



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 6TH DAY OF NOVEMBER, 1996 AT 9:30 A.M.

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

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

Agenda No. 1769 was pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 1770** Accept bid of D & L Supply, Inc. for annual supply of cast iron valve boxes, lids and extensions for \$158,525 for two years (Purchasing Report - Bid 43A)
- Disposition:** Accepted; prepare contract.
- 1771** Accept bid of S-2 Contractors, Inc. for Insley Basin CSO Phase II Unit 1 for \$228,100 (Purchasing Report - Bid 49)
- Disposition:** Accepted; prepare contract.
- 1772** Reject all bids for landslide repair at Hillside Community Center Park (Purchasing Report - Bid 1107-C)
- Disposition:** Accepted.
- Mayor Vera Katz**
- 1773** Reappoint Marsha Roberts Pillon, Christopher Thomas, Christopher Taylor, Pamela Brown and Richard Steinfeld to the Public Utilities Review Board (Report)
- Disposition:** Confirmed.
- *1774** Pay claim of Mona Mohn (Ordinance)
- Disposition:** Ordinance No. 170693. (Y-4)

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- *1775** Pay claim of Lynn McPhail (Ordinance)
Disposition: Ordinance No. 170694. (Y-4)
- *1776** Pay claim of Terry Phillips (Ordinance)
Disposition: Ordinance No. 170695. (Y-4)
- *1777** Establish a classification and salary for Police Corps Cadet in accordance with the Personnel Rules adopted by the City Council (Ordinance)
Disposition: Ordinance No. 170696. (Y-4)

Commissioner Charlie Hales

- 1778** Accept completion of the Traffic Calming project at SW Corbett Avenue between SW Carolina Street and SW Boundary Street and authorize final progress payment (Report; Contract No. 30647)
Disposition: Accepted.
- *1779** Contract with CEMS, Inc. for landslide repair in Pittock Acres Park for \$176,070 and provide for payment without advertising for bids (Ordinance)
Disposition: Ordinance No. 170697. (Y-4)
- *1780** Amend contract with David Evans and Associates, Inc. to include additional architectural services for Pier Park improvements in the amount of \$10,000 (Ordinance; amend Contract No. 30026)
Disposition: Ordinance No. 170698. (Y-4)
- *1781** Intergovernmental agreement with Multnomah County to provide bridge approach improvements for the Willamette River bridges accessibility project (Ordinance)
Disposition: Ordinance No. 170699. (Y-4)

Commissioner Gretchen Miller Kafoury

- 1782** Accept contract with S & R Roofing as complete for roofing at Station 23 and make final payment (Report; Contract No. 30816)
Disposition: Accepted.

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Commissioner Mike Lindberg

1783 Accept completion of the Insley Basin CSO sump project, Unit 1-Phase I, and authorize final payment to BL&B Contractors, Inc. (Report; Contract No. 30622; Project 5456)

Disposition: Accepted.

1784 Accept completion of the Willamette River Basins test sump Unit 9 and authorize final payment to Brundidge Construction, Inc. (Report; Contract No. 30725; Project 5846)

Disposition: Accepted.

***1785** Authorize the conveyance of properties to the Bureau of Environmental Services, subject to certain conditions being fulfilled, and authorize acceptance of deeds and payments of expenses (Ordinance)

Disposition: Ordinance No. 170700. (Y-4)

***1786** Authorize the execution of a Real Property Purchase and Sale Agreement for property at the end of N Endicott Avenue and provide for payment (Ordinance)

Disposition: Ordinance No. 170701. (Y-4)

1787 Amend City Code regarding sewer user charges to clarify current policies and alter the adjustment policy (Ordinance; amend Code Chapter 17.36)

Disposition: Passed to Second Reading November 13, 1996 at 9:30 a.m.

REGULAR AGENDA

1768 **TIME CERTAIN: 9:30 AM** - Amend Resolution No. 35150 dated June 9, 1993, to allow implementation of the Willamette Boulevard Bikeway without associated traffic calming measures (Resolution introduced by Commissioner Hales; amend Resolution No. 35150)

Discussion: Jeff Smith, Office of Transportation Bicycle Program, said the original resolution approved a bikeway on Willamette Boulevard but that portion was deleted so that its construction could occur at the same time as the traffic calming program planned there. Because of concerns raised about parking removal and emergency vehicle access, the traffic calming piece has now been delayed but there is agreement to go ahead with the bikeway component. The project calls for 2.4 miles of bikeway along Willamette Boulevard between Portland Boulevard and Ida Street. He described the public involvement process and showed slides.

Citizens speaking in support of the project included:

Clarice White, 7400 N. Willamette Blvd., 97203

Todd Lasher, 5632 N. Willamette Blvd., 97217

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Paul Roscoe, Portland Wheelman, 1026 SE Sellwood Blvd., 97202
Karen Frost Mecey, Executive Director, Bicycle Transit Alliance,
5704 SE Liebe, 97206

Supporters said Willamette Boulevard is ideal for a bike lane because it is the safest and most direct route to get around in North Portland and a vital link to other parts of the City. It will also encourage more biking by University of Portland students and slow down traffic.

Commissioner Hales said he is glad the parties could get to yes on this project as it will make biking on Willamette Boulevard much less chancy.

Disposition: Resolution No. 35563. (Y-4)

1769

Accept bid of S-2 Construction, Inc. for Parkrose water supply mains Phase I for \$3,405,515 (Purchasing Report - Bid 36)

Discussion: Carleton Chayer, Purchasing Agent, said his office received a complaint about the sub-contracting process after the prime contractor chose a sub-contractor who did not submit the lowest bid. He said the prime contractor did conduct good faith efforts and the bid specifications do not require the company to chose the low bidder. He noted that the City has found that requiring selection of the low bidder may be counterproductive to building capacity among Minority, Female or Emerging Small Businesses (MBE, FBE, ESB) in some instances. He said the recently completed disparity study recommended the use of direct contracting, allowing the City to purchase subcontracting services directly and requiring the prime contractor to use them. However, that recommendation has not been acted upon yet.

Mayor Katz asked what priority that recommendation has received.

Mr. Chayer said it has a very high priority, as part of the sheltered market program. He said private contractors get much more involved with subcontractor selection than the public sector does.

Commissioner Lindberg asked if the subcontractor was a minority firm.

Mr. Chayer said yes, Salt and Pepper is a certified minority owned company, which often hires non-minority employees but is still a bona fide minority firm.

Commissioner Lindberg said there could be instances where a minority owner could hire all non-minority workers.

Mr. Chayer said the team reviewing the disparity study recommendations is looking at this issue very closely. To get an Equal Employment Opportunity (EEO) certification, a company's workforce must reflect the makeup of the community.

James Posey, National Association of Minority Contractors of Oregon, said this award is

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totally unfair and just a proliferation of the "good old boy" system. He said some minority firms are making low bids and still not getting jobs and there is no reason why the Purchasing Agent cannot say that any minority trucker must use 50 percent of its own trucks rather than brokering a pass-through system. He said the Certification program is an embarrassment and he is discouraged by the lack of change even though the City has the discretion to certify and target selected contractors.

Mayor Katz asked Mr. Chayer what can be done administratively.

Mr. Chayer said the specifications could state that truckers are obligated to use 50 percent of their own trucks.

Commissioner Lindberg asked if the subcontractor selected in this case was primarily a broker.

Mr. Posey said yes.

Commissioner Hales asked where does the brokering of trucking services rank as a loophole in the system.

Mr. Posey said fairly high. He said this kind of loophole makes the City's affirmative action efforts look bad and allows people to continually break the law.

Mayor Katz thanked him for flagging this important issue. She said Council will take action when the review of the disparity study recommendations is completed.

Mr. Posey said in the meantime his company has no work during the winter even though it was the low bidder.

Commissioner Lindberg asked if the City could reject the contractor on this basis.

Jim Van Dyke, Deputy City Attorney, said a contract can always be rejected for good cause but a record has not been developed in this case to justify that. He said the minority firm, Salt and Pepper, is not just a front but a certified minority firm. The State also sets pre-qualifying requirements and the City has no ability to reject a company which meets them. He said the City does have control of the EEO Certification Program and is currently beefing it up. He disagreed that the City could legally or administratively decide not to award a bid to people who act as brokers. He said it is very difficult to prove discrimination when the award has gone to another MBE firm and recommended proceeding with the bid.

Mayor Katz asked if there was a remedy for this kind of situation.

Mr. Van Dyke said a sheltered program could be the answer, although this is a very thorny problem.

Mayor Katz asked if it is legal for the City to pre-qualify MBE, FBE and ESB contractors.

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Mr. Van Dyke said yes.

Commissioner Hales said the credibility of the City's whole effort is threatened when there are easy ways to get around them. He said two issues are involved here. First, does the company selected have true minority status. Second, does that contractor have true independent status.

Mayor Katz asked if EEO Certified companies who act as brokers and contract with others for employees are in violation of EEO regulations.

Mr. Van Dyke said he does not know the composition of the Salt and Pepper workforce.

Commissioner Hales said it appears Council has no option in this case except to approve this but it needs to look for ways to make this work better.

Commissioner Kafoury said she is tired of talking about this and it is time to blow the whistle on this practice. She voted no.

Commissioner Lindberg said it is a great tragedy for a program to be undermined in this way and he hopes the issue is given a high priority by the disparity study review group. However, he believes the City's hands are legally tied here.

Mayor Katz said this "shell" issue needs to be resolved.

Disposition: Accepted; prepare contract. (Y-3; N-1, Kafoury)

Commissioner Mike Lindberg

1788

Expand the City of Portland Telework Guidelines to include all permanent City employees (Resolution)

Discussion: Commissioner Lindberg telecommuting is a winner for the environment, resulting in cleaner air and less traffic.

Laura O'Keefe, Emergency Office, said the program will now be available to many more employees and about half the City's jobs are seen as potentially "teleworkable."

Commissioner Lindberg said unless the City takes the initiative, nothing much may change. Studies show some increase in productivity so at some point the City may want to make this more than just an option.

Ms. O'Keefe said they do not know yet what a lot more remote access capacity would mean to the telecommunications system.

Mayor Katz requested an analysis as to how this might affect future employee space needs.

Commissioner Hales said it is important, when crafting labor agreements, that termination

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of telecommuting by an employee be discretionary and not become a pre-existing condition.

Ms. O'Keefe said the guidelines call for a one-year agreement between the employee and the manager, with a yearly evaluation. She said they relied on the City Attorney and Personnel staff in crafting the guidelines but do not consider them to be cast in stone.

Commissioner Hales said it should be absolutely clear that a manager can pull the plug at anytime so this does not become an entitlement that shackles future Councils. He asked for an interpretation of the exit provision.

Mayor Katz said the Bureau of General Services and others should identify their highest future space needs to see if teleworking cannot help reduce them.

Disposition: Resolution No. 35564. (Y-4)

City Auditor Barbara Clark

1789 Assess property for sewer connection contracts processed through the Private Plumbing Loan Program for the period ending October 22, 1996 (Second Reading Agenda 1760; P0020)

Disposition: Ordinance No. 170702. (Y-4)

1790 Assess property for sewer system development contracts of the Mid-County sewer project for the period ending September 24, 1996 and non Mid-County for the period ending September 24, 1996 (Second Reading Agenda 1761; Z0639, Z0640)

Disposition: Ordinance No. 170703. (Y-4)

At 10:47 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 6TH DAY OF NOVEMBER, 1996 AT 2:00 P.M.

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

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Rick Faus, City of Gresham, Acting Deputy City Attorney (on Agenda Item 1792) and Kathryn Beaumont, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Commissioner Charlie Hales

1792

Tentatively deny appeal of Mill Park Neighborhood Association and uphold, with conditions, Hearings Officer's decision to approve application of City of Portland Bureau of Parks and David Douglas School District for a conditional use to develop a community center adjacent to Floyd Light Middle School at SE 106th Avenue, between SE Washington and Salmon (Findings; Previous Agenda 1674; 96-00430 CU AD)

Discussion: Rick Faus, Gresham City Attorney acting for the City of Portland in this case, noted that a letter had been received from David Schwabe alleging that an inappropriate ex parte contact had occurred during the October 16 hearing. He said Council can either choose not to hear this allegation today, since the record was closed three weeks ago, or it can reopen the record, hear Mr. Schwabe's statement and then determine whether an ex parte contact has occurred.

Mayor Katz asked whether Mr. Schwabe would have an opportunity to raise this issue if this is appealed to LUBA.

Mr. Faus said yes and LUBA could grant an evidentiary hearing to determine if an ex parte contact did occur. If so, it could remand this case back to the City.

Commissioner Kafoury said she would prefer not to reopen and to keep the record closed. She so moved and Commissioner Hales seconded. Hearing no objection, Mayor Katz so ordered. She also requested that the clerk notify Mr. Schwabe in writing of this decision.

Steve Gerber, Planning Bureau staff, noted that the findings submitted are very close to the original ones submitted by the Bureau of Parks in making this application. There have been some amendments responding to points raised during the Council hearings and there are new sections addressing the Multnomah County Parks Master Plan issue and the fact that notification was sent out prior to issuance of the Hearings Officer's decision. Finally, there is a new section which addresses a tree plan which was required by Council at the last hearing.

Mayor Katz asked if there were any substantive changes to the findings since the Council hearings.

Mr. Gerber said only those new sections.

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Commissioner Kafoury moved adoption of the findings. Commissioner Hales seconded.

Disposition: Findings Adopted. (Y-4)

S-1793

Amend the Zoning Code to comply with the interim requirements of the State Transportation Planning Rule (Second Reading Agenda S-1765)

Disposition: Substitute Ordinance No. 170704. (Y-4)

S-1794

Develop a Downtown Core and Lloyd District bicycle parking implementation project, in coordination with business and community stakeholders to provide high quality long- and short-term bicycle parking in existing buildings (Previous Agenda S-1766)

Disposition: Substitute Resolution No. 35565. (Y-4)

1791

TIME CERTAIN: 2:00 PM - Appeal of The Landing at Macadam, LLC, applicant, against the Design Commission's decision to deny application to build 360 units of housing, with parking, driveways and greenway improvements at 3840 SW Bond Avenue, between SW Lane (vacated) and SW Lowell Streets (Hearing; Previous Agenda 1619; 96-00475 DZ GW AD)

Discussion: Kathryn Beaumont, Senior Deputy City Attorney, outlined the procedures to be followed.

Commissioner Hales read a statement regarding his ex parte statements, including meetings and conversations pertaining to the North Macadam area. He noted that as Commissioner-in-Charge he directed the Portland Office of Transportation (PDOT) to implement a street connectivity policy for that area. He said he believes he will be capable of fairly applying the design criteria before Council as he has not discussed the design aspects of this application other than in an interview with Randy Gragg of the Oregonian.

Mayor Katz said as Commissioner-in-Charge of the Portland Development Commission (PDC), she designated it to take the lead, with the Planning Bureau and PDOT, in discussing development plans with North Macadam property owners.

Ms. Beaumont noted that this is an on-the-record hearing and only issues raised at the Design Commission hearing may be raised here.

Jeff Joslin, Planning Bureau staff to the Design Commission, said the Commission denied approval of this development proposal based on non-compliance with the City's design guidelines as outlined in the Code. The applicant appeals on the basis that the Commission imposed impermissible conditions of development. However, no conditions were imposed. Conditions are required to bring a proposal into conformance with approval criteria and may also be imposed by the hearings body to meet other City, State and federal regulations. In this case there was no approval and no conditions of approval. He said "impermissible" conditions refer to requests by PDOT for public access through

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the site. At the point where such conditions were requested, the applicant refused to develop the proposal further and did so with the full knowledge that their proposal at the time was deficient, did not meet a number of approval criteria and provided insufficient information to fully define the project. The Design Commission therefore was unable to move the project further through the process and was left with no alternative other than to deny it. During the course of three hearings the applicant spent the majority of the time speaking to the issue of streets and other dedications and each time the Design Commission stated that the streets did not necessarily relate to the approval criteria and that only an approvable design would allow them to speak to the public and specific design qualities of the project. The applicant still chose not to further develop the proposal. The conditions regarding streets did not relate to the basis of denial and were not discussed in the Design Commission's final deliberations. It has also been determined that for the purpose of this hearing such discussion is not relevant evidence as it is not pertinent to the basis of denial and is not considered an appropriate basis for overturning or remanding the denial.

Mr. Joslin showed slides describing the district and the proposal for 361 units of housing with 704 parking spaces. He said North Macadam is essentially a post-industrial area with quite a bit of vacant land and quite a lot of pedestrian traffic, serving as the missing link between areas to the south and the Central City. He outlined the boundaries of the proposed development site and compared some of the modifications that were made after the preapplication was filed to bring it closer into compliance with the guidelines. The proposal generally seemed promising in the richness of materials and variation of forms. A number of units are planned on the bases of parking garages, forming stacked units of three to four stories, with access by a number of skybridges or elevators. He listed the applicable design guidelines and added that, of the 46 applicable guidelines, 12 are met and 34 are not met. Of those 34, 13 do not conform to the guidelines and another 21 have incomplete information.

Mr. Joslin said the urban forum guidelines call for breaking the site down into smaller pedestrian-friendly pieces and call for pedestrian view corridors to occur along the existing right-of-way alignments. They also speak to the notion of urban enclosure. He said a major concern of staff and the Design Commission was the quality of the main entry area and the placement of a recreation building in that view corridor. There was also a question of whether the proposal was more of a suburban, rather than an urban, form and whether the form states that this is not a public place. He said another concern raised was with the quality of the units on Bond Street, where a series of six-foot masonry walls form the backsides of the units. Concerns about public access and pedestrian quality were also raised, especially about the Willamette Greenway where only a single pedestrian access is provided along the north property line. It is shown as a 12-foot path with a three-foot buffer between what is roughly a 510-foot garage base extending along the 650-foot property line. He said PDOT requested a half-street improvement and full north/south street at some point running through the site, continuation of the pedestrian access to the River, as applicant has proposed, with an additional street through the heart of the site. He said the applicant's version of the same information also shows a 15-foot light rail setback which was requested by PDOT but not requested to be included as a condition. He said the Greenway improvements would be especially welcome here as they would

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substantially add to it. He said he could find no comparable developments in the area where a garage base stretched hundreds of feet. Other question marks include a gate between the Greenway and the heart of the site, what the interior of the site will look like and the 21 guidelines that were unmet because of incomplete or contradictory information. He said because the proposal is not fully developed, the Design Commission was unable to determine what adjustments might be needed. He said while the final character of the district is uncertain, what the Design Commission asks is whether development will be a stumbling block to a truly integrated pedestrian-friendly neighborhood.

Commissioner Hales said the record shows the original application included the entire site but the current application includes all but a 70-foot strip along the southern edge. He said the City usually does not allow this kind of parcelling of the property in subdivisions as it can be used to avoid compliance with City Code and often results in weird or disconnected pieces of property. Why is a 70-foot remnant allowed here?

Mr. Joslin said if a site is vacant, an applicant can define any portion of that site to be developed. That would not be the case if the property were being redeveloped.

Commissioner Hales said he could not see that North Macadam policies A2.1 and A5.1 were met.

Mr. Joslin referred to Page 17 of the staff report.

Commissioner Hales said if sufficient architectural detail had been provided to determine compliance with the guideline recognizing the Willamette River's nautical history.

Mr. Joslin said the railing and some of the other treatments seem to be consistent throughout the various versions of the drawings.

Joe Voboril, 1600 Pioneer Tower, 888 SW 5th Avenue, 97204, attorney representing The Landing, said he wants to discuss the appeal his clients filed, which is quite different from the design issues raised by Mr. Joslin.

Commissioner Hales said the approval criteria need to be addressed, however, just as they would be in any land-use case. In this case they are the design guidelines listed by Mr. Joslin.

Mr. Voboril disagreed. He said they have raised issues as to whether the City can impose these conditions. He submitted part of a transcript from City Attorney Peter Kasting which he characterized as very pertinent.

Mayor Katz asked the staff how Council should proceed at this point, since his appeal will be based on something completely different.

Mr. Joslin said the options for Council are to overturn the Design Commission's decision and find that the proposal meets all applicable criteria. Or it may amend the Design Commission's decision and approve the design with conditions that bring the proposal into

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compliance. Regarding the street dedication issues, the matter could be remanded back to the Design Commission, as applicant proposes, with specific instructions to agencies and the Commission. He said however, that he is not aware of any precedent for such an action in the Portland land-use review process. Council could choose to deliberate on the street issue but uphold the denial, in essence issuing an advisory opinion on the issue. Again, this is not typical. Or Council could recognize the street issue as irrelevant to the design review approval criteria and make a decision based solely on those criteria. That is staff's recommendation.

Mr. Voboril said he believes that is a correct characterization. He quoted from Mr. Kasting's comments to the Design Commission on August 15 where he said "to the extent we are talking about a requirement coming from the City Engineer, as opposed to the Design Guidelines, you may scratch your head and ask why this is in front of the Design Commission. The answer to that is really sort of consistent with Mr. Voboril's desire to get the issue raised and get it disposed of. Strictly speaking the Design Commission has the authority to address this because the Zoning Code says 'the City may attach conditions to the approval of all discretionary reviews. However, conditions may be applied only to ensure that the proposal will conform to the applicable criteria for the review or to ensure enforcement of other City regulations.' So to the extent we are talking about Title 17, this would be a condition to ensure the enforcement of other City regulations. Addressing it now gets a decision made and does it in the context where that decision can be appealed to City Council and reviewed by Council in a more expeditious and efficient manner than waiting until the end of the building permit phase and running into a road block then." Mr. Voboril said he asked Planning to put these conditions, if they were going to be required, in the staff report and applicant could then argue with the Design Commission as to whether they should do it. And, if they cannot talk the Commission out of it, they could appeal to Council. Mr. Joslin is accurate about the need for more information about such things as relocation of the recreation building. He said his clients would first like to deal with the access issues and then go back to the Design Commission.

Ms. Beaumont said Mr. Kasting's testimony was presented at the first Design Commission hearing, at a point where the Commission was at a bit of a loss because Mr. Voboril and his clients made their record on the transportation issues, not the design criteria. At that point the Design Commission had not made a decision and had not even deliberated about what to do about this proposal. Taken in context, Mr. Kasting's comments indicate that if the Design Commission was planning to approve the project, a condition would typically be added that the applicant comply with all other City regulations. The Commission could have incorporated compliance with Transportation conditions in their decision to get that issue up front. However, the Commission chose to deny the proposal based on non-compliance with design criteria. The basis for Council's action would be to determine whether or not this proposal complies with the design criteria, which Mr. Voboril has chosen not to address in his appeal. Council could either direct him to address his remarks to the design criteria or allow him to make his record based on the appeal he has presented so far.

Commissioner Hales said the applicants could have waived the 120-day review rule to do further work but have chosen instead to come forward with the appeal of the Design

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Commission. He said he thinks Council should hear that as it is applicant's opportunity to put on a case of any portion of the Design Commission's decision. You cannot separate the question of street design and transportation from some of the other design issues, such as the pedestrian experience and replication of the block pattern.

Mr. Voboril said if Council granted the appeal and remanded it back to the Design Commission all those issues can be addressed through the design review criteria, not through impermissible conditions. He said his clients purchased a six-month option to buy the property on January 24, 1996, with a six-month contingency period. They then spent the next 5-1/2 months talking to Planning and Transportation staff who encouraged them to proceed with the project. They were told the City wanted to see housing here, with density at about 40 units per acre. They were also told to produce an urban-scale project, not a suburban complex. He distributed copies of the site plan, noting that at the preapplication stage his clients made it clear they did not want public streets in the project and asked if the internal streets could be private. City planners told them private streets are acceptable in the City and staff wrote that they agreed that private driveways, not streets, would be created as part of the project. To avoid confusion, it was recommended that the term driveways be used. He noted that the site plan for a prior project, the Viera-Darrell project, which was approved by the City, was given to his clients to indicate the kind of conditions that the City would propose. There were no through streets in that project but only internal, private streets with no pedestrian access through to the Willamette River. In the March, 1996 preapplication conference, staff told his clients that they would be expected to improve and provide access from Bond street to the Greenway trail. His clients agreed. The next site plan (May 31, Exhibit G) indicates the Greenway improvement and a 15-foot wide pedestrian access from Bond to the Greenway trail. On June 12, 1996, the application was deemed complete and his clients then purchased the land, continuing to work with City staff on the plan in providing more pedestrian access points along Bond and a north/south access near the mid point of the property. These were all design changes his clients were receiving from staff and are indicated on the site plan of July 18, 1996.

Mr. Voboril said on July 19, everything changed when John Gillam of PDOT called his clients and said they had received new directions from Commissioner Hales and City planners had been told to require criss-crossing public streets to the site. The testimony in the record indicates his client would lose 80 to 90 dwelling units as a result of these streets, streets which do not go anywhere. That resulted in an impasse. His clients said they would continue to work on the design but must somehow appeal that condition as they would never have purchased the land if they had known the streets would be required. He said they believe these conditions are illegal. First, the City has no authority to require internal public streets when no subdivision has been requested. He was told the authority was the Metro Interim Framework Plan but that has not been adopted yet and, furthermore, it is a regional planning document and not intended to be site specific. They were then told the authority was Code Sections 17.88.020 and 17.88.030. However, the earlier Viera-Darrow project required no such public streets even though the ordinances go back to 1979. He said they found not a single project larger than two acres built since 1979 where the developer had been required to put in internal, dedicated public streets to the project. In the eight examples they found, the developer was allowed to put in private

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streets as long as they met fire and life safety requirements. He said the requirement for these streets is totally arbitrary as there are no streets planned or existing to the north of the property. The proposed half-street will run right into an industrial building.

Mr. Voboril said Commissioner Hales clearly has a vision for the area far different than the existing plans and policies and wants to establish a new street system. He can do that but he cannot impose that new vision on an existing application that was filed before he came up with it. His clients are entitled to rely on current regulations, not Commissioner Hales' vision which is also inconsistent with prior commitments made to the property owner south of Gibbs on North Macadam. It is also inconsistent with the North Macadam Design Guidelines passed in 1992 which speak to the development of Moody and Bond as the arterial which will link the South Waterfront area and North Macadam. He said Council may want to change those guidelines but should first have the benefit of public input. Finally, he said, these impermissible conditions are unconstitutional, citing the Nolan v. California Coastal Commission and the Dolan v. City of Tigard cases. Those decisions make it clear that conditions which require extractions must have an essential nexus between the condition and the impacts of the project. In this case there are many off-site conditions, all of which his client will do as they are related to the impacts of development. However, the criss-crossing streets and access to the Willamette River are public desires or Commissioner Hales' vision of a future street system. At the present time there is no rational connection between the conditions being extracted and the projected impacts on this development. The Willamette river Greenway Trail and the pedestrian access easement have been included as impermissible conditions as these were offered by his client as gifts. The City cannot require those either. These conditions severely damage his client's property and could result in the City having to buy that trail and pay for the improvements.

Mayor Katz noted that Mr. Voboril had raised both a taking and a timing issue. However, City Code Title 17 gives the City Engineer the authority to require public streets in this kind of development. She said it appears that the applicant did not hear about this kind of requirement as the work was progressing. She asked whether this is normally how the City does business in the review process.

John Gillam, PDOT, said Transportation staff would normally look at all applicable Codes and discuss those with the applicant as soon as possible. In this case, they were raised late in the review process but still within the review period, prior to submission of the final report by Planning. He said Code Section 17.88.030 gives the City Engineer the authority to determine the location of local public streets for multi-dwelling tracts.

Commissioner Hales raised two issues not connected with the street network. He said the base zone requirement for the CX zone says development is intended to be pedestrian-oriented with strong emphasis on a safe, attractive streetscape. He asked how that would be met in considering Exhibit A3.9, elevation of the north side of the property with a 550-foot distance occupied by two and three-story parking structures. That is the one access to the Greenway.

Mr. Voboril said his client tried to make the application more responsive to the design

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criteria. He said more breaks in the buildings were provided and more penetrations may still be needed to meet the criteria as the plans progress. The standard could be applied to either public or private streets. Council could order his client to return to the Design Commission and direct that all the internal accessways, or driveways, can be private.

Commissioner Hales said that would not affect this as it concerns the northern edge of the project and has nothing to do with the legal status of the interior streets.

Mr. Voboril said his client may have to provide more openings to meet that criterion. It is their position that they will have to meet the design criteria that apply. What they do not have to do is provide public streets inside the project.

Billy Reed, Pegasus Development, 350 Bridgepark Way, Redwood City, CA, said one issue Mr. Joslin glossed over is that everything in the elevations Commissioner Hales is showing is without landscaping. The buildings will have great landscaping and to look at the elevations in a vacuum does not give the project justice.

Commissioner Hales said what the City is looking for is a safe streetscape which provides "eyes on the street." He questioned whether a three-story parking garage on the one public walkway connecting the neighborhood to the River will be safe, regardless of the landscaping.

Mr. Reed said the safety factors are different from something that is appealing to pedestrians. That is something to be addressed with the Design Commission.

Commissioner Lindberg said he could not understand why Mr. Voboril decided not to appeal the design issues so that all the issues on the table could be dealt with.

Mr. Voboril said if a public street is required, his client will sell the property and not build here. They consider the conditions to be illegal and unconstitutional so they did not want to spend more money to design a project with conditions they know they would have to appeal. They can then go to court, seek a ruling in their favor and then return to deal with design.

Kirk Taylor, CB Commercial, 1300 SW 5th Ave. Suite 2600, 97201, said his firm found this site for Pegasus. When they searched for any apartment project with public internal streets they were unable to find any. He said what the City has imposed here is to prevent the development from taking advantage of the waterfront or the view. Adding internal streets would make it difficult to obtain financing or make this economically viable. He said Pegasus has done an admirable job, exceeding the design requirements placed on Trammell Crow for the Riverplace Development without requesting any funds from PDC.

Commissioner Lindberg asked if there was any attempt to develop a new pro forma for a project that included the street requirement.

Mr. Taylor said no, they have not done a reconfiguration.

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Mayor Katz noted he had stated in written testimony that "unfortunately public means everybody and there is a certain element of everybody that does not enhance the project," citing the City's own record on public spaces.

Mr. Taylor said all you have to do is look at the Police blotter to see what has happened in City parks. He cited Washington Park, where there has been a constant problem with drugs, as an example.

Mayor Katz asked if he was suggesting the City should not have public streets.

Mr. Taylor said when there is public access there are elements that developers try not to design into their projects.

David Cook, Old Spaghetti Factory (OSF), 0715 SW Bancroft, 97219, said they agreed to sell a 75-foot strip reserve to Pegasus when it was intent on proposing housing that exceeded the 15 units to the net acre housing requirement. The OSF stipulated that Pegasus not build on that strip and became a co-applicant with Pegasus so that when it exceeded the requirement for housing, not only for the nine acres they bought from OSF but also for the acre in reserve, that acre would have its housing requirement completed. In effect they were transferring the housing requirement off the acre so it could be used for commercial expansion of the restaurant. That was done on the advice of the Planning Bureau. He said they had owned the property Pegasus bought for 9-1/2 years and joined in efforts of the North Macadam Development Council to produce a traffic analysis for the area dated December, 1988. They then sold the property to Viera-Darrow, which obtained Council approval on appeal of the Design Commission's condition of approval requiring construction of an east/west Greenway connection through their property to the River. Council at the time stated the greater good was being served by enabling housing to be built in North Macadam and that there would be many other opportunities for east/west connections to the Greenway Trail. Unfortunately, that development never happened and now another developer is before Council appealing conditions which impose obstacles preventing housing from being built. This time there is an east/west connection in the plan but now the issue is about conditions that did not even exist until sometime in July, 1996 when Commissioner Hales informed the Bureau of Planning and Office of Transportation that the street plan for the North Macadam area, which was based on lower density and auto-orientation, was no longer valid. However, OSF, the potential developers and City staff all relied on the approved list of conditions from the Viera-Darrow project for guidance in proposing subsequent developments. He asked that the appeal be upheld and this be remanded back to the Design Commission.

Barbee Williams, Chair, Corbett/Terwilliger/Lair Hill (CTLH) Neighborhood Association, 0224 SW Flower, 97201, said whatever is allowed with this project will set the standard for all development in the North Macadam area. She said an internal street grid is really important to the CTLH neighborhood plan and to fostering a pedestrian-friendly environment. The large, straight-up wall on the north side should not be allowed. She said 17.88.020 regarding multiple dwellings call for them to be closer than 250 feet from a dedicated public street. Also, 17.88.030 deals with through streets and CTLH has long supported plans for the City's street grid to connect downtown to their neighborhood.

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Placement of the recreation center and pool will result in the loss of the view corridor as required in the Willamette Greenway Plan and by the view corridor requirements. She also objected to having the public access easement on the north end as the only access to the Greenway for approximately eight blocks. The project looks like a super block project with no consideration for the other buildings that will go in around it. She urged support for the Design Commission's denial.

Irwin Mandel, 1511 SW Park, 97201, said this is an inherently suburban development which strikes a discordant note for the future development of the entire City.

Jeanne Galick, 7005 SW Virginia, Chair, Greenway Committee, CTLH Neighborhood Association, said this development does not meet many North Macadam design guidelines nor the Willamette River Guidelines. In critical areas, incomplete plans have been submitted for review. The proposed public access to the Willamette Greenway is gravely inadequate, forcing the public to access it via one public pathway on the north side, along 600 feet of unmitigated parking lot ways. To reconnect a difficult zig-zag maneuver is proposed, essentially guaranteeing a private riverfront. She said at minimum there should be a path on the south side but it would be much better to link the 75 feet between the Pegasus Development and the OSF to provide a viable recreational trail. She agreed with the Willamette Pedestrian Coalition in its call to open up Abernethy Street as both a physical and view corridor to the River. In July, Pegasus told the neighborhood they would move the recreation center, which blocks Abernethy, but they still have not done this. Abernethy should be used to promote a traditional block system and provide an important view corridor to the River, avoiding the impression of a gated community. CTLH wants access to the Willamette, maintenance of the traditional street grid and a Greenway trail built and linked for public use. She submitted a petition signed by 40 neighbors who agree. Once the public access issues are dealt with this should be returned to the Design Commission to resolve the design issues.

Pat Scruggs, 0426 SW Dakota St. 97201, said she could not find any reason why this appeal should be accepted. The neighborhood welcomes new development in North Macadam but opposes poor design and as staff has clearly shown, there are a number of areas where this does not meet design criteria. She said the guidelines specifically call for respect for the City's block structure and this is nothing new. The guidelines are not specific to this development but to all developments in this area and are not unreasonable or unfair. Even without the issue of public access and public streets, a number of design guidelines have not been met. She said public access here would improve public safety for people living within it and for those who pass through to get to the River. People who live in Portland like pedestrian-oriented developments and a pedestrian-friendly character should be marketed as an opportunity, not an inhibitor.

Helen Farrens, 3956 SW Condor, 97201, said as a pedestrian she would be unhappy with this. She asked for a grid system, not a fortress.

Jeffrey Lang, 7240 SW Fulton Park Rd., 97219, expressed concern with the process and said some common ground should be sought to avoid a major pissing match between the developer and, ultimately, the City Attorney. He said the appeal should be rejected but

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the constitutional issue must be resolved. Let the Design Commission work on the rest of it.

Jim Gardner, CTLH Neighborhood Plan Steering Committee Chair, 2930 SW 2nd, 97201, said public access also provides convenient ways for the residents to get where they want to go. Tremendous congestion can result when there are very few routes to get from one point to another. A big advantage of the City's grid system is the multitude of routes to choose from and that should occur also in North Macadam where they are planning for fairly high density. A number of design features do not follow the guidelines and should be returned to the Design Commission, even if Council upholds the appeal based on the street issues.

In rebuttal, Mr. Voboril cited Ms. Galick's testimony about the importance of connecting the Greenway trail out to the south of the project. He said at the end of the August 29 hearing, he announced to the Design Commission that the OSF and Pegasus agreed to share the cost of extending the Greenway trail on the 75-foot strip so there would not be that break. He said he did not know until now that Council took out the requirement for east/west access in 1989 in the Viera-Darrow case and he suspects that was due to the decision in the Nolan case. In this case, his client is willing to do far more than Viera-Darrow. He said Title 17 was raised very late in the game, for the first time on August 1. The Mayor is correct that they had knowledge of this prior to the first Design Commission hearing on August 15 but it was an afterthought that was raised when the matter became contentious. Someone, citing Section 17.88.020, said it means you should not have a dwelling more than 250 feet from a dedicated street. But the Code adds "or by way of an approved roadway." That is the way the City has allowed, for more than 16 years, property owners who are not subdividing to have internal private streets. That is why the eight examples they found had internal, private streets and that is why Viera-Darrow was allowed to have them. Section 17.88.030 is ambiguous, stating that "through streets, in widths designated by the City Engineer, but at least 50 feet in width and not more than 600 feet apart connecting existing dedicated streets." He said this is about connecting existing dedicated streets which in this case do not exist. It does say "or at such locations as designated by the City Engineer" but this is totally arbitrary and unconstitutional.

Commissioner Hales asked whether, for a property on the edge of the City where there are no streets to connect to, it would be totally up to the property owner to determine if the street system were to be extended.

Mr. Voboril said yes because the Code talks about existing dedicated streets. Here there is not even one existing street this would connect to, existing, platted or planned. The probable reason for the 600 feet is not to require people to connect streets that are so far apart that it makes no sense. In this case that does not apply at all.

Commissioner Lindberg said it might be more responsible to say while there might not be existing platted streets it makes sense to talk to nearby property owners to see if there is a need to connect to something they are going to develop. He asked if his client did that.

Mr. Voboril said John Wagner, US Bank Trust Department, who manages 18 acres to the

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south, and Eric Saito, another neighboring property owner, testified that the issue of the street east of Bond has been continually debated and they do not want more streets on a grid system there. They stated they did not want the parkway through there as they relied on the North Macadam design guidelines which state that the Moody-Bond connection provide the linkage. Now they are being told there is a new street plan. Commissioner Hales has a new idea, but it has not had the benefit of public input.

Mayor Katz said Pegasus appears to want a gated community without a gate in order to secure the safety of its residents. She said the City has policies that foster public safety, through exclusionary zones and other means, if that is really the issue. Replying to Mr. Voboril's argument that his clients will lose units if they build the public streets, she suggested that the developer reconsider the 1.8 parking spaces per unit currently proposed. Finally, she cannot support a blank wall of garages and call it a pedestrian way. She said the City has streets like that downtown that no one uses because they are cold, unfriendly and terribly unsafe.

Mr. Voboril said his client has offered to return to the Design Commission and it may be necessary to make some design changes and improve the wall on the north to get design approval. He said his client believes the 1.8 parking ratio is economically realistic and if not enough parking is provided, neighbors will protest that residents are parking on the streets.

Mayor Katz said the City is trying to encourage downtown developers by reducing the number of required parking spaces. That could also increase the number of units.

Mr. Voboril said that number is the result of market analysis, not a design issue.

Mayor Katz said what she hears is people have 1.8 cars, demand covered parking, are concerned about safety and do not want pedestrians walking through the area. She said she would like to find ways of dealing with the additional housing units and pedestrian-friendly issue with regard to public access and welcoming Pegasus into the community.

Mr. Voboril said the problem with the public streets is that the developer does not want to own a bifurcated project and has a right to be worried about security, as a reaction to being sued for liability reasons.

Mr. Gillam said public streets within the project would provide on-street parking, making up for some loss of units due to public street dedication. They estimate that between 60 and 80 on-street parking spaces would be provided by these public streets, adding up to about 24,000 square feet of development.

Commissioner Hales asked if this project is at the full floor area ratio allowed by the zone.

Mr. Voboril said they can build up but construction costs go up dramatically if a building goes beyond three stories.

Mr. Reed said elevators would be needed in every building if they are broken up.

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Commissioner Kafoury noted that both sides have testified in favor of returning this to the Design Commission but the applicant has chosen not to present information on the design criteria. The Design Commission ruled against them and then they came here. She said something is out of synch.

Mr. Joslin said the applicant is willing to go back to the Design Commission and respond to the design criteria only if the street conditions are removed. Staff is confident that they have the authority designated under Title 17 and that this is an appropriate exercise of it.

Commissioner Kafoury moved to tentatively deny the appeal. Commissioner Lindberg seconded.

Commissioner Hales apologized to Pegasus for the lack of clear signals it received about the multiple bureau requirements. He said Council is trying to make that work better. However, Title 17 gives a lot of discretion, as do the design criteria. He did instruct his bureaus to tune up the policy and enforcement rigor regarding Codes that deal with the public realm. But that direction is redundant to existing guidelines, both the design regulations and Title 17, and he was telling the bureaus to do things they were already empowered to do. The real problem is that the conception of this project is so alien to Portland that it cannot be resolved. This is a project that says people live in enclaves rather than neighborhoods while the whole direction of City policy is in the opposite direction. The City is trying to give people transportation choices, not having them all exit a single orifice and travel around by one means, the car. Finally, this is a project that gives a sense of enclosure rather than enhancing the neighborhood. He said the City has evidence that a community is better off when development does not result from a fortress mentality and he does not believe the project as currently designed can meet the Design Guidelines, regardless of the legal status of the streets.

Commissioner Kafoury said the tally sheet gave enough grounds to deny the appeal from the beginning but, after her experience in trying to retrofit the sewer system in East County and make this a livable part of Portland, she does not want to do that kind of development here. She said there has been a lot of change since the previous development was approved.

Commissioner Lindberg said he supports the staff and Design Commission. He noted that 13 Design Guidelines were not met and 21 others were incomplete or had contradictory information.

Mayor Katz said she does not want this kind of development to be a part of her legacy in an area where Council envisions a new neighborhood. She wants to tie neighbors together, rather than isolating a geographical area and the neighborhoods around it.

Disposition: Tentatively deny appeal; prepare findings for November 13, 1996 at 2:00 p.m.

At 4:30 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 7TH DAY OF NOVEMBER, 1996 AT 2:00 P.M.

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

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Linda Meng, Senior Deputy City Attorney; and Martin Cavinaw, Sergeant at Arms.

1795

TIME CERTAIN: 2:00 PM - Intergovernmental Agreement to join the Regional Water Providers Consortium and to endorse the Regional Water Supply Plan, October 1996 (Ordinance introduced by Commissioner Lindberg)

Discussion: Commissioner Lindberg said this agreement provides a flexible road map, not a blue print, with many possible routes for dealing with future water supply needs in the future. It reflects four years of effort from 26 water supplies and Metro. He noted four issues Council raised last year when it considered the earlier draft: 1) recognition that Portland is committed to retaining the Bull Run as its sole source of drinkable water except for seasonal and emergency supplements; 2) additional emphasis on green alternatives, expanded conservation efforts and the use of non-potable water; 3) adjustment of the Level One reliability measurement for peak season water availability and; 4) economic equity in the face of uneven regional growth. This final plan recognizes the importance of those principles. He said each participant will retain jurisdiction over its own supply system. This would leave the City Council with all its current decision-making authority over its water system. He asked Council to act now on the Plan, rather than deferring a decision, to avoid having to throw out this plan after all the effort and public input that have gone into it.

Mayor Katz said she would like to focus on two issues: 1) the impact of the City's commitment to Bull Run as the sole source of drinkable water; and 2) concerns about governance.

Mike Rosenberger, Director, Bureau of Water Works, said earlier input on the preliminary regional water supply plan resulted in a number of changes to the Plan and the agreement with the 27 other suppliers. This plan clearly states Portland's commitment to Bull Run as the source of its drinking water and is also committed to protecting the Bull Run and Little Sandy River as a future potential drinking water source. Council is also committed to improving the water quality of both the Columbia and Willamette Rivers. Council's request for a substantial increase in the emphasis on conservation and non-potable water use is also reflected in the final plan. The Plan also directs the consortium to continue policy analysis on the reliability issue and does not assume a 100 percent commitment to shortage-risk avoidance. The authority to implement actions will reside with the individual jurisdictions, not the consortium, and no mandatory action can be required of any participant. He said the Bureau heard clearly that Council did not want decision

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making affecting individual entities delegated to the consortium. The Water Bureau and other stakeholders will analyze the supply, financial and other issues relating to the sale of wholesale, surplus City water. He described the extensive public information and involvement process and the contribution of several advisory groups. Continued public involvement is called for in the agreement. Mr. Rosenberger noted that this effort grew out of Metro's mandate to develop a growth management plan for the region. One component of that plan is water supply and conservation. He said 11 jurisdictions have adopted this agreement already.

Mayor Katz noted that in drought situations Council is willing to push more conservation to avoid an unnecessary drawdown or having to find another major water supply. She asked how that is reflected in the Plan.

Mr. Rosenberger said that is addressed as part of the City's statement on the reliability issue where the City maintains that it is not necessary to build for the absolute peak days and also emphasizes conservation. The Water Bureau will identify how much surplus water it actually has in order to determine when in the future they would have to supplant the Bull Run.

Commissioner Lindberg noted concerns about drinking Willamette River water as part of this plan.

Mr. Rosenberger said the plan outlines three potential sources for the future, probably sometime after 2035. The Willamette, the Columbia and the Bull Run are identified as the three most likely sources but the direction from Portland is that it will rely on the Bull Run forever. If there is enough growth, the City could be put in a position of not having enough Bull Run water to sell so the region will have to figure out how to supplant that water if it is reserved for City use.

Mayor Katz said she trusts that the regional partners are as strongly committed to conservation as the City is.

Mr. Rosenberger said yes, the regional suppliers are looking at a variety of ways to foster conservation, including new rate structures and audits of commercial/industrial customers. Almost all the consortium members charge more based on higher water use. Even if other jurisdictions want to use Willamette River water, Portland does not have to.

Regna Meritt, Water Quality Advisory Committee and Oregon Natural Resources Council (ONRC), said they are very glad to see the plan move away from the use of Willamette River and towards more emphasis on conservation. She said the best pieces -- conservation and watershed protection -- came from the public and it is critical that citizens have a clear role in the future. She said the Advisory Committee requests that Council modify the agreement to add a statement calling for creation of a standing citizens advisory committee. The ONRC supports the agreement contingent on enhanced opportunities for public participation, a commitment to conservation and appointment of the county health official to an advisory role. She said the ONRC goal is to protect the best water sources so the City will not have to use dirty water sources.

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Dr. Gary Oxman, Multnomah County Health Officer and Water Quality Advisory Committee member, called for strengthening the participation of public advisory groups. He said health officers in the various jurisdictions will be happy to participate either as a group or as members of an advisory committee.

Lloyd Anderson, Chair, Water Resources Advisory Committee, recommended approval of the agreement and the plan. He endorsed the addition of a public advisory group as public input is especially important in dealing with conservation issues. He said the trust level among the governmental parties to this agreement is high and approval should not be delayed.

Dale Sherbourne, 2134 SW Palatine Rd., 97219-7662, asked Council to delay approval as this plan states that the Willamette River will be used as the secondary source of water. This eliminates the Little Sandy, which would be a better source and which should be protected through land purchases by the City. He also urged Council to go ahead with an environmental impact study on a third dam in the Bull Run and criticized the lack of public involvement.

Other citizens testifying in opposition to this agreement because of its failure to adequately protect the Bull Run and to ban use of the Willamette River as a source of drinking water included:

Bob Robinson, 2226 SE 35th Pl., 97214
Russ Farrell, 3149 NE 43rd, 97213
Oliver Tracy, 2806 SE 43rd, 97206
Dan Aspenwall, 3565 SE Clinton, 97202
Frank Gearhart, PO Box 3426, Gresham, OR 97030
Donald Cook, 2006 SW Sunset Blvd., 97201
Frances Cook, 2006 SW Sunset Blvd., 97201
Ward Svart, 274 Cervantes, Lake Oswego, OR 97035
Ralph C. Feely, 7825 SE Taylor, 97215
Larry Tuttle, 5858 SW Riveridge Lane, #24, 97201
John Pointer, 2400 NW 111th, 97229
Cherie Lambert Holenstein, 6141 SE Steele, 97206
Dr. Jean Anderson, 1414 SW 34th, Suite 3002, 97201
Hamish Patterson, 5717 SE Holgate, 97206
Ugo Pezzi, 1414 SW 3rd, Suite 3002, 97201
Paul Richmond, PO Box 454, 97207-0454
Sharon Genasci, 2217 NW Johnson, 97210
Tom Cropper, PO Box 18025, 97218
Dr. Joseph Miller, 5815 E. Marmot Rd., Sandy, OR 97055
Phil Mitchell, 333 SE 45th, 97215-1015
Clare Donison, 2074 SE 110th, Gresham, OR 97216-3207
Rose Marie Opp, 11135 SE Yamhill, 97216-3456
Winnie Francis, 622 NE Tillamook, 97212
Jody Robindotter, 4400 SE Roethe Rd., 97207-5759
Louise Weidlich, Director, Neighborhoods Protective Assn., PO Box 19224, 97219

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Edward Atiyeh, 7595 SW Broadmoor Terrace, 97219
Dale Greenfield, Physicians for Social Responsibility
Beth Lynch, PO Box 1154, Sandy, OR 97055
Phil Dreyer, 742 SE 39th

Opponents also asked for a delay to allow more public involvement and input. They expressed fears that Portland, as only one partner, will lose control and that conservation efforts did not receive enough emphasis. Concern with the role of the Little Sandy, the lack of an evaluation process or sunset clause and the need to protect public health were also voiced. Many asked that the agreement be referred to a vote of the people.

Citizens testifying in support included:

Jacqueline Dingfelder, 212 NE 54th, 97213-2617
Jess Lowman, Tualatin Valley Water District
Dale Jutila, Clackamas River Water District, 9100 SE Mangan Dr., Clackamas, OR
97015-9576
Gayle Killam, Oregon Environmental Council, 520 SW 6th, 97204

Supporters said this agreement provides a good framework for the region, while allowing each agency the authority to make its own decisions. Support for formalizing public involvement through an advisory committee was also stated.

Commissioner Lindberg asked how high a value was placed on water quality.

Lorna Stickel, Water Bureau, said all 26 suppliers were asked to list their key policy values. Substantial concerns were raised concerning the quality and suitability of the Willamette and Columbia Rivers as future drinking water sources. Some citizens, primarily Portland residents, stated strong preferences for Bull Run while others were open to multiple options. Some directed attention to the Little Sandy as a source of good quality water. She said when you consider all the factors about what water sources to use, water quality is one of a number that need to be evaluated. Not everyone shares Portland's key policy values.

Commissioner Lindberg said the bottom line is that Portland translated the high value it placed on raw water quality into a commitment to use the Bull Run.

Mayor Katz asked what happens if a majority of the consortium supports a filtration plant for Willamette River drinking water. Does the City share the cost of building it?

Mr. Rosenberger said no. Wilsonville cannot decide to build a filtration plant and expect Portland to pay for it unless Council chooses to do so.

Mayor Katz asked whether Portland can withdraw at any time, if the consortium is moving in a direction it does not support.

Ms. Stickel said absolutely.

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Terry Thatcher, Deputy City Attorney, said the City can withdraw just by giving notice.

Commissioner Lindberg noted that Portland is paying a high percentage of the dues to fund the intergovernmental agreement but has only a low percentage of the vote.

Mr. Rosenberger said the consortium needs to deal with both the current environment and with growth. The cost of the second phase of the plan was shared based on projected growth so very small participants such as Damascus paid very large amounts because they are expected to grow quite a bit. To fund the ongoing work of the consortium, the decision was made to weight the average so that one part of the cost was based on growth while another part was based on the existing service population. That results in Portland paying a higher percentage than smaller entities.

Ms. Stickel said that results in the City paying about 33 percent. The City's growth factor is 25 percent. She emphasized that the consortium will not force any actions down any participants' throats against their will.

Mayor Katz questioned how decisions on such matters as staffing would affect Portland's bill if it has only one vote.

Ms. Stickel said that is an issue that could potentially result in an entity saying it cannot support the consortium at that level. The adoption of a work plan and operating budget is done by majority vote.

Mr. Thatcher said the consortium will vote on a work plan and budget substantially in advance of when the dues need to be paid so the entities can budget for the bill ahead of time. Portland will not get an unexpected bill and if it thinks it is too high, it could say it will not pay and is leaving the consortium.

Commissioner Lindberg said in effect everyone ends up with veto power. He asked staff to draw up language adding input from a public advisory group and public health officers.

Mayor Katz said she would like biannual review by Council added too. She asked about incorporating the language of the 1993 and 1995 resolutions into the ordinance.

Commissioner Lindberg said the Resolutions stating the City's position could be added, not just cited.

Mayor Katz asked about targets and benchmarks.

Ms. Stickel said they are included but not yet specifically assigned. That will happen when the plan is implemented.

Mayor Katz asked for a review of the discussions about a third dam in the Bull Run and use of the Little Sandy River, including the environmental issues.

Mr. Rosenberger said water quality is a very important value but there are six or seven

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other values that people have identified as being very important as well. Regarding the third dam on the Bull Run, it is a matter of balancing water quality against other values such as costs and environmental concerns. The many numbers cited in the plan are meant only to inform decision makers.

Commissioner Hales said the report does give the impression that this is a very scientific process. He said Table 11-2 on Page 202 appears to summarize all the other tables and, looking back at Tables B-2 and B-3, there is one rating in each case which blows the Bull Run right out of the ranking. On Table B-2, the environmental rating for the Bull Run dam regarding fish habitat, non-threatened and endangered species, gets the worst rating. On B-3, the land use inconsistency of Bull Run at 4.5 versus a rating of one for everything else, blows away any possibility that the Bull Run would look good in that rating. Why is building a dam in between two other dams so inconsistent that it gets a ranking five times worse than anything else?

Ms. Stickel said that ranking had more to do with the types of analyses and the permitting processes that would have to be done. A full blown Environmental Impact Statement would be needed at a cost of several million dollars. That would not be needed for most of the other sources on the list.

Commissioner Hales said that is a cost factor, not a rating factor. This report makes it appear that it is inconsistent on a land-use basis, rather than it is expensive to permit.

Mr. Thatcher said the third dam would require cutting 500 acres of old growth in an area where there is a policy that it not be cut. There is no clear indication the federal government would say yes to that.

Commissioner Kafoury noted Council prior statements against logging in the Bull Run. Ms. Stickel described some of the environmental effects that would need to be considered, including endangered fish species. Some people believe the environmental impacts should not be considered but both their consultants, as well as Forest Service and Fish and Wildlife staff, indicated the dam would be difficult to permit.

Mr. Thatcher said the rating reflects the permitting hurdles that would have to be jumped in order to allow a third dam in Bull Run.

Commissioner Hales said that a third dam is either an option or not. If it is not permissible it should not be on the list.

Mr. Thatcher said they are only saying it would be difficult to permit and an exemption might be needed. It is possible to permit something if it serves a great public interest and the alternatives have been evaluated.

Mayor Katz said the City is no where near making any of those decisions but it may be on the table in 2050, when things change. The same goes for the Willamette and the Columbia.

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Mr. Rosenberger said three sources are listed down the road but on the way many other efforts will be undertaken. This is much more squishy than a blueprint.

Ms. Stickel said the rating did not prevent adding the Bull Run dam as one of the primary scenarios they evaluated. It has an effect only on one policy value, the natural environment, although it also affects cost.

Commissioner Hales said he would like to know if any of the threatened species criteria listed in B-2 deal with land-based rather than water-based species and how inundation of one percent of the land area of the watershed could have that serious an effect. He said this is about 500 out of 65,000 acres.

Mayor Katz requested the amendment language noted above.

Mr. Rosenberger said he will provide additional language creating a public advisory committee to the consortium and calling for biannual review by Council of the agreement.

Disposition: Passed to Second Reading November 13, 1996 at 2:00 p.m.

At 5:30 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner
By Cay Kershner
Clerk of the Council