400-some spaces projected for the Fox blocks right next to the site.

Mr. Hottmann said the traffic study looks at existing traffic and then adds on what is known. In this case, the Fox blocks were not specifically known at the time. They have now made an application.

Robert Shoemaker, 4837 W. Burnside Road, 97210, representing the Downtown Community Association and the Friends of the Missing Park Blocks, said this is not technically a conditional use hearing, but is essentially one. The most important criteria are that the proposed parking garage will not by itself or in combination with other parking facilities in the area significantly lessen the overall desired character of the area as determined by the Central City Plan and the Downtown Plan. The other criteria require that the garage not have a significant adverse impact on the overall pedestrian, bicycle and transit environment and safety of the area. He said the hearing was not about the need for a parking garage to serve existing downtown buildings, but about a parking garage at this location meeting the criteria spelled out in the zoning code. The groups he represents do not think so. There are at least two, much better locations that meet the criteria and denial of this application would not in effect deny the parking garage. Both the other sites are larger, with access off 10th Avenue--a street intended to handle a large flow of traffic--and are outside the downtown core area. The two locations are the block just north of the Masonic Temple and the block between the Galleria and the Pittock Block.

Mr. Shoemaker said two important policies underline the criteria regarding the area's desired character, both of which are violated by this proposal. First, the Downtown Plan transportation policy is that the core area should be primarily served by mass transit and walking--the use of cars should be discouraged and minimized. "Core area" is not specifically defined but, logically, is that portion of town east of 10th and west of 4th. SW Park and 9th are classified as pedestrian streets. Parking, particularly long-term, commuter parking, should be on the periphery. Encouraging cars to come into the core harms the pleasant environment, discourages walking and weakens mass transit. Second, the Downtown and Central City Plans' housing policies give high priority to increasing housing and creating a high quality environment in the downtown area, as free as possible from the noise, smell, danger and confusion of the automobile. The Park Blocks have long been intended to serve the latter purpose. He said respecting and following these policies will best meet Policy 14. He emphasized two Policy 14 statements: to maintain and implement the Downtown Plan as part of the Central City Plan and to continue to actively foster the growth and attractiveness of the downtown, enhancing its competitive position over other commercial areas in the region. The fundamental error the Hearings Officer and Planning staff made is to regard the single, first sentence of Policy 14 as saying it all. Mr. Shoemaker said the

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Downtown Plan is particularly important and has been the blueprint of downtown development since 1972, updated in 1980 and reinforced in 1988 by the Central City Plan. If any single document sets forth what is the desired character for the area, it is the Downtown Plan.

Steve Schell, 707 SW Washington, attorney representing Neil Goldschmidt and assisting the Downtown Community Association (DCA), said the Central City and Downtown Plans represent the hopes, dreams, tears, years and toil of thousands of people who devoted untold hours to their creation and represent the vision of how we see ourselves and our city. He said the applicants asked that the focus be on one page only, which is not fair. The plans contain ideas such as a 24-hour city, high densities along light rail, connecting the north and south Park Blocks, transit as the preferred mode of transportation, parking on the periphery--a livable, walkable city. A recent report from the Progress Board notes that transit use has decreased over the past two years by two percent, which indicates that we have gotten away from the basic tenets.

Commissioner Hales asked Mr. Shoemaker about the two, alternate sites that would be preferable and whether they were owned by the applicant.

Mr. Shoemaker answered that one was between Salmon and Main/9th and 10th, and has been designated by the Central City Parking Facilities Study as a prime parking facility site. The other is between Alder and Washington/9th and 10th. He thought both sites were owned and operated by the applicant.

Commissioner Hales noted Mr. Shoemaker said he considered this to be, in essence, a conditional use hearing. But it certainly is not a legislative process to designate certain parcels for certain uses. Commissioner Hales asked if he were suggesting that the Council and the City start making use decisions based on what other property an applicant owns and what he would recommend if the applicant owned only this block.

Mr. Shoemaker said the fact that such a block is available for a parking garage is relevant and it meets the criteria. It is not as if they are saying no to a garage to serve the needs for preservation parking, just that there are better places.

Commissioner Hales said, in visiting the area, he saw structures, such as 4th and Yamhill, 10th and Yamhill, that seem in many ways similar to the proposed structure. He asked if, in Mr. Shoemaker's interpretation of the Code, they could be approved today and what is different between those structures and this one.

Mr. Shoemaker said they are outside the core--either west of 10th or east of 4th-- and they do not have access to 5th, 6th, Broadway, Park or 9th. The

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difference is location and how that location bears on City plans for the core area. And, also street access, as 10th is a traffic street, which protects the core area.

Mr. Schell emphasized this is a half-block with pedestrianways on both sides and single-lane streets, except for Taylor, all the way around it.

Mayor Katz said Council had been asked to continue reading beyond the bold language in Policy 14. She noted that Mr. Schell talked about the "tears and years" of the Downtown Plan and yet the applicant, in one of its briefs, discussed things that had changed over the years and noted that the Plan called for a network of sky bridges, elimination of street parking and maintaining the River District for industrial purposes. She asked how he dealt with the discrepancies and the fact that, over time, the vision does change.

Mr. Schell said the level of planning documents in place is the easiest way to address this. There is a Comprehensive Plan, under which are a series of neighborhood plans which are still in force and have never been changed. The Downtown Plan and Central City Plan are part and parcel of those neighborhood plans and this Council and its predecessors have never chosen to revoke those plans, which are binding documents on the City. He stated that this is their position.

Chris Kopca, Senior Vice-President in Real Estate, Downtown Development Group, said the most recently adopted plan calls for very intense, high and large building coverage, placed close together. The plan also calls for creating a near-seamless retail environment in the core. The Central City Plan, with reinforcement from the CCTMP, has Park and 9th sidewalks serve as the strong, connecting pedestrian element between the retail core, the cultural district to the south and the financial district to the north. The Plan addresses retaining the older, historic building resources. Infill projects are encouraged. Mr. Kopca said their project would keep Park and 9th an intriguing retail setting. Two currently existing 30-foot wide driveways will be permanently closed and 12 street trees and public art will be included. The project will physically tie and functionally reinforce all of the other uses in the area. It is the site between the long-standing retail core and the cultural institutions, being on the edge of but not in the core. It will help tie the retailers to the cultural institutions. He said the Park Avenue Plaza site is strategically located to serve three important parking needs: 1) retail customers; 2) cultural facility patrons; and 3) older/historic building employees. The project was conceived and designed to do two things. First, meet or exceed the adopted policies, development guidelines and traffic standards and, second, enhance the character of the area. The City Planning and Transportation Departments have independently favorably endorsed the project, as have Tri-Met and Metro, unconditionally. The Hearings Officer's findings and approval is unequivocally

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favorable even after receiving the same testimony that will be heard today. Mr. Kopca said this one garage would serve nearby buildings, four of which are historic landmarks, and is a real neighborhood project. As part of the CCTMP deliberations late last year, the City concluded it needed to move away from the near outright preclusion of parking established in the 1970s which helped fuel the downtown's significant decline in market share over the last 25 years. There is a crying need for preservation parking in this area. Compared to other downtown areas, this is a parking-deficient area, which will become worse when Central Library reopens. Even with the net addition of 405 stalls to the west end of the retail corridor proposed in this project, it will have 1,000 less stalls than the east end of the corridor and 2,000 less than the most urban portion of the south auditorium areas.

Mr. Kopca said that both Taylor and Yamhill Streets in the CCTMP are specifically allowed to have auto access/curb cuts. There will be a 12-foot wide entrance-only on Yamhill and a single 25-foot wide entrance/exit on Taylor, for a total of 37 feet in sidewalk crossing. On the block today is 115 feet. There will be a 66 percent reduction in the amount of curb area and access lanes. The 9th and the Park driveways will be removed. This single parking facility also meets two primary objectives in the parking preservation program: 1) a single facility to serve more than one building to minimize the potential for curb cuts about the City; and 2) a single facility to serve multiple uses--office, retail, cultural--to minimize the frequency of parking facilities.

Mr. Kopca said there are no transportation issues associated with this project. Nearly all streets that serve the garage operate with a B or A service level, against the City's adopted standard of D. An analysis was prepared with 100 percent utilization (not design capacity of 85 percent) and double the pedestrian count, at surrounding intersections and up to five blocks away. The amount of time available for pedestrians to cross streets, queue lights on key streets and light rail design was included.

Commissioner Hales referenced the traffic analysis statement that the garage will not exceed the City's standards in level of service and asked if they could project a level of service effect on Taylor Street from the Fox block proposal.

Mr. Kopca answered that their traffic analysis indicates there is ample room to handle the Fox block facility or any other facility in the immediate area.

Margaret Strachan, 1220 SW Morrison, said the desired character of the neighborhood has been noted in many documents and policies: To strengthen the downtown as the region's heart, maintain its role as the preeminent business location of the region, expand its role in retailing, housing and tourism, and reinforce its cultural, educational and entertainment activities. She said the trick is to balance all that and this block is too important in the

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balance to be used as a parking structure. The housing policy in the Central City Plan directs the maintenance of Central City status as Oregon's principal, high-density housing area and the proposed garage is in the high-density housing area's yard. It should be open space or, at the least, a commercial building with housing in it. She cited the parks/open spaces policy which calls for a park and open space system of linked facilities that tie the central city districts together, which especially applies to this vacant block. The area is also designated a park-deficient area. Policy 14 calls for a public park on the block bounded by Park, 9th, Taylor and Yamhill within six to 20 years. She said the Plan was now seven years old, so there were a lot of years left.

Tracey Ritter, 623 SW Park, #209, 97205, said she is a member of the DCA and a downtown resident who lives near the proposed site and walks extensively in the area. She said traffic is hazardous enough without the addition of 550 cars, especially during rush hours and Christmas holidays. She noted that Council would be told countless times during this meeting that the garage will be violating Policies 6 through 8, 12 and 14 of the Central City Plan, as well as specific goals outlined in the Downtown Plan, such as A1, B2, B3a, B3b and E3. She supports the widely-held idea that the lot be purchased by the City and converted to a park. Ms. Ritter asked the Goodmans to recognize the importance of civic responsibility and consider a more mutually-beneficial use for the land, especially for desperately-needed housing.

Lee Lacey, 910 SW Park, #502, 97205, said the Planning Bureau neighborhood analysis failed to mention some of the housing stock in the immediate vicinity and if Council wants a 24-hour city, it needs to walk its talk. He noted that doubling automobile usage in the area will double emissions. The weekend short-term parking will increase pedestrian/auto conflict.

B. J. Seymour, 1405 SW Park Avenue, clarified that Park Avenue on the south side of Salmon Street is the same street as 9th Avenue in this discussion. She mentioned that there is a rather high percentage of elderly people downtown and, although they can walk to many activities, it can take longer for them to cross a street. Ms. Seymour timed herself crossing at an elderly person's pace. It took about 16-18 seconds under clear and dry weather conditions. According to the proposal's transportation impact analysis, 500 cars currently cross Taylor at 9th during the evening rush hour. Adding 262 exiting the parking structure means slightly more than 12 cars per minute.

Garry Papers, Chair of the Portland A.I.A. Urban Design Committee which represents design professionals and over 700 metro architects, said that while they are not opposed to well-designed, well-located parking structures per se, this is an inappropriate use in this location and the design is sub-standard. The Design Commission approval carried significant conditions.

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Mayor Katz said the design was not an issue before Council today.

Mr. Papers responded it was if the Hearings Officer's contention is used that design approval constitutes compliance with the guidelines, which are part of the character.

Mayor Katz noted there may be an objection to that.

Mr. Papers said his committee argued that the proposal did not meet three approval criteria of the parking review provisions. First, it will have adverse impact on the overall pedestrian, bike and transit environment, amplified by holiday use and the fact the structure will be a magnet for cars. When the structure is full, people will still be looping around the block to discover that. Traffic analyses carry a lot of assumptions and he suggested for such a critical location that an independent analysis be done, not simply a staff review of a study paid for by the applicant. Second, it is not consistent with the full spirit of the Central City Plan. Third, it will lessen the overall area character. The Hearings Officer's premise for the definition of the desired character is if the City wanted a park it would have been designated as open space and CX allows parking, so parking is consistent. Mr. Papers said the CX zone also allows 12 or 18 different uses.

Richard Brainard, 813 SW Alder Street, 97205, said he was an urban planning consultant and one of the chief planners for the Downtown Plan and the downtown planning manager for a few years in the Goldschmidt administration. He said all the plans emphasize mass transit and de-emphasize automobile trips, but the proposed garage does the opposite. It encourages more people to drive downtown with the promise of additional parking spaces. The City should be encouraging the 550 (stalls proposed) people to use mass transit. Freeways to and from downtown approach gridlock during rush hours. Not only is this parking proposal wrong, but also the section of the CCTMP which opened the door to it was added without the public's thorough knowledge.

Bob Naito, 5 NW Front Avenue, said his father, Bill Naito, was asked to take on the leadership to eventually have the City obtain the six blocks to connect the Park Blocks when this proposed garage was first in the hearings process. Mr. Naito said, along with his vision, Bill was a hardheaded businessman and real estate developer. He thought up a creative financing strategy to eventually, maybe in a generation, complete the Park Blocks. Mr. Naito asked Council to look at alternatives before approving this garage. He referred to Bill's comment that he "had never met a parking space he did not love." But, in this case, he met 550 of them.

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Jim West, 9220 SW Barbur Blvd., Kimley-Horn and Associates, Traffic Consultants, said he would comment on the studies already in the record in which traffic volumes generated by the garage are underestimated and pedestrian volume is significantly underestimated. A traffic study should include existing background traffic, site-generated traffic and other, nearby, committed projects. The study included the former two, but did not include traffic associated with the reopening of the Multnomah County Library, the Columbia Sportswear Store, the Pioneer Park West Building and the replacement of the Aero Club by an 8,000 square foot office building. The study developed trip generation information from a "similar" but unnamed parking garage located in downtown Portland. Because the garage is not known and the reasons for selecting it were not defined, he questioned whether the operational characteristics of the unnamed garage can be used for the proposed garage. Clientele and turnover rates could be very different. The report indicates there could be 130 to 150 short-term spaces, with 350 long-term spaces for older buildings and 20 long-term spaces for on-site retail; 180 spaces could be available for short-term parking. No explanation was given as to what float or oversell factor was used. Spaces could also be available for short-term parking due to employee absences. At a typical 20 percent float, another 74 spaces could be available per day for short-term use, so more than 200 could be available. Coupled with high turnover for short-term parking, the number of vehicle trips increases dramatically. Mr. West said the report made no adjustments for the increased pedestrian volumes on Yamhill when the west side light rail opens, or for the increased number of garage patrons, the ground level retail space or the reopening of the Library and other stores. The analysis treated each intersection and driveway as a separate and isolated location, although they operate as a system network.

Mayor Katz said there had been an objection to this testimony and it would be revisited at the end of the session.

Andrew Wheeler, 600 SW 10th, 517 Galleria, said the Goodman parking structure was not a plaza, but a 12-story warehouse for cars between the two narrowest avenues in the City and 50 feet away from what will be another storage warehouse of 407 more cars. He said the Goodman block and the three contiguous blocks hold 1,537 cars. When the Plaza, the Fox Tower and the Rembold projects are built, the count will be 2,286. The Kittelson analysis makes nothing of the fact that the project site is surrounded on three sides by one-lane streets. Planners generally agree that long-term parking should be on the central business district periphery, not in the retail core.

J.E. Bud Clark, 1927 SW Jefferson, 97201, said the Central City Plan, especially the pedestrian guidelines, is being ignored. That plan and the Downtown Plan have held to a pedestrian-oriented downtown. This, along with the other new buildings, will turn a pedestrian delight into a dark alley

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and kill plans for a future enhancement of a pedestrian-oriented Park Avenue. He said this was like putting the Grand Coulee Dam on the Columbia River--all the salmon would die and the perpetrators would be cursed forever. In a past appeal before Council, the Goose Hollow Foothills League opposed a car wash at SW 18th and Jefferson and legal advice was that the developers would take it to appeal and win for sure. However, the car wash decision was eventually reversed by the appeals court, so it can happen. Mr. Clark said this vision of a parking garage does not fit with the neighborhood in the downtown area.

Mayor Katz said she would like some discussion on any parallels between the Goose Hollow car wash and this item.

Gert Boyle, Columbia Sportswear Company, 6600 N. Baltimore, 97203, said her company plans to build a flagship retail store in downtown, representing a substantial, long-term commitment. The proposed Park Avenue Plaza was an important factor in this decision and her company has subscribed to the garage. Ms. Boyle said the existing parking and the City's commitment to mass transit is commendable and will contribute to the area's growth, although increased office, retail and residential activities will require additional parking.

Jeff Miller, General Manager, Sak's Fifth Avenue, 850 SW 5th Avenue, 97204, said this structure will help anchor the downtown retail core on the West end, as Pioneer Place and Sak's anchors the east. He noted he was a member of the Association for Portland Progress (APP) which looks at how to strengthen the retail downtown core and how to continue retail core growth. Customers need to be drawn downtown so they will know how good the retail, arts and cultural district is. He thinks there is a dire need for more parking in the downtown core.

Harriet Sherburne, Director of the Portland Center for the Performing Arts (PCPA), 1111 SW Broadway, 97025, said PCPA and the emerging cultural district will benefit from more parking in this vicinity. Arts Plan 2000, accepted in 1992, found one of the two most significant barriers to cultural attendance was the shortage of safe and convenient parking in the vicinity. There were 750 performance events last year, with attendance of 567,000 people. Most of these were in the evening, generating much-desired off-peak use of streets and parking. Properties and the cultural organizations located around the South Park blocks, along with APP, have joined together to establish the cultural district and build the area into a unique and identifiable destination for living, learning, playing, entertainment and working. She said more parking resources would support the vision of the cultural district. The Central City Plan ideals for this site were unfortunately followed by Measure 5 and the loss of implementation capacity. The City has had a reasonable time to

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exercise action on this site. Through design standards and review processes, effective for two decades, Portland has defined the desirable pedestrian environment by retail and service uses at the street level. The standard has worked well for downtown, is well incorporated into the proposed project and has been appropriately approved through two processes.

Commissioner Lindberg said the garage built across the street from the Performing Arts Center, at that time called the Moyer garage, was extremely controversial. He said he supported it as it would support the Performing Arts Center complex. He asked if that only met part of the demand.

Ms. Sherburne said that was correct and it was a bonus to have more parking spaces to specifically serve the Performing Arts Center. It fills up regularly.

Commissioner Lindberg said in response to a survey that determined tight parking was a disincentive to arts events attendance, a study was done which showed there were three or four thousand parking spaces within four blocks of the arts center which were not full all the time so it would seem this was a marketing information challenge. He asked if they were all full now.

Ms. Sherburne said they were not full. Some were not physically suitable to be open to the public at night, being designed initially to serve the buildings' office customers. Some people are buying parking in the buildings.

Mike Powell, Powell's Books, 7 NW 9th Avenue, 97209, said the parking is needed, especially in this part of downtown. The building is the same size as those surrounding it. He thinks the issue comes down to what is right for an urban core. Whether open spaces are the best way to enhance its vitality or if dense retail, office, parking and light rail is best. A balance is necessary. When he chose a location for his retail store, he was told to never open across from a blank street--it would be quite a risk. The North Park blocks have only his and one other successful store. The South Park blocks have no long-term, successful retail. O'Bryant Square, a downtown vestpocket park, has a very high rate of turnover of the few retail spaces, although bars and restaurants are doing all right.

John Russell, 1727 SW Hawthorne Terrace, said he hates to disagree with his hero, Neil Goldschmidt, but he agrees with Mike Powell. This is a tough issue. In almost any other neighborhood a park is an asset. In residential districts people want to live next to one and in office districts people want to work next to one. A retail neighborhood is different. A retail district needs pedestrian amenity continuity--the street experience needs to draw people. He has worked to discourage blank-faced buildings, but no building at all is worse. Parks such as Portland's Pioneer Square and San Francisco's Union Square are the exceptions--too much park space kills a retail district. The Downtown

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Plan decrees that the retail district run east-west, the only district that does. He said an extension of the Park Blocks would effectively cut off the western part of the retail district and do great harm to the retail continuity.

Commissioner Lindberg asked if either open space or the 12-story parking structure would be the only options.

Mr. Russell responded that it could be an office building. He noted that what happens 30 feet above the street makes little difference to the pedestrian. He said this building was a well-designed retail facility.

Commissioner Lindberg asked, considering the narrow sidewalks, if one option might be to have more of a streetscape and pedestrian-friendly atmosphere and still have the garage.

Mr. Russell said street setbacks are damaging to retail. In this building, the entrance/exit space has been minimized, with the gates well inside to reduce queuing. Also, the two levels of retail is remarkable.

Blake Nordstrom, Co-President of Nordstrom, Inc., PO Box 147, Seattle, WA, 98111, said not many retailers across the country are investing large sums in downtown situations. Most are mall-driven and there are few thriving downtowns. He said everyone addressing this issue, for or against, wants what is best for downtown Portland. The Portland downtown Nordstrom store pays more parking validations than any other store in the company. They are trying to do their best to address their customers' concerns and their perception of parking.

Commissioner Lindberg asked if a 500 to 600 space parking garage, two blocks away, would equally meet their needs.

Mr. Nordstrom responded that on paper it would but, again, customer perception would be an obstacle.

Chet Orloff, representing Richard Toscan, Chair of the Portland Cultural District Council (PCDC), said PCDC consists of the Association for Portland Progress, Oregon Ballet Theatre, Oregon Historical Society, Oregon Symphony Orchestra, Pioneer Courthouse Square, Portland Art Museum, PCPA, Portland Center Stage, POVA, Portland State University, Association of Downtown Churches and Sak's Fifth Avenue. He said PCDC recognizes that this is a contentious issue and also, to some extent, it is charged with the responsibility to maintain the downtown cultural core and its livability. PCDC also recognizes the need for parking as critical to the well-being of cultural institutions, particularly in the future as they depend more and more on private support.

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Commissioner Lindberg quoted the phrase "we do not need to add more park space that will further burden park and public safety systems" from a letter from PCDC and asked if PCDC was against more open space.

Mr. Orloff said members had expressed concern about the park blocks and the City's ability to police and maintain them.

Mayor Katz asked which is most important for the cultural district, public safety or parking.

Mr. Orloff said, the key issue is parking.

Commissioner Lindberg asked if PCDC would be equally satisfied if the parking were two blocks from this site.

Mr. Orloff said, as a representative, probably, but he could not say until it was discussed with his Council.

Bud Lindstrand, Chairman of the Oregon Symphony, 7286 SW Ascot Ct., 97225, said he also represented Maestro James DePriest. He read a letter from Mr. DePriest stating appreciation of Council's support of the arts and asking for its support for the garage. The letter stated that there was still a need for increased accessible, sheltered parking which did not undercut public transit. Mr. Lindstrand noted that parking was tight, especially during multiple events. He said people in the arts also like retail in proximity to the downtown cultural area.

Commissioner Lindberg asked the same question he asked Ms. Sherburne. Are all the garages being used now and could some be open at night or are people unfamiliar with them?

Mr. Lindstrand said he is not as knowledgeable as Ms. Sherburne, but from his personal experience the garages are quite full.

Bing Sheldon, SERA Architects, 123 NW 2nd Avenue, 97209, said the significant historical buildings in this neighborhood had yet to be addressed. They are one of the prime purposes for this project. Traditionally, historic buildings have trouble attracting tenants due to lack of parking. He had not heard anyone address what the character of the area would be in the future. The area is relatively underdeveloped now but the Fox block and Aero Club projects will change the scale of the adjacent block. Mr. Sheldon said it is important to develop the activity of this area to reinforce the retail. This historically fine retailing area has fallen on tough times. He agreed that a parking lot was a poor cousin to retail, but a city is a living organism and in order to have the arts, retail and offices there must be a reasonable supply,

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reasonably located, of parking. The original Downtown Plan postulated that parking should be in fairly large blocks.

Commissioner Blumenauer said there had been some dismissive testimony of the CCTMP, but it is a substantial improvement over the lid which would have killed downtown had it been kept in place. He asked if, in 20 or 30 years, the attraction of the river would create more intense development in the eastern portion of the core.

Mr. Sheldon said, in looking at the development patterns, what pulled it east was light rail. He said you do not want to sacrifice one section of the city for another and this parking would help the balance for the west core.

David Margulis, 800 SW Broadway, 97205, said his business is downtown and he is there six or seven days a week. He is strongly in favor of light rail (with the reservation that the fare is expensive), however some people cannot be pressured to take it. Mr. Margulis said downtown Portland is a regional center for the whole state, although many of his out-of-town customers balk at coming downtown. He said the west side of Broadway was at a plateau and needed a shot in the arm. Buildings without parking cannot compete with suburban malls.

Clayton Hering, President of Norris Beggs & Simpson, 121 SW Morrison Street, #200, 97204, said his firm has been active in downtown development for more than 60 years and the key to a healthy region is a strong and vibrant city core. Preservation parking will directly meet the goal of the CCTMP. He said to adopt new rules in process will significantly deter future development and impact the vitality of the Central City.

Others speaking in opposition to the appeal were:

Richard Singer, 824 NW Albermarle Terrace, 97210

Scott Howard, 851 SW 6th Avenue, #1500, 97204

Tom Sjostrom, Morgan Park Properties, 720 SW Washington St.,
#330, 97205

Roderick Bunnell, PO Box 1271, 97207

Pat Prendergast, 333 SW 5th, #200, 97204

Roger Qualman, Norris Beggs & Simpson, 121 SW Morrison,
#200, 97204

Laurene Wilson, AT&T State Government Affairs, 121 SW
Morrison St., #1040, 97204

Bill King, 625 SW Broadway, 97204

Phil Kalberer, President, Kalberer Hotel Supplies, 234 NW 5th Avenue

Ron Beltz, Louis Dreyfus Property Group, 222 SW
Columbia St., #201, 97201

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Ron Brenner, 851 SW 6th Avenue, #450, 97204

Brian Scott, President and Executive Director of Livable Oregon, 921
SW Morrison Street, #503, 97204

Mark New, 621 SW Morrison Street

Dwyn Armstrong, past staff member of the Downtown Community
Association and member of the Association for Portland Progress

Robin White, Executive Vice-president BOMA, 1211 SW 5th Avenue,
97204

Kenneth Novack, 3200 NW Yeon, 97210

Bill Findlay, 1511 SW Park Avenue, 97201

Wayne C. Rembold, 1022 SW Salmon Street, #405, 97205

Doug Bean, 101 SW Main Street, #920, 9720

Ernie Bonner, 2924 NE 27th Avenue, 97212, said he thought the name Park Avenue Plaza was a strange name for a parking garage until he came across term preservation parking. Originally, the term meant parking in support of the older, historical buildings but recently has changed to include all buildings downtown which have less parking on site than the maximum allowed in the zoning code. This project would be the tallest parking structure in downtown, completely fill the proposed space, and 500 cars would impact the rush hours. The Hearings Officer determined this garage met the letter of the code and that the desired character of the area will not be compromised. The applicant and Hearings Officer maintain the zoning code is Council's vision for the area and Mr. Bonner asked if Council truly envisioned a phalanx of buildings with all the same design guidelines as the rest of downtown. This area could be a destination draw as its location is at the junction of two important downtown elements--the Park Blocks and the retail core.

Mayor Katz noted that Mr. Bonner had been involved in the downtown plan for over 20 years. She said the plan once allowed for 5,000 housing units which is now 15,000 and called for 50,000 new jobs where now they're looking at 75,000. She said things change within the Central City Plan but the vision is still high density, urban, retail, commercial, cultural, and open space. She asked Mr. Bonner to think through this with her.

Mr. Bonner said planning is a process with certain guidelines for direction, but is mainly to maintain some kind of vision over a number of years. It does not have to be a static plan, but the focus should be the vision. A strict interpretation of the zoning code might keep Council from something more consistent with the vision.

Others speaking in support of the appeal were:

Irwin Mandel, 1511 SW Park Avenue, 97201

Michael Parker, Territory Road, Oysterville, WA, 98641

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Lili Mandel, 1511 SW Park Avenue, 97201
Jim Westwood, 3121 NE Thompson Street, 97212
Thomas Vaughn, 2135 SW Laurel Street, 97201
Ralph Austin, Executive Director, Innovative Housing, 1214 SW
Washington
Phyllis Johanson, 2237 SW Market St., 97201
Bill Resnick, 1615 SE 35th Place, 97214
Louise Beaudreau, 1511 SW Park Avenue, 97201
Howard Glazer, 2378 SW Madison Street, 97201
Lisa Horne, 420B SW College Street, 97201
John Adams Bright, 2036 NW Irving Street, 97209
Jerry Powell, Goose Hollow Foothills League Planning Committee,
1819 NW Everett Street #205, 97209
Bruce James, 2489 NW Raleigh Street, 97210
Ken McFarling, no address stated
Nancy Cunningham, 1117 SW Alder Street, 97204
Ellie Guerin, 11995 SE Idleman Road, 97266
James McQuillan, 4612 NE 18th Avenue, 97211
Alvin Ackerman, 1431 SW Park Avenue, 97201
Colleen Smith, 1525 SW Park Avenue, 97201, member of Board of
Directors of the Downtown Community Association
Sylvia Gates, 01659 SW Greenwood Road, 97219
Lenny Dee, 2580 NE 31st, 97212
Gunter Hill, 623 SW Park Avenue, 97205
Ann Holznagel, 4935 SW 37th Avenue, 97221
Karryn Nagel, 623 SW Park, #609, 97205
Rose Marie Opp, 11135 SE Yamhill Street, 97214
Lawrence Hudetz, 11135 SE Yamhill Street, 97214
Beverly Shoemaker, 4837 W Burnside, 97210
Richard Lishner, 2545 SE 37th Avenue, 97202
Julie Limbocker, 4117 SE 11th Avenue, 97202
Ray Polani, 6110 SE Ankeny Street, 97215-1245
Jean Morris, 910 SW Park Avenue, 97205, Resident Manager of the
Admiral Apartments representing 36 building tenants
Roger Ferguson, 623 SW Park Avenue, 97205
John Gould, 520 SW Yamhill Street, 97204
Sam Oakland, 3446 NW Thurman Street, 97210
Eileen Rose, 1209 SW 6th Avenue, #501, 97204
Terence O'Donnell, 1307 SW Broadway, 97201
Gino Pieretti, 184 Oswego Summit, Lake Oswego, 97035
Margaret Bailey, 1717 SW Park Avenue, 97201, Downtown Community
Association member (submitted 1,500 names on petition in
support of appeal)
Rick Gallagher, 1423 NE 19th Avenue, 97212
Wes Burden, 1331 SW 12th Avenue, 97204

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Douglas Strickler, 4343 SE 35th Place, 97214
Cathy Warren, 1423 NE 19th Avenue, 97212
Paulette Stokes, 910 SW Park Avenue, 97205

Mayor Katz asked Mr. Holstun, Senior Deputy City Attorney, if there were any objections to the testimony. Mr. Holstun answered that there was one and suggested that each side be given an additional three minutes to address it.

Stephen Janik, attorney with Ball, Janik & Novack, 101 SW Main St., Suite 1100, 97204-3274, representing the applicant, said arguments in support of the appeal have been charismatic and full of idealistic intensity, but focus on generalized policies which are not the approval criteria for this case and do not agree with the vision in the CCTMP. Many of the arguments are already well refuted by the City Planning staff, Traffic Management, Tri-Met, Metro, Livable Cities and the Oregonian newspaper. He emphasized this case is to review a Hearings Officer's decision On the Record, not a policy setting meeting. The crux of this case is the CCTMP, which is a new vision adopted by Council in order to better manage downtown parking. The lid was eliminated, as it was found to be detrimental to the high-density goal. In the past 20 years, downtown dropped from 91 percent of all the region's office space to 43 percent today and the CCTMP may turn that around. Without sufficient parking to keep employees downtown, aspirations for a vital downtown will not be sustained in future decades and the transit system will lose riders.

Mr. Janik said the only issue in this case is whether the parking use as distinguished from its design will "significantly lessen the desired character of the area." The CCTMP, as codified, says character is discerned by allowed densities, zoning and design guidelines and the project is in compliance. Comprehensive Plan designation must be looked at, not text or words, a critical distinction. Commentary on "area, neighborhood or development plans" says in the Central City there are subdistricts and the applicable subdistrict will be where the project is located. This is known as Policy 14. Policy 14 and the zoning code say the same thing. The goal is to create an intense, high-density downtown serving as the regional center for commerce, shopping, culture and entertainment while maintaining an attractive pedestrian environment. The Hearings Officer concluded that the evidence shows this garage is consistent with the desired character because it supplies six office buildings with much needed parking, adds substantial new retail, supports the nearby library, PCPA and the Art Museum. The Hearings Officer looked at the parking density throughout several downtown sectors for an undue concentration and found this area to have less parking than other sectors. The appellant suggests going through the entire text of the Central City Plan to pull policies out to try to make them fit, although the zoning code forbids that. The Downtown Plan, because it was a visionary document, is highly generalized and not specifically applicable in quasi-judicial cases as an approval criteria. It has been

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superseded by the Central City Plan and the CCTMP. The Hearings Officer also found no substantial evidence that the transportation system could not accommodate the garage. Regarding the impact on light rail, Tri-Met has always been a jealous advocate of its system and has written a letter for the record that this project will not adversely impact light rail.

Mr. Janik said he had one evidentiary objection, to the testimony of the traffic expert, Daniel Brame, newly called by the appellants. He said a copy of that report was handed to him during the dinner break. There must be a distinction between legal argument and evidence and legal argument and fact. An opinion of an expert is not a legal argument; an expert's opinion is clearly factual evidence. It is new evidence purported to come into the record at this time. In a more formal judicial proceeding rather than quasi-judicial, the expert would need to be qualified because it is evidence. That is what an expert is called upon to give. Mr. Janik said this was against the rules and he asked that it not be considered and the testimony stricken.

Mr. Shoemaker began with rebuttal to the argument against the traffic engineer's testimony. He said no new study was made and no new evidence was submitted, the argument was analysis and commentary. It fits within the Notice of Appeal which says parties may criticize the validity of evidence received by the Hearings Officer. Mr. Shoemaker, in reference to Mr. Janik's comment that he was ambushed, said they were ambushed by five transportation analyses, one each that came in on April 1st and 5th and three on April 8th, giving them no opportunity to deal with them until tonight. He said Mr. West's testimony and Mr. Daniel Brame's letter are appropriate.

Mr. Schell said, as this was a Type III proceeding, Council had the right to accept, reject or modify the Hearings Officer's determination. He said there is no dispute that parking, especially preservation parking, is needed. The question is whether it belongs here. Goals for reduction of congestion, noise, pollution and reliance on the automobile are not met with this proposal. Mr. Schell said they do not object to retail but find there is a problem with this garage in this place.

Neil Goldschmidt, 222 SW Columbia Street, 97201, said that during his tenure as mayor a tenacious and visionary cadre of neighborhood activists, professionals and urban diehards set out to save all of Portland's neighborhoods, of which downtown was the first among equals. There are compelling reasons not to succumb to the forces that nearly ended the central business district as a place with any life outside of the office towers. The best of the applicants' arguments can be summarized that Council meant, with its last legislative act on downtown parking, to create an entitlement to construct a garage anywhere in downtown. And, the only burden on the applicant is that nothing bad has or will be done to the neighbors. The applicants' have voiced a

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perception of the Downtown Plan as an old and messy document with outdated ideas. Mr. Goldschmidt said he was shocked by the City's Planning Commission report. A powerful, wealthy proponent has moved against possibly valuable interests of a neighborhood and the latter should, when confronted by powerful economic interests, be able to rely on the City planning staff and its mandate to assure that the proposals were independently analyzed. He asked when Council stopped being the trustees of the public interest. The report merely says that everything the applicants' said is just fine. The burden on the applicants is enormous and, contrary to the Hearings Officer's findings, they cannot meet it because they must show that "the proposal will not by itself or in combination with other parking facilities in the area significantly lessen the overall desired character of the area." The Fox block can now be admitted into evidence because they have filed but the block across from the Art Museum cannot be entered into evidence although it clearly is going to be built for cultural district parking, as will the project north of the Galleria. All of these are farther away from the pedestrian corridor. Mr. Goldschmidt said we cannot keep inviting people to live in this "neighborhood" if we do not mean for them to have one and this park block has been thought of as a link between the River District and the cultural district.

Commissioner Lindberg said Mr. Schell submitted material which said that within a three-block radius of the site, including the site, there were 24 parking facilities with 5,503 spaces. He questioned the different total number of spaces that people have mentioned and just what area is being addressed--a five block area that the Hearings Officer looked at, or a three- or four-block area?

Mr. Schell said, in response to the question of what is the appropriate area to use for the numbers, it is ultimately what Council decides.

Mr. Shoemaker said "area" is not defined in the criteria in reference to the "desired character of the area." Staff suggested a 25-block area which the Hearings Officer accepted but it may be that Council does not need to. He said it seems there are two areas: 1) the area of the site and 2) the core area of the downtown.

Commissioner Lindberg asked Mr. Goldschmidt about his reference to underground parking and if there were plans underway for that on this block or adjoining blocks.

Mr. Goldschmidt said he believed at the time of the hearing there would be an application for the Fox block and that it should be included in the analysis. He also believed at the time of the Planning Commission hearing that there would be developments on the other two blocks. He assumes that the Goodmans had the option to jointly develop the latter with the owner for a possible 500 spaces.

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Nordstrom, the anchor retail store, is struggling and has been pretty candid with Council about its needs.

Mayor Katz suggested overruling Mr. Janik's evidentiary objection, and hearing no objections, so ruled.

Mr. Harrison, Chief Planner for Community Planning and Lead Planner on the Central City Plan project, made a clarifying statement between the Downtown Plan, the Central City Plan and the Comprehensive Plan. He said it has been noted that further statement A under Policy 14 reads "maintain and implement the Downtown Plan" and while that has been explained away as only a further statement, the status of that statement is important for these deliberations. The Planning Commission at one point contemplated calling these further statements "objectives." but as the term might diminish their legal power, Mr. Harrison was directed to call them "further statements," to be read as part of the policy. The Central City Plan, Action A, intention was that the further statements, along with the policies, would be part of the Comprehensive Plan. The reason that Policy 14 in the Central City Plan was so short, as opposed to the other sub-area plans, is it relied on the continuation of the Downtown Plan as an elaboration.

Commissioner Hales moved to deny the appeal and uphold the Hearings Officer's decision and Commissioner Blumenauer seconded.

Commissioner Blumenauer said there was testimony that Council should listen to the people and not be concerned about lawyers and strict interpretation, although Council is providing a beacon for 2040 and making difficult decisions. If these decisions are subjected to broad interpretations without concern for intent, implication or context, and there is a lot of squish, Council will have a very difficult time. The Downtown Plan was adopted more than 20 years ago and now there is more office space in the suburbs. Some old policies, including the lid, would have the effect of moving more offices to the suburbs and more people would be in single-occupancy vehicles. Council has an obligation to try to build a system that works. He said despite some people being dismissive of the CCTMP, it extends the most strict parking ratios in the United States and extends the same ratios from the center of the city to a broader area in an effort to be transit-friendly. Council itself, for the first time, no longer has paid parking and is walking/busing/biking its talk. To think the vision of downtown can be managed without a parking resource is unrealistic. The Central City Plan has some visionary elements which are not mandatory. Had they been, the Plan likely would not have passed. Commissioner Blumenauer said this area has been zoned for more density, even by prior Councils. There was a choice then and since to purchase the blocks or change the zoning, but neither was done. The CCTMP continues the spirit and tenor that the Council has been working on for the last 25 years. Underground parking doubles the cost

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from \$1,500 to \$2,800 per space. He said the Hearings Officer's decision was reasonable in terms of the Central City Plan and the transportation management effort.

Commissioner Hales thanked the City's professional staff for quality and objective planning work. In answer to Mr. Ferguson's comment that this was not a land-use decision, it was a political decision, Commissioner Hales said the decision being made is more than a lawyerly quibble. It is a promise that the state and this community has made to all our citizens. He noted that 23 years ago, in 1973, Governor McCall and legislators with vision passed the first state-wide land use planning law. That law has three great benefits for Oregonians: it preserves farm and forest land; it replaces disorganized sprawl with planned growth; and, what matters in this case, it promises certainty. In most cities, the zoning map is just an aspirational document but here the plan is the law and can be counted on by everyone--lawyers, neighborhood associations, developers and individuals. Commissioner Hales said that in the three and one-half years he had been on Council, less than a dozen zone changes have been approved, most of which were supported by the neighborhood associations, which is an incredible record compared to the rest of the country. In some other cities in the state, pressure has been put on the process to stop city councils from making quasi-judicial land-use decisions as they have been unable to keep the distinction between them and a political/legislative act. In a quasi-judicial decision, the code and the plan are looked at. He said the City has visionary planning with citizen participation and that is where to do the vision work, not on individual permit applications. This issue comes down to the difference between looking at the code and following it or reaching into Santa's pack for anything beyond the code in the general plan documents. He emphasized that if they start doing that, no neighborhood will be safe and therefore this Council needs to do what they say they are going to do.

Commissioner Hales noted the history of the City's park system when groups and individuals raised funds and contributed to park additions and improvements. In this case, there has been a request for the City to spend millions of dollars to buy the park block but there has been no citizen effort to raise funds. Prior Council members (four of whom attended this meeting) zoned this lot CX, the highest intensity zoning there is, giving it enormous value as a result. Now the City is asked to spend taxpayers' money to buy it after upzoning it. He noted that Commissioner Blumenauer alluded to City neighborhoods that have real park needs and this is a vision to get excited about. He mentioned the fact there is no public swimming pool east of 83rd Avenue. This park block, as attractive as it is for nostalgic reasons, ranks low on a priority list. Commissioner Hales said he shares the vision where downtown is once again the region's center, regaining at least 50 percent of the office space which will stay there as growth occurs. Downtown should not be

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frozen in nostalgic amber, but should have its growth guided. The surface parking lots need to grow buildings, some of which may be parking garages--a legal use. If people do not like the vision or the rules, they should change them, but Council should not revise them in the middle of someone's permit application.

Commissioner Kafoury said the City must meet the 2040 goals and it is a difficult process to try to manage growth in the region. She noted Metro Executive Director Mike Burton's article in the morning paper which pointed out that it was not government that would be able to make 2040 a reality and preserve the farm and forest lands and keep the urban growth boundary from expanding. It is citizen by citizen, neighborhood by neighborhood, that must make these decisions. She said if this case were in a planning policy discussion, she would have other choices for the block's use. However, Council is being asked to approve or deny an application from a developer and the application meets the requirements of the code. Commissioner Kafoury said there must be a better way to resolve this issue and believes that if the passionate advocates met with the Goodmans in another setting besides a land use hearing, there might be a different outcome. The major changes have not happened through land use appeals, they have happened from people talking together to find compromises and alternatives.

Commissioner Lindberg said this is about interpretation of policies within the code. He said it has been good to hear the testimony from people who love living downtown, especially after he was part of the process in the 1970s when downtown policies began to be developed. Those policies tried to make a nationally and internationally renowned downtown and they have been successful. He said, in terms of process, it is Council's responsibility to look broadly at the policies developed with this project and, legally, per the Planning Bureau and the City Attorney's Office advice, they have the right to look at the Central City Plan and the Downtown Plan. He was disturbed that the Hearings Officer referred to the Downtown Plan as a quagmire. Commissioner Lindberg said the one thing which will never change in the vision of the Downtown Plan is its orientation to the individual, human being--great cities are for people. There could be more preservation parking, but just put it a few blocks away. He says no to this garage, the tallest parking garage in the city on the smallest lot in the center of what is visioned as a transit-, pedestrian-, retail-oriented district. It does not meet the criterion of not lessening the desired character of the area. He said those opposing this have a legal responsibility, as it moves through the legal system, to lay out the case and he is submitting to staff 26 areas where this violates City policies and guidelines and he will mention eight for the record. First, the core of the city is for pedestrians and transit and autos are to be discouraged. Second, the Council through specific plans and policies designated Park and 9th as pedestrian walkways. The Central City classification map shows the function

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of Park and 9th as central city pedestrianway and the Downtown Plan guide is to develop a major pedestrianway along these blocks from Portland State north to Union Station. Third, the Comprehensive Plan shows the zoning for this block as CX, and the code specifies that it should be pedestrian-oriented with a strong emphasis on a safe and attractive street-scape. Fourth, the State Transportation Planning rule states that one purpose of the rule is to provide for safe and convenient pedestrian, bicycle and vehicular circulation. It directs avoidance wherever possible levels of automobile traffic which might interfere with or discourage pedestrian or bicycle travel. In this particular case, and it is clear in the code, they can look at the cumulative effect of all these projects within four blocks which will have a tremendous amount of auto use within a few hundred feet of the pedestrian center and transit. Fifth, the Central City Plan contains action items, while not legally binding, speak to the intent of Policy 14. It encourages widening sidewalks and making improvements between SW Salmon and Ankeny for park block connections. In this case, no requirements have been made on the developer to have that type of sidewalks. Sixth, the Downtown Plan gives maximum accommodation to walking in the core and reduced air and noise pollution. Seventh, the Downtown Plan has a goal to provide a balanced transportation system which should provide more efficient use of both right-of-way and vehicles. This means reducing reliance on the auto and increasing the number of persons moving through the area on transit. Eighth, the Downtown Plan housing section identifies goals to enable creation of a pleasurable human environment by providing pedestrianways, people movers, other systems and bicycle trails to connect people to core housing. Ideally, a politicians' goals should always concentrate on the long term, not the short term, and concentrate on the public not the private interest. He said this project is shortsighted. Many of the letters he received wanted more parking somewhere in this area, but not here. He said many of the neighborhoods' major battles have come one block at a time. He cannot understand why a garage would be put on an expanding light rail line.

Mayor Katz said this case is not a political decision, it is a quasi-judicial hearing. There are guidelines and criteria that Council must respond to, especially as this will probably be appealed. It is a request to develop a block that is zoned appropriately for the project. The zone's character is intended to provide for commercial development in the most urban and intense areas. Policy 14B says to continually foster the growth and attractiveness of the downtown, enhancing its competitive position over other commercial areas in the region. She said the City is at a crossroads and while she shares the vision there are obligations. Support of the urban growth boundary means we cannot say no to some things. The 2040 goals call for 15,000 housing units downtown, for 75,000 jobs in the core and for 138,000 new jobs in the City. That is what it means to maintain the urban growth boundaries and protect farm and forest land with no sprawl. She envisions a 24-hour city with a vibrant cultural center, university district, arts, offices, housing for everybody and a vibrant

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retail core. The data showing businesses moving out of the downtown is accurate and this trend must be reversed. To do so, parking and transportation policies must be rethought, still ensuring a balanced approach with commitments to pedestrians, transit and bicycles. Mayor Katz said this city will grow up and slightly out. This Council has visions for the city. One is for an entire new community in the north with open and green spaces, linking housing, retail and public spaces and, in the south, housing, retail, commercial and waterfront activity. She said she and others were chastised about changing rules and criteria in voting against the Water Avenue ramp and she has thought about that. People do need to feel that rules will not change overnight when they invest in the City.

Disposition: Tentatively deny appeal: Y-4; N-1, Lindberg: Applicant prepare findings for May 29, 1996 at 2 p.m..

At 10:00 p.m., Council adjourned.

Council paid tribute to Commissioner Blumenauer who was resigning Council Position No. 2 to assume his seat in Congress as Oregon's representative for Congressional District 3.

BARBARA CLARK
Auditor of the City of Portland

Britta Olson

By Britta Olson
Acting Clerk of the Council