



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 8TH DAY OF JANUARY, 1997 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales, Kafoury and Sten, 5.

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

CONSENT AGENDA - NO DISCUSSION

Tom O'Keefe, United Community Action Network, requested that all items be pulled from Consent and read separately.

REGULAR AGENDA

- 24** Reject all bids for nuisance abatement services (Purchasing Report - Bid 72-A)

Disposition: Accepted. (Y-5)

- 25** Accept bid of M. Stearns Construction Co. for St. Johns Park improvements for \$108,200 (Purchasing Report - Bid 80)

Disposition: Accepted; prepare contract. (Y-5)

Mayor Vera Katz

- 26** Confirm reappointment of Nancy Bond, Thor Hinckley, Phil Thompson and Bill Welch to the Sustainable Portland Commission (Report)

Disposition: Confirmed.

- *27** Authorize extension to Legal Services Agreement with Mary Merten James (Ordinance; amend Agreement No. 30687)

Disposition: Ordinance No. 170820. (Y-5)

- *28** Pay claim of Mary Duran, personal representative of Estate of Charles Lovell (Ordinance)

Disposition: Ordinance No. 170821. (Y-5)

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- *29** Authorize contract with Davis & Hibbitts, Inc. for professional surveying of City of Portland households to provide information to be utilized by the City Council in developing the FY 1997-98 budget (Ordinance)

Discussion: Commissioner Francesconi said he was impressed by the preliminary questions and answers and is pleased with what is planned.

Mayor Katz said she hopes the information can be cross-referenced demographically and by geographic area. Council will hold an Informal to review the results.

Disposition: Ordinance No. 170822. (Y-5)

Commissioner Charlie Hales

- 30** Set hearing date, 9:30 a.m., Wednesday, February 5, 1997, to vacate a portion of NE 70th Avenue between NE Roselawn and NE Emerson Streets (Report; Petition; C-9913)

Disposition: Adopted. (Y-5)

- 31** Set hearing date, 9:30 a.m., Wednesday, February 5, 1997, to vacate a portion of SE Tenino Street east of SE McLoughlin Boulevard (Report; Petition; C-9919)

Disposition: Adopted. (Y-5)

- 32** Recommend a ten-year property tax exemption to Grayco Resources, Inc. for new multiple-unit housing on SW Yamhill, 17th, and Morrison Streets (Planning Commission Report and Recommendation)

Discussion: Commissioner Francesconi said in the future he would like a review of all tax-exempted property.

Mr. O'Keefe questioned why tax abatement ordinances, which give away a lot of money, are placed on the Consent Agenda and why so many have emergency clauses. He also said the weekly Council Agenda should get wider distribution and more publicity so people know what is happening.

Commissioner Francesconi said the question to ask in taking projects off the tax roll is whether the projects would be built at all without them.

Disposition: Accepted. (Y-5)

- *33** Grant a ten-year property tax exemption to Grayco Resources, Inc. for new multi-unit housing on SW Yamhill, 17th and Morrison Streets (Ordinance)

Disposition: Ordinance No. 170823. (Y-5)

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- 34** Recommend a ten-year property tax exemption to MLK-Wygant Housing, LLC, for new multiple-unit housing on the east side of NE MLK Jr. Boulevard between Going and Wygant Streets (Planning Commission Report and Recommendation)

Disposition: Accepted.

- 35** Grant a ten-year property tax exemption to MLK-Wygant Housing, LLC, for new multiple-unit housing on the east side of NE MLK Jr. Boulevard between Going and Wygant Streets (Ordinance)

Disposition: Passed to Second Reading January 15, 1997.

- *36** Authorize a contract and provide for payment for the NW 81st Place retaining wall and slide repair project (Ordinance)

Disposition: Ordinance No. 170824. (Y-5)

- *37** Designate and assign a parcel of land as public right-of-way in connection with the NE 158th Avenue south of NE Marine Drive street improvement project (Ordinance)

Disposition: Ordinance No. 170825. (Y-5)

- *38** Establish two sub-funds within the Portland Parks Trust Fund (Ordinance)

Disposition: Ordinance No. 170826. (Y-5)

- *39** Contract with Innovative Solutions, Inc. for electrical engineering services as required in support of the Bureau of Parks and Recreation GOBI projects (Ordinance)

Disposition: Ordinance No. 170827. (Y-5))

- *40** Contribute \$80,000 towards the purchase price of the Taylor Woods property in southwest Portland in the Fanno Creek regional target area (Ordinance)

Disposition: Ordinance No. 170828. (Y-5)

Commissioner Gretchen Miller Kafoury

- 41** Confirm appointment of Patricia Montgomery and reappointments of Bill Graham, Pauline Nelson, Bernie Foster, Marc Pettibone and George Van Hoomissen to the Taxicab Board of Review effective January 8, 1997 (Report)

Disposition: Confirmed. (Y-5)

- *42** Authorize contract with Carpet Resource Center to furnish and install carpet in the Portland Building 14th and 15th floors (Ordinance)

Disposition: Ordinance No. 170829. (Y-5)

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- *43 Contract with Southeast Uplift for \$50,000 for start-up of workforce development activities in Outer Southeast and provide for payment (Ordinance)

Discussion: Commissioner Francesconi said this contract involves citizens in the workforce process but he has some concerns about how this will be integrated with the Portland Development Commission's efforts.

Disposition: Ordinance No. 170830. (Y-5)

Commissioner Erik Sten

- 44 Amend contract with Montgomery Watson for \$104,233 for Phase IIA & IIB to provide additional professional consulting engineering services to develop alternatives and 10% improvement plans and cost estimates for a new facility to replace Screenhouse #2 located at the Bull Run Headworks and provide for payment (Ordinance; amend Contract No. 29844)

Disposition: Passed to Second Reading January 15, 1997 at 9:30 a.m.

- *45 Authorize purchase of a temporary construction easement and a perpetual easement for water facilities on the property of Winmar of Jantzen Beach, Inc. for the Hayden Island crossing project, at a total cost of \$40,200 and provide for payment (Ordinance)

Disposition: Ordinance No. 170831. (Y-5)

- *46 Authorize the Purchasing Agent to sign a Purchase Order to serve as a contract with the lowest responsible bidder for the purchase of 1,000 feet of high density polyethylene (HDPE) pipe for the Bureau of Water Works (Ordinance)

Disposition: Ordinance No. 170832. (Y-5)

- 47 Amend contract with L.R.S. Architects, Inc. to increase established cost ceiling by \$30,039 for additional architectural and engineering services to revise contract documents to accommodate a 1-hour corridor, to complete the ADA compliance improvements and to convert a wash bay into a repair bay within the Interstate facilities and Willis Building (Second Reading Agenda 18; amend Contract No. 29086)

Disposition: Ordinance No. 170833. (Y-5)

City Auditor Barbara Clark

- *48 Update City Code to reflect changes in Council procedures (Ordinance; amend Code Chapter 3.02)

Disposition: Ordinance No. 170834. (Y-5)

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REGULAR AGENDA

Commissioner Jim Francesconi

- * 49 Grant a temporary, revocable permit to FirstPoint Communications Services, Inc. and establish terms and conditions (Ordinance)

Discussion: Mary Beth Henry, Office of Cable and Franchise Management, said FirstPoint is a wholly-owned subsidiary of Portland General Corp. Although agreement has been reached on this franchise, the Charter requires a four-month approval process. Because FirstPoint would like to move forward as quickly as possible, this ordinance grants it a temporary permit to proceed immediately with building its telecommunications system.

David Leatherwood, Vice President, Operations, FirstPoint Communications, said they have requested this franchise in order to fulfill their plans to build a fiber-optic "super highway" around the City.

Rochelle Lessner, Portland General Corp., thanked staff for making this go well.

Ms. Henry said FirstPoint will pay the City five percent of its gross revenues for use of the right-of-way and will also provide a four-inch conduit for City use plus capacity on their telecommunications system for municipal purposes. Since the City now has several telecommunication franchises, staff is putting together a map to see how best to use this conduit capacity.

Commissioner Francesconi asked if access issues were addressed.

Commissioner Sten said this is a good agreement for the City but as competition in the telecommunications and energy industries increases over the next 12 months, a number of issues need to be reviewed. The first is to ensure, as far as it is within the City's power, that citizens get treated fairly. Also, because many City programs are dependent on franchise fee revenues and on a utility environment that will not exist a year from now, the City must face the possibility of lower revenues.

Mayor Katz said both an internal and external group are studying this and by directly involving stakeholders they hope to avoid getting caught in a bind at the Legislature with conflicting needs and lobbying efforts.

Commissioner Francesconi asked about the effect on residential customers of increased competition in telecommunications.

Mr. Leatherwood said Portland General Electric will provide FirstPoint with services for improved substation communication. They make the operational decisions on how best to serve residential and commercial customers.

Commissioner Sten said industrial customers in the energy area actually subsidize residential customers to a small extent. That will go away with increased competition and it is not clear how residential ratepayers will be protected. The impact on telecommunications is harder to figure.

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Ms. Lessner said the energy business is dealing now with the same issues telecommunications went through and resolved 10 years ago.

Ms. Henry said the telecommunications companies competing with US West are primarily competing for commercial businesses and there are no competitors for residential service. That is something the Public Utilities Commission is working on.

Disposition: Ordinance No. 170835. (Y-5)

Commissioner Gretchen Miller Kafoury

50 Liquor license application for Anthony Aragon, dba Hoyt Street Pub & Eatery, 1036 NW Hoyt Street, Dispenser Class A liquor license (change of owner); unfavorable recommendation (Report)

Discussion: Mike Sanderson, License Bureau, said staff learned this morning that a new superseding application has been filed for the Hoyt Street Pub with the OLCC. This item is now moot as the applicant has sold all his interest.

Disposition: Referred to Commissioner of Public Utilities.

At 10:05 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 8TH DAY OF JANUARY, 1997 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales, Kafoury and Sten, 5

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

- 51 TIME CERTAIN: 2:00 PM** - Recommend amendment to Zoning Code to change the FAR designation of a certain area included within the Central City Plan District and the South Auditorium Plan District (Planning Commission Report and Recommendation introduced by Commissioner Hales)

Discussion: Mike Saba, Planning Bureau, said this amendment was initiated after staff learned that the second phase of a planned housing project, part of an original Urban Renewal project, could not be developed as designed because of the zoning. The zoning also restricts implementation of recently adopted housing goals which call for the creation of 15,000 housing units as part of the Central City 2000 Plan. Staff now recommends that Council pass this legislative FAR amendment to increase the current (FAR) Floor Area Ratio from 3:1 to 6:1. Practically, the area affected by this change is limited to a surface parking lot directly east of the current Parkside Plaza apartments. Staff and the Portland Planning Commission believe a legislative amendment is appropriate because the current 3:1 pattern is inconsistent with permitted land-use densities in the adjacent area.

Mayor Katz said it appears that because of a timing sequence, a portion of this geographic area is still at 3:1 while the rest is at 6:1. She said it looks like this amendment will benefit only one development.

Mr. Saba said the original Central City Plan and the Downtown Plan generally recommended 6:1 throughout the area. He said it is unlikely anything else will be built beyond the second phase of this housing because of plan district regulations governing height, setbacks, landscaping and pedestrian pathways. There are also two public parks within this area.

Commissioner Hales said redevelopment of the shopping center is a possibility too.

Mr. Saba said Harrison Square and Riveria Plaza could possibly expand but there is no indication of that now.

John Southgate, Portland Development Commission (PDC), said PDC did govern development of this area through its Urban Renewal Plan at a time when there were more limitations on use and density. This changes the FAR but not the height limits and the specific proposal is for a five-story building. This is a good example of staff identifying an area where the current zoning regulations work against the infill development the City is encouraging.

Irwin Mandel, 1511 SW Park Ave., 9701, said there is reason to cheer any time housing replaces an existing surface parking lot in downtown.

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Julie LeBray, Oregon Pacific Investment, said her company always envisioned developing a second phase on this property but at some point in the late 1980s it was downzoned without their knowledge to 3:1, making the second phase impossible without this zone change. She said in the future they hope to do a third phase 3 and update the shopping center, adding housing above the retail level. She said they plan a five-floor, wood structure and need more density than the 3:1 allows to make it economically feasible. She noted that the planned parking ratio is approximately .75 per unit, rather than the customary one to one.

Commissioner Hales said having this well-designed housing on a parking lot is great and it will be nice to have some 90s-style development to update PDC's first urban renewal effort.

Disposition: Accepted. (Y-5)

- *52 Amend the Zoning Code to change the FAR designation of a certain area included within the Central City Plan District and the South Auditorium Plan District (Ordinance introduced by Commissioner Hales)

Disposition: Ordinance No. 170836. (Y-5)

At 2:20 p.m., Council recessed.

JANUARY 9, 1997

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 9TH DAY OF JANUARY, 1997 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales, Kafoury and Sten, 5.

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Rick Faus, Gresham City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

- 53** **TIME CERTAIN: 2:00 PM** - Appeal of Hayhurst Neighborhood Association against Hearings Officer's decision to approve application of City of Portland Bureau Parks and Recreation for a conditional use, environmental review and adjustments for development of a community center and recreational facility improvements at Gabriel Park, SW Vermont at 45th Avenue (Hearing; 96-00741 CU EN AD)

Discussion: Rick Faus, Gresham City Attorney, outlined the procedures to be followed in this hearing. Commissioners Hales, Francesconi and Sten made statements regarding their ex parte contacts.

Steve Gerber, Planning Bureau, showed slides of the park and the proposed site. He noted that applicant has requested an adjustment not to install the required screening on the park property because of an existing hedge just beyond the current storage shed at the upper portion of the eastern parking lot. The hedge now serves as a screen for the parking lot as required by the Code but it is on an adjacent property not meeting the Code requirement. Staff and the Hearings Officer have recommended that this adjustment be approved only if the two adjacent property owners are fully aware of the situation and agree to maintain the hedge, or allow the applicant to do so. The applicant has also requested an adjustment to the community garden's gravel access road, relieving it of the Code requirement to pave it. Staff and the Hearings Officer have recommended against this adjustment due to the lack of mitigation for paving, which is required to prevent dust and mud. Another parking area located just off SW Canby St. on the Park's southern edge is also subject to an adjustment request, where applicant has suggested that the park itself could mitigate for the lack of required trees for this parking lot. However, the applicant has since decided to provide trees for this area, negating the requested adjustment. A drainage area near SW 45th is subject to Environmental Review and here applicant proposes to enhance the area by slowing and cleaning the runoff before it reaches Vermont Creek and by replacing the disturbed, non-native vegetation with native vegetation, as recommended by staff and the Hearings Officer. However, a letter (Exhibit I-25) and a later modification of it offer what staff believes is a better and more-easily implemented condition of approval. The language suggested will make the permit center's job much easier than what was originally recommended by staff. Staff recommends that this be adopted in place of Condition A for the environmental approval.

Mr. Gerber said an existing parking lot, currently serving tennis courts, is proposed to be expanded by 17 spaces. He noted that the proposed community center and aquatics facility is a conditional use in an Open Space Zone and the parking lot with 105 spaces is accessory to that use. An existing pump house will be removed. Location of the center in a low point of the park significantly helps it meet the need to preserve views of the park. In combination with the center's design, this position

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will limit any blockage of views into the park and open space. The intersection at 45th and Vermont will be improved and will also make bus service safer and more convenient for all neighbors.

Mr. Gerber said the center, aquatics facility and parking lot require conditional use review which must find that the approval criteria concerning uses in the Open Space Zone and off-set impacts are met. The proposed drainage for the facility includes modification to an existing drainage area within the Environmental Protection zone. The requested adjustment regarding parking and loading must comply with the relevant approval criteria and the proposal must also comply with the Transportation Element of the Comprehensive Plan and the State Transportation Planning Rule. He said this proposal is consistent with the intended character of this specific open space area. It will occupy less than three percent of the 92-acre park and will be located in a portion of the park that minimizes the impact on views of the park. Adequate open space and all existing park features and facilities are being maintained. The only impact will be one of enhancement. Both streets impacted by an increase in traffic are neighborhood collectors, which are appropriate to the proposed use. With the planned improvements, the transportation system will be capable of supporting this use and pedestrian safety will be increased. The activities and hours of activity at the center will most directly impact the intersection of SW 45th and Vermont and the immediately surrounding uses, which are mostly commercial but do include a significant amount of residential uses as well. Significant setbacks, landscaping and mostly indoor activities will minimize these impacts and protect residential privacy. Mr. Gerber said with the requirement for removal of the blackberry bushes from the drainage area and with approval by Council of the new recommended language for Condition A, the proposal conforms with the criteria for environmental review. It is also in conformance with the Transportation Element and the State Transportation Rule. Only with the agreement by adjacent property owners, may the applicants rely on their hedge to mitigate the requested adjustment to the landscape requirement for the east parking lot. The required trees for the South parking lot should be provided and this adjustment request denied. The adjustment request for required paving of the community garden access way should also be denied. A requested adjustment to eliminate the loading area for the center should be approved and with the conditions noted and the one change recommended by staff, the proposal should be approved and the appeal denied.

Jeff Kleinman, attorney for the Hayhurst Neighborhood Association, said they were unaware of the revision to Condition A, which was not available seven days prior to the hearing. He said the appellants do not dispute the value of a community center but question whether the application meets the conditional use approval criteria. He asked Council members to do three things: 1) consider this application as if were made by a private party and not the City; 2) consider the impact on the neighborhood; and 3) consider the dangerous precedents that some of the Code interpretations will set for future requests from private applicants. He said the key Code criteria is 33.815.100 (A)(1) which calls for the use to be consistent with the intended character and purpose of the specific Open Space zone. Five purposes are identified and this proposal complies with none of them. A-2 requires that adequate open space be maintained so that both the purpose and character of the Open Space zone shall be retained. Even though the proposed facility would take only a small portion of the park, this portion is the key undedicated portion of the Park, truly "open" space which is the safest and securest open space because it is closest to homes and lighting. Mr. Kleinman said this use also does not conform with 33.815.100 (D)(1), the arterial streets classification policy. The facility will be served by two neighborhood collector streets and if Council concurs with the Hearings Officer's finding that the policy is merely suggestive and not mandatory, it will have a lot of bad news in the future from private applicants. Those policies are

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binding on new projects. Finally, Section B-2 requires that the transportation system be capable of safety supporting the proposed use as well as existing uses in the area. He said relevant factors regarding street capacity, level of service, access to arterials, transit availability, on-site parking impacts, access requirements, neighborhood impacts and pedestrian safety must be considered. There is no difference between good and bad traffic, despite the use. The notion of locating a new major attraction in an area with one bus line and no service on Sundays is a terrible mistake.

Robert Bernstein, Consulting Transportation Engineer, 507 18th Avenue East, Seattle, WA 98112, said the community center will draw users from all over southwest Portland and beyond and is incompatible with the spirit and intent of the Neighborhood Collector classification of the access streets, SW 45th and Vermont. It violates the definition and spirit of the Arterial classification policy as well. Parking demand at the center will exceed lot capacity on a frequent basis with severe consequences for pedestrian safety and neighborhood livability. He said he does not question the policy of using parking management as a tool to reduce auto use but in this case is talking about the "real world" impact of cars looking for places to park. Although there is not a lot of data about traffic generation at community centers, one can compute with reasonable certainty the amount of parking that is required. He said he used vehicle occupancy data collected at the Dishman Community Center and Mittlemen Jewish Community Center (MJCC) in order to compute the number of parking spaces per user. Using an optimistic estimate of transit use and drop offs, they computed a need for .67 parking spaces for each user. This needs to be compared to the architectural program, the definition of the size of space, types of rooms and uses, etc. Adding those numbers up, one finds the center is designed to serve 300 people. His calculations indicate that when 157 people are present, the lot will be full. The applicant's traffic analysis focused on a condition wherein the center was just over half full and upon that level of usage they are basing the claim that the parking lot is adequate. This is going to be a very busy place and will be well over half full much of the time, creating congestion and back-ups and forcing cars onto the neighborhood streets in a search for parking spaces.

Commissioner Hales noted that the Hearings Officer states in her decision that if opponent's reasoning is followed, no use that is listed in one category could be a use in another category.

Mr. Kleinman said they are not sure that is relevant to the decision but they do not in any case, believe it is a correct characterization. They do not believe everything is prohibited by these criteria.

Commissioner Hales asked how many more parking spaces would be needed on-site, based on Mr. Bernstein's analysis.

Mr. Bernstein said he has not done a specific analysis, but the applicant needs to say something about how many people they expect to have on-site on a typical worst-case or design-case basis. There was no such information in any part of the application. If the Parks Bureau decided to operate the facility at 3/4ths capacity, one could take the parking per person numbers to determine how many spaces were needed. Or it could also decide it was willing to live with the congestion. The traffic analysis should be based on solid figures, not seen through rose-colored glasses.

Commissioner Hales noted an application from a private applicant for a conditional use in an Open Space zone, the construction of Self Enhancement, Inc.'s community center in Unthank Park. He asked Mr. Kleinman if he thought the Hearings Officer erred in approving that application and if

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Council were now bound by that precedent.

Mr. Kleinman said the City may or may not be bound by that as he did not hear the evidence in that case or what criteria were raised. However, the main problem is the interpretation that the arterial streets classification policy is not mandatory. If, in that case, the Hearings Officer determined that policy was only aspirational, then that was a very big mistake.

Commissioner Hales said that is the only case he knows where a private applicant has applied for a conditional use in an open space. It was heard by the Hearings Officer but not appealed to Council.

Mr. Kleinman said this particular Code interpretation would apply to all cases in the City whenever the City or anyone tried to say that the applicant has not complied with the Arterial Streets Classification Policy. If Council says that does not matter because the policy is just suggestive, not mandatory, it will have a Citywide effect on open space.

Commissioner Kafoury said she did not see a discussion of parking in the Hearings Officer's report.

Mr. Bernstein said he testified before the Hearings Officer, basically repeating what he has said here today, but she did not refer to it in her report.

Commissioner Hales said there is information about parking in the application.

Frank Selker, Vice Chair, Hayhurst Neighborhood Association, 6121 SW Tower Way, 97221, read a letter from Becky Miller, President, Hayhurst Neighborhood Association, labelling approval of this proposal a grave mistake. Her letter states that the Gabriel Park site only marginally addresses Portland's land-use planning goals and she objects to applicant's contention that it does not need to meet the spirit or intent of those goals because the wording of the Code is aspirational. Ms. Miller describes the neighborhood's dismay at having to spend so much time fighting something so many originally wanted and which would work so well at another site, such as Hillsdale, where it would have a greater level of self-sufficiency, qualify for supplemental funding by other agencies and provide many more opportunities for school children. She asks Council to seek a better way. Speaking for himself, Mr. Selker said the impact of this use in open space will far exceed three percent of park space it will take. The building will be sited at a low point of Gabriel Park, essentially a stage for a whole quadrant of the park, and will dominate the view. He also expressed concern about the interpretation of the Arterial Streets Classification Policy and about the particularly poor public transportation to the site. He said if Home Base wanted to site a store here, the City would say no because of the inadequacy of the transportation and the inordinate impact it would have on that corner of the Park.

Martie Sucec, Co-Chair, Multnomah Neighborhood Association, 7005 SW 34th Ave., 97219, said she would like to see language adopted to prevent anything from being built in the Open Space Zones. The Multnomah Neighborhood Association declined to endorse either the Multnomah Center or Gabriel Park as a site, and this has been a very divisive issue, particularly given the lack of a Master Plan for Gabriel Park. Speaking personally, as a health professional researcher, she stressed the restorative value of green, grassy spaces on people's health. She disputed the Parks Bureau statement that this portion of the park is of limited value. She said it is of enormous value because it is the only place a lot of people feel safe to look over this grassy expanse.

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Corrine Weber, speaking for the Maplewood Neighborhood Association, 6245 SW 39th Ave, 97221, said the neighborhood opposes siting the center in Gabriel Park as well as the increased commercialization of this corner. Several surveys conducted by neighbors about the proposed zone changes at 45th and Vermont confirmed widespread opposition to increased commercialization of that area. People in the area were particularly stunned by the massive size of the center, which is perceived as a commercial intrusion totally out of character with anything else in the neighborhood and a potential burden on taxpayers and a white elephant. Many believe it will have a negative impact on the area's livability and foresee a constant flow of street activity, to 11 p.m. and beyond, as well as more parking problems, loitering and littering. She said as much activity will go on outside the building as inside, despite the protestations of the Parks Bureau, and many problems will result because of the unsupervised young people who will hang out there. A more suitable location should be found.

Commissioner Francesconi asked if the need for a community center in southwest and the need for young people to have a place to go had been discussed at the neighborhood association meetings.

Ms. Weber said yes, but many people were shocked by the massive size of this center and did not perceive the need for one this large. They were also concerned about the lack of clientele to support such a large facility, given the nearby proximity of the MJCC, the Wilson pool and the Portland Community College pool, which often goes begging for customers.

Don Baack, 6495 SW Burlingame Pl., 97221, said he views this proposal as suspect, based on estimates of facility revenue streams that did not consider the economic environment in which this facility is located, either in terms of competition or the numbers of people who will use it. He said this proposal was built on the premise of "build it and they will come." No one in their right mind would invest \$10 million in a facility without doing market research, particularly when providing retail services. Market research would tell you the number of customers to expect, revenue expectations, and the impact of competing facilities. In this case, citizens could end up subsidizing the facility because it is not earning sufficient income.

Commissioner Francesconi said the assumption on transportation given by Mr. Kleinman is that the center will attract users from all over the region and will have a high use.

Mr. Baack said those assumptions are pure speculation. The Parks Bureau did no homework on how many people will use the center and this is not a proper basis on which to make decisions. Transportation is a key factor and public transportation to public facilities is needed.

Joseph Higgins, Chair, Hayhurst Parks Committee, 4668 SW Flower Pl., 97221, said to site the center in Gabriel Park is contrary to the intent of the Open Space zoning and is not fiscally responsible. He said the Open Space should not be impacted unless it can be shown that the impact is worth the problems associated with it. He said data supplied by the Parks Bureau indicates that the capital budget is short approximately \$920,000 to construct a base scheme facility, the minimum building needed to meet the goals of the project. The building allowed by the budget, the "allowable" program, is projected to serve 250,000 a year but without a market analysis there is no way to know if that many people will actually come, especially with the improved Wilson and MJCC pools. However, if 250,000 do come, the operations cost recovery is at best 71 percent, and at worst 55 percent. This would require an annual operating subsidy of between \$241,000 and \$443,000. Also, every year the center operates, it will build a backlog of heavy maintenance items

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and there is no recovery of any of the \$11.5 million capital investment cost, which will probably be driven much higher by change orders.

Others speaking in support of the appeal and in opposition to this proposed location for the community center included:

Jeff King, 4712 SW Flower Ct. 97221
Susan King, 4712 SW Flower Ct. 97221
Anthony Boutard, 1640 SW Davenport, 97201
Carol Boutard, 1640 SW Davenport, 97201
Jane Smiley, 2605 SE 70th, 97206-1112
Mildred Taxer, 6805 SW 42nd Ave, 97214
Vivian Terrell, SW 45th Ave
Bernice Feibleman, 4206 SW Idaho Terr. 97221
Victor Von Salza, 6903 SW 54th Ave, 97219
Constance Flabetich, 6448 SW Loop Drive, 97221
Jim McNanny, 4303 SW Vermont, 97219
Melanie Burns, 6442 SW Loop Drive, 97221
Wes Risher, SW 7th Ave, 97219
Barbara Novak, 7908 SW Ruby Terrace, 97219
David Watkins, 6533 SW 34th Avenue, 97201-1077
Mildred Ball, 2727 SE 6th, 97206
Michael Roche, 8920 SW 40th Ave, 97219
Erik Nielsen, 5701 SW 42nd Ave, 97221
Theresa Enroth, 8222 SW Capitol Highway, 97219
Elinor A. Levin, 7740 SW 45th Ave., No. 23, 97219-1566
Rosemary Seminara, 8433 N. Olympia St., 97203
Beth Woodward, 6102 SW 46th Ave., 97221
Dennis Keepes, St. Johns Neighborhood Association, 9622 N. Pier
Park Place, 97203
Dorothy A. Higgins, 4668 SW Flower Pl., 97221
David King, 4712 SW Flower Ct., 97201
Wendy Morseth, 7204 SW 5th Ave., 97219
Robert Kouns, 6908 SW 37th Ave., 97219
Rose Marie Opp, 11135 SE Yamhill St., 97216
Paul Gleason, 7638 SW 36th Ave, 97219-1631
Virginia Bartnik, 6737 SW 45th Ave., 97219
Alan Martin Bacharach, 4506 SW Illinois St., 97221-2848
Catherine Marie Bennett, 5025 SW Vermont St., 97219
Diane George, 3801 SW Idaho Terr., 97221
Jay Mower, 777 SW Chestnut St., 97219
Christopher DeForest, 2374 NW Kearney St., 97210
Harry Tewfik, 5450 SW Illinois St., 97221
Bruce Anderson, 6434 SW Loop Drive, 97221
Louise Weidlich, Neighborhoods Protective Assn., PO Box 19224, 97219
Bob Baldwin, 5043 SW 19th Drive, 97201
Suzie Barendrick, 5925 SW 47th Ave., 97221

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James Stahl, 5827 SW Logan Ct., 97219
Marcia Peters, 4445 SW Flower St., 97221

Opponents said open space should not be used to build this facility here. They said this unstructured space should be left alone and the corner should remain as it is, at least until a Master Plan is prepared for Gabriel Park. They said transportation is inadequate and the center will be difficult to reach by bus, forcing people to use their cars and thus violating the Transportation Planning Rule which requires a 10 percent reduction in auto use. It also fails to comply with the Metro 2040 Plan which calls for concentration of growth and the siting of such facilities in town centers. Because of the inadequate number of parking sites, cars will overflow onto neighboring streets, exacerbating an already serious problem for residents. Many opponents said the center will be costly to operate and the City will not be able to provide adequate funding. Some argued that sufficient recreational facilities already exist in Southwest and it would be better to expand those rather than build a costly competing facility. A number of those testifying called upon Council to redirect this decision to the Southwest Community Plan process and not to proceed with a facility for which there is no mandate and which has caused so much anguish and opposition. They argued that more centrally located sites with better transit access are available and should be selected instead. Concerns about late night noise and lights, littering and loitering youth and their negative effects on livability.

Kathryn Beaumont, City Attorney representing the Parks Bureau, asked that their traffic consultant testify first.

Phillip Worth, Kittelson and Associates, 610 SW Alder, Suite 700, 97205, addressed appellant's testimony regarding parking demand. He said there is one critical error in their statement. They define capacity in a unique way that differs dramatically from what Parks & Rec has traditionally done with its centers. The Bureau defines capacity by the staffing and programming of the facility as well as the ability to actually process patrons in and out. Another error applicant has made concerns the estimated drop-off rate for the patrons who attend the facility. Kittelson, in its surveys of the Dishman Center, identified a 70 percent drop-off rate for patrons, generally children being dropped off by their parents. Using the numbers submitted by appellant, he estimates a maximum peak demand of 300 patrons. If 70 percent are drop-off patrons, this brings to to 90 the number of patrons who require individual parking spaces. The Parks Bureau is proposing to provide 135 spaces in total, more than would be necessary.

Commissioner Francesconi asked if the 70 percent drop-off was for aquatic centers.

Mr. Worth said it is for the Matt Dishman Center in total, not just the aquatic facility. The actual percentage of new trips the Gabriel Park community center would add to the transportation system is projected to be three percent over existing volumes. Regarding the street classification system, he said the Southwest District, as defined by the Transportation Element of the Comprehensive Plan, is deficient in lane miles of higher order streets, streets above the neighborhood collector level. Because of that deficiency, lower order streets must be relied on to do the kind of travel that would otherwise be expected on higher order streets.

Commissioner Hales noted that 105 on-site parking spaces are proposed on site, 30 in a shared arrangement and 17 to be added on the west lot. He said the conditions of approval call for improvement on SW 45th where people are now parking informally, where the logs are. Will any on-street parking spaces be created by that improvement?

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Mr. Worth said no.

Commissioner Hales asked if there would be any parking on 45th after the improvements are completed.

Mr. Worth said on-street parking will be allowed on the park side of SW 45th and after the improvements are made, they estimate a net loss of 13 spaces.

Commissioner Hales asked if there would still be on-street parking on Vermont, though he realizes some will be lost because of the service road entrance.

Mr. Worth said a space or two might be lost but there would still be some on-street parking on Vermont, although they have not been counted in the application.

Commissioner Hales said then the 142 spaces will be augmented by the available on-street spaces even though they cannot be counted,

Commissioner Francesconi asked if these were neighborhood collector streets.

Mr. Worth said yes, both Vermont and SW 45th are.

Commissioner Francesconi said as he understands it on neighborhood collector streets major expansions of existing land uses should be discouraged. Is that a "should?"

Mr. Worth said yes.

Commissioner Francesconi asked if the Code ever uses the word "shall" instead of "should?"

Tim Barnes, Planning Bureau liaison to the Parks Bureau, said the policies in the Transportation Element are not actually part of the Zoning Code but do apply as approval criteria. They are stated in aspirational language and to his knowledge there is no place in the Transportation Element that the word "shall" is used.

Commissioner Francesconi asked if other aquatic centers are located on neighborhood collectors.

Commissioner Hales asked about the indoor aquatic centers, Matt Dishman and Columbia pool.

Zari Santner, Parks Bureau, said Matt Dishman and Columbia are on neighborhood collectors, while Buckman is on a local collector. Even MLC is on a neighborhood collector.

Commissioner Sten noted that Dishman is a half block from Williams and that both Williams and Columbia Boulevard are much busier streets, with a small turn off onto smaller streets.

Mayor Katz asked if the drop-off data was based on Matt Dishman only.

Mr. Worth said the data was based on surveys they conducted, particularly at Matt Dishman.

Mayor Katz asked what other community centers were surveyed.

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Mr. Worth said they looked in particular at Dishman and Montavilla as well as the Jewish Community Center. The surveys he has referenced in particular were conducted at Matt Dishman. When they compare the proposed center with those that are available to survey, Matt Dishman comes closest in terms of what facilities are available to the community.

Andrew Hanshaw, Chair, Southwest Community Center's Citizens Task Force, 7032 SW 29th, 97219, described the rigorous site selection process, which included on-site visits to dozens of possible sites. They also reviewed letters from hundreds of concerned citizens and left time at all Task Force meetings to allow citizens to testify. The Task Force is confident that Gabriel Park meets the necessary criteria for a community center and remains the best site for this center. He said strong support exists among many Southwest residents for the center, the need for which was established with the passage of Ballot Measure 26-10. The need for an aquatic facility in underserved Southwest was also well documented.

Nicki Lynch, Task Force member, said the Task Force determined early on that the best place for this center would be in an existing park, building synergy between indoor and outdoor activities. They understood that citing the center in a park would take some open space but, in the case of Gabriel Park, only a small portion will be taken, with a modest impact on the whole Park. The Task Force felt placing the center on the corner of SW 45th and Vermont, which is a busy corner, would have less impact on the Park's open space. Many of the complaints about parking and traffic will be ameliorated by the traffic improvements planned as part of this project.

David A. Gens, President, West Portland Park Neighborhood Association and member of the Citizens Task Force, 10644 SW 42nd Ave., 97219, said the center is consistent with the intended character of the Open Space zoning. Plans dating from 1957 and 1976 both show recreational facilities built in the park. The 1991 Parks Futures document described Gabriel Park as a metropolitan and magnet park. The center's proportion to the rest of Gabriel Park must be considered as well as its location in the most urbanized area. Both the Staff Report and the Hearings Officer's decision emphatically relate how community services can be provided in the Open Space Zone, where they note that no regulation prohibits community services from being included in a park and that adequate open space will be retained. He said his neighborhood association supports the Gabriel Park site. Three neighborhood associations oppose, a minority of the Southwest neighborhoods.

Deb Stryker, Task Force member, 1440 SW Broadway Dr., 97201, and owner of a Hillsdale business, said Southwest has long been disconnected because of a lack of infrastructure and inter-modal transportation. The 2.7 percent of the Park to be used for the center is now a sewage pump station. This is not open space. A centrally located, non-membership facility will increase the safety of the area and discourage the drug deals that occur daily here now. The specific language of the bond measure has been adhered to in every decision by the Task Force and no other proposed location would allow for adjacent recreational activity. The landscaping and design will be both environmentally efficient and aesthetically pleasing. The Hillsdale Business Association also supports this site. Ms. Stryker also noted that there would be significant opposition to the three other proposed sites.

Don Palmer, Task Force member, 3620 SW Nevada Ct., 97219, said this is absolutely the best location for this center. He said people will get to the park by walking, biking, taking the bus or their cars. He noted that originally more parking spaces were included but the number was lowered

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in response to neighborhood criticism that the project was too massive. He is baffled to now hear people testify today that there should be more parking. He said comparisons with the MJCC are faulty because it was built at a time when land for parking was plentiful and before people were asked to get places by means other than cars. He said Tri-Met will get the job done.

Glenn Gregg, Task Force member, 10415 SW Terwilliger Place, said the selection process was vigorous and inclusive and Gabriel Park was selected as the sole site in the entire Southwest area that met all the center's program needs. Every other site was either too small, badly configured, inconveniently located, unavailable or too costly either for acquisition or construction and their selection would have compromised the services citizens expected in return for the taxes they amortize. Allegations that the street system and bus service are inadequate are without merit. He said improvements at the intersection of 45th and Vermont are already included in the proposal and bus service can be expanded as needed. Enhancement of pedestrian and bike paths, public transit and street systems in the area can be jump started by using the community center as a catalyst to move those plans forward. The center will have a useful life of 50 to 70 years and looking back over the 75 years of transportation infrastructure improvements, no one can seriously believe that the modest needs of the center cannot be met. The record also clearly shows the project meets all the requirements of the Arterial Streets Classification Policy. The choice is to build the center here or not to build it simply because today the infrastructure at 45th and Vermont is not 100 percent perfect.

Dr. William Conner, Task Force member, 2600 SW Sherwood Pl., 97201, said locating the center on 2.45 acres of a 90 plus acre park will not compromise the basic green space concept. The center will occupy space now occupied by a water pumping station in a portion of the park that appears under-used. The center is a very beautiful building, carefully crafted to fit into the environment and be non-obtrusive. It will compromise none of the current activities in Gabriel Park, only enhance them. This is the ideal site.

Phil Wax, Task Force member, 3723 SW Bridlemile Ln., 97219, said last year the Bridlemile/Robert Gray Neighborhood Association voted overwhelmingly to endorse this site. Community centers belong in parks and are a good way to integrate indoor and outdoor activities. This is a park with soccer fields, playgrounds and ball fields and those functions work very well with a community center. The westside is very underserved by public swimming pools and gymnasiums.

Commissioner Francesconi asked if the Task Force prioritized needs in Southwest Portland and if this site would meet them.

Mr. Wax said he cannot say that this or any site would meet all the needs. In the beginning stages, the Task Force developed a wish list for what they would like a community center to have. Items on the list were then ranked, with the advice of consultants, according to those that would be the most viable, affordable and widely-used.

Commissioner Francesconi asked if they discussed who would use the center, given the different locations. Was there any data on this?

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Mr. Wax said they felt people would come no matter which of the three sites were chosen and did not believe placing it in a more urban site would increase its use at all. Rather there might be other problems.

Amanda Fritz, 4106 SW Vacuna St., 97219, said appellants read the purpose statement for Open Space but neglected to note that includes many functions. They assert that the Arterial Streets Classification Policy is binding but, as she wrote in her letter of October 14, 1996 (Exhibit I-36), the Transportation Element contains both aspirational and mandatory language. In cases where the word "should" is used in the policy or classification description, the policy is considered aspirational rather than mandatory and the classification represents the ideal rather than the actual functioning of the street. The Transportation Element of the Comprehensive Plan also refers to Vermont as a heavily used multi-modal arterial. The Arterial Streets Classification Policy for neighborhood collectors uses the word "should" throughout and is therefore an aspirational policy. In her Exhibit she classified all the 12 pools around Portland and did so by looking at the Transportation Element maps. There are four on local service streets, four on neighborhood collectors and only four on major city traffic streets. Thus siting the center on neighborhood collector streets is not at all inconsistent with current practice or policy. A survey of the Wilson Pool, which has seven bus lines running through it and Hillsdale, found that only 5.7 percent using the pool travelled there by bus. To deny this application based on the inadequacy of transit overemphasizes its use. If the Code defines the adequacy of parking on a conditional use as 97 and 150 plus are proposed, that is what the Hearings Officer based her decision on. The Hearings Officer also notes on-street parking should improve with the addition of the parking lot, parking agreement and designated parking. She said she would not want more parking.

Mayor Katz noted that she had distributed five additional amendments for conditions of approval and said they will be considered later on.

Ms. Fritz asked the City Attorney if Council was allowed to modify the Hearings Officer's decision at this time.

Mr. Faus said yes.

Ms. Fritz said all the conditions of approval she has proposed are in the record and she believes they will add further environmental protection.

Commissioner Francesconi asked Transportation staff at some point to clarify her statements that use of the word "should" indicates an aspirational policy.

John Alland, Crestwood Neighborhood Association, 10463 SW 53rd Ave., 97219-5837, said over the last several years Crestwood has voted multiple times in support of siting the aquatic center at Gabriel Park and firmly believes the siting process and application meet all the required criteria. They believe the assertions of the Hayhurst Neighborhood Association are unfounded regarding uses in Open Space. The use of Gabriel Park is indeed consistent with the character of Open Space; Gabriel Park is an activity park with baseball diamonds, tennis courts, trails and gardens. The aquatic center with basketball courts and pools dovetail perfectly into existing conditions and uses. It makes sense to combine indoor and outdoor activities and the center will attract people of all ages. Second, adequate open space will be maintained as the center will take up less than five acres of an over 90 acre park. The location of the center is far away from the natural open space area and is

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situated close to activity areas and the transportation system. The application meets all the public service requirements, including the arterial streets classification and the Portland Transportation System Plan, the Bike Master Plan and the Pedestrian Plan. Vermont Street and SW 45th both provide excellent connectivity to adjacent town centers. With the cooperation of Tri-Met there will be ample bus service and both streets provide bike access that is integral to the transportation network in Southeast. The intersection of SW 45th and Vermont is the hub of public transportation in the area. The application also provides for street improvements and sidewalks and the capacity of 45th and Vermont is far in excess of current and projected uses. Placement of a lot there will make the intersection safer for everyone. Appellant has not proven that these streets cannot handle additional traffic and the application addresses their concerns fully. Police and fire protection are indeed adequate and the center could possibly provide an additional police neighborhood contact office. The stormwater section of the application is also adequate and meets the requirements of the Tualatin Water Basin District. If anything, the center will improve public safety because indoor activities will provide activities and organizations for juniors and seniors. There will not be any excess noise as the center has been designed to shelter sounds from the surrounding neighborhood. It is consistent with Metro 2040, the Southwest Community Plan and its siting is critical to meeting the City's future density requirements as the future village that may eventually surround it will provide needed housing and jobs.

Others speaking in support of the Gabriel Park site included:

K.C. Cowan, 2501 SW Troy St., 97219-2548
Judie Miller, 4216 SW Pendleton St., 97221
Marcelle Newvine, 5823 SW 53rd Ave., 97221
Brian Foulkes, 5711 SW Boundary St., 97221
Daisy Housel-Miller, 5530 SW Boundary St. 97221
Jere Retzer, 5115 SW Alfred, 97219
Helen Farrens, 3956 SW Condor Ave., 97201-4104
Mary W. L. Becker, 2726 SW Nevada Ct., 97219
Catherine Woodward, 6234 SW 30th Ave., 97201
Bill Graham, 9847 SW 60th Ave., 97219
Kay Durtschi, 2230 SW Caldew St., 97219
Edwin McCleskey, 3408 SW Carolina St., 97201
Robert Archer, 7302 SW 51st Ave., 97219
Ken Wood, 7033 SW 52nd Ave., 97219
Richard Whitman, 8000 SE 34th Ave., 97202
Ken Meyer, 3541 SW Vermont St., 97219
Barbara Linn, 3669 SW Spring Garden Ct., 97219
John Kelly, 4050 SW 52nd Ave., 97221
Chris Linn, 3669 SW Spring Garden Ct., 97219
Jeanne Donaldson, 5903 SW Miles Ct., 97219
Nathan C. Palmer, 3620 SW Nevada Ct., 97219
Linda Denning, 7302 SW 51st Ave., 97219
Candi Palmer, 3620 SW Nevada Ct., 97219
Joy Stricker, 3215 SW Marigold St., 97219
Douglas Davidson, 4215 SW Vermont St., 97219
Will Fuller, 3824 SW Canby St., 97219

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Tim Crail, 3150 SW Bertha Blvd. No. 8, 97201

Elisa Davidson, 4215 SW Vermont St., 97219

Supporters said Gabriel Park is the best site, the facility is badly needed and any defects the site may have can be corrected. They said the impact of taking three percent of Gabriel Park, at an unattractive and under-used corner where few people are seen, will be minimal. They cited the inadequacy of current swim and other athletic facilities that serve middle and lower-income residents on the West side and contended that the transportation improvements planned as part of the proposal will make crossing the intersection much safer. They said no site was without some defects and none have adequate transportation. A three to five percent increase in traffic is acceptable. Supporters noted that the Zoning Code clearly allows community centers in Open Space zones.

Tim Barnes, Planning Bureau liaison to the Parks Bureau, said what is most compelling about this proposal is not the limited lawn area that will be displaced by development but all the services that will be added to the park. There will be an expansion both in recreational facilities and in the hours of park use throughout the year. He said what is being proposed is a community center that will add public services and is the result of extensive planning and research. There is broad public support and most of the opposition is to the particular site, not the center itself. He said the center is not massive -- this is not Home Base -- and distributed five exhibits to indicate its scale and its impact on the park and adjacent area. He said the building is exceptionally well-designed and well-sited, at a low point of the park and will not be seen from most of the park. It will also not generate the kind of traffic a big box retail store or fast food franchise would. He noted that the traffic consultant calculated that it will add only three percent to the net traffic volume at 45th Avenue and SW Vermont. In large part this is why they believe the proposal meets the Transportation Element policies. Community centers can be approved in the Open Space Zone which limits development but is not a no-build zone. Schools, libraries, museums, golf course clubhouses and even maintenance buildings can be approved in Open Space zones through the conditional use process. He read the list of functions in the purpose statement for Open Space zones but noted that many parks, such as downtown Pioneer Courthouse Square, do not meet all of them. Such facilities as concessions, caretaker quarters, parking, public squares and boat launching areas do not necessarily provide "contrast to the built environment" or "preserve scenic qualities or protect sensitive fragile and environmental areas" as stated in the purpose statement. But they are integral to the services provided by public parks. Gabriel Park does provide all the functions on the list and Parks is proposing a community center at one corner which will add to the functions offered by the Park but will not keep the Open Space site from providing the other functions on the list. As to whether the Transportation Element criteria are aspirational or mandatory, Mr. Barnes said this plan actually complies with the aspirational goals because it will be adding only such a small percentage of traffic volume onto these heavily travelled streets that those streets will continue to provide the local functions intended by the Transportation Element.

Commissioner Sten asked if the proposal complies with the traffic goals or the aspirational goals.

Mr. Barnes said the plan complies with the aspirational goals. There are some mandatory statements but they do not apply to this park site or the streets which surround it.

Commissioner Sten said the Hearings Officer does not appear to find this to comply aspirationally with transit and pedestrian improvement goals. He asked Mr. Barnes if he disagreed with her

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statement that this is not an ideal transit situation.

Mr. Barnes said the policies of the Transportation Element are not what they need to comply with.

Commissioner Hales said they have to comply with 33.815.100 (B)(2) to show the system is capable of supporting this use.

Mr. Barnes said they have to comply with the approval criteria that call for providing adequate transportation facilities that will safely support the use. That is the one referred to by Mr. Kleinman. However, he left out the key phrase "safely support" and then lists various aspects, including transit. Mr. Barnes said he does not see a safety issue at this site although there is another policy -- Transportation Element Goal 1 -- which says one must provide adequate transportation accessibility to all land uses. Under that umbrella, one can enumerate the different kinds of transportation, of which transit is one. Then the question becomes, what is adequate. Kittelson has provided information for the record about this adequacy. The Number 1 bus would serve 80 percent of the expected transit demand, even though it does not run on Sunday and, as the Kittelson report points out, the reality is that most people will drive to this facility no matter where it is located. Kittelson found that even at Matt Dishman center, which has many bus lines, only a very small percentage of patrons actually took the bus. Transit capability is one

of many approval criteria, not a stand-alone criterion.

In his rebuttal, Mr. Bernstein said his un rebutted testimony that the transportation system will not have adequate capacity or safety to handle conditions at the community center when the lot is overfull still stands. He said the comments made by applicant's traffic analyst on his testimony should be disregarded because he clearly misunderstood and misrepresented it. He said, unfortunately, he cannot explain in 30 seconds what the problems were or his technical approach but will be available to explain those if Council is interested. First of all, applicant's three percent impact is based on a drop-off rate of 70 percent. That number was counted from between 4:30 and 5:30 p.m. at Dishman Center and the 70 percent mainly reflects moms dropping off kids for lessons and there is no indication that the 70 percent mode split that occurred during those hours is in any way applicable to the Southwest Community center or to any other hours of the day, particularly winter evenings. The 70 percent also refers to cars coming in the driveway and this means they were double counted, going in and out. Second, his analysis did not refer to cars in the driveway, it referred to the number of people concurrently in the building. This means the comparisons are apples and oranges and that is why comments by the applicant's traffic analyst about his testimony should be disregarded.

Mr. Kleinman said more time should be taken to consider the approval criteria and Code interpretations proposed by the Hearings Officer before rushing to a conclusion. On the critical issue of whether the ASCP is aspirational or mandatory, references have been made to the use of the word "should" rather than "shall." He said here we are dealing with Section 33.815.100 (B)(1), which ties into the ASCP which states that the City must find the proposed use is in conformance with either the ASCP or the Downtown Parking and Circulation Policy. To take applicant's view renders both this language and the ASCP a total nullity. A second issue is whether there is a need for a community center and how the needs of this particular neighborhood are dealt with vis a vis those of greater Southwest. He noted one proponent who testified about the initial determination to site this in a park and not an urban setting. Mr. Kleinman said if you are going to meet the needs

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of greater Southwest, the center needs to be in a more accessible urban setting where lower-income people live and not farther out, adjacent to the Washington County line, which is what has been approved here. In this whole process, the cart has been put before the horse.

Mr. Kleinman objected to the revised condition proposed by staff and to Amanda Fritz' five additional modified conditions as his clients had not had time to review them.

Commissioner Kafoury noted that Ms. Fritz said her amendments had originally been proposed in October.

Ms. Fritz confirmed that.

Mr. Kleinman then withdrew his objection.

Commissioner Hales asked if Council has the discretion to modify conditions in a hearing like this. He said the proposed language under Condition A simply clarifies existing language and he would guess appellants would prefer the more precise specifications about trees, rather than the general ones. He asked if Mr. Kleinman objected to the content.

Mr. Kleinman said Council may certainly modify conditions in a proceeding of this nature but he has not seen the modified language and does not know whether it goes to concerns of his clients or not. Third, new language of this kind must be available seven days ahead of time. That is improper under ORS 197.763.

Mr. Faus said that was correct as it should have been available because it was a staff-generated condition and viewed as part of the staff report. However, the Council is free to modify conditions and may do so on its own at any time.

Ms. Beaumont objected to inclusion in the record of the videos shown by Wes Risher and Kathryn Bennett because they are new evidence and were not shown to the Hearings Officer. She said the Parks Bureau would like an opportunity to review the modification to Condition A proposed by Mr. Gerber. In general the clarifications Ms. Fritz proposed in October, 1996 (listed as an exhibit to the Hearings Officer's report) are acceptable although she has recommended some changes to the same condition that Steve Gerber has recommended changes to that are even more onerous. Parks staff would therefore like an opportunity to comment further on that condition.

Commissioner Hales said he believes Council should take up none of the proposed modifications to the conditions. Both parties have asked for an opportunity to review the changes to the conditions, if Council makes them, but he proposes it not do so. In the case of the recommended language on Condition A, it is simply a set of specifications to language already there that adequately deals with non-native plant species in the drainage swale. Ms. Fritz' recommended amendments are also additional specifications that go above and beyond the condition that specifies that the Bureau of Environmental Services (BES) approve the design, construction and methodology for the drainage swale. He said if it is good enough for BES, it is good enough for him in this case.

Mr. Faus said neither video shown today was shown to the Hearings Officer and should be considered new evidence. He recommended rejecting them.

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Commissioner Kafoury moved to strike them from the record. Commissioner Hales seconded and, hearing no objection, the Mayor so ordered.

Mr. Faus said since objections were raised about the modified conditions, Council should indicate whether they wished to consider them.

Commissioner Hales proposed not to take up the proposed modifications. He does not believe Council is opening up anything, however, in discussing the adjustment requests because the Planning Bureau has recommended that the adjustment request to modify the loading area be granted and the others be denied. He agreed with that recommendation.

Commissioner Hales moved to deny the appeal, uphold the Hearings Officer's decision, approve the adjustment request dealing with the loading area and deny all the other adjustment requests. Commissioner Kafoury seconded.

Commissioner Francesconi asked if adding conditions would delay the process and if these are the ones in the record.

Commissioner Hales said yes, the Hearings Officer did not impose them but imposed a lot of other conditions about the construction of drainage improvements and mitigation. The proposed conditions include a performance guarantee about tree preservation and some specifications for the construction of in-stream structures and timelines. He said he thinks they are excessive, given the fact that BES has already approved the method used to build the drainage facilities.

Commissioner Francesconi asked if the procedure would be delayed if these were added.

Mr. Faus said both parties have requested that the matter be delayed until they have had the opportunity to review the proposed modifications. They are in the record and while Council does have the right to modify conditions, it should consider the request of the parties to have further opportunity to comment.

Mr. Gerber clarified the staff and Hearings Officer position regarding adjustments. They recommend approval of the requested adjustment to the parking lot perimeter landscaping requirements for the east parking lot with the condition of approval. They do not recommend leaving the driveway in a graveled position.

Commissioner Hales said he intended to follow the Hearings Officer's recommendation with respect to the conditions but was under the impression that the modification to the loading area came subsequent to her decision.

Mr. Gerber said that is wrong as it was also contained in the Hearings Officer's decision.

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

Commissioner Francesconi said disagreement is very healthy and this debate has been very educational. He will vote to approve this center because he believes it is allowed in an Open Space zone under the current Code. Regarding transportation, the issue of the neighborhood collector

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street is worth exploring but is more aspirational than mandatory. He said he is not voting at this point to fund the operations of the center but only to approve the land-use decision. As Parks Commissioner he feels an obligation, given passage of Measure 47, to look at alternative capital construction needs in Southwest. He understands the need for a community center in Southwest but has to look at the alternatives. It is also very important to craft a Citywide policy for determining when Open Space will be used for non-open space reasons. The Parks Bureau is already working on that. The role of Parks in general needs to be looked at in regard to density and other concerns raised by the opponents. The Portland Futures document needs to be revised in light of changing circumstances -- growing density and the importance of neighborhood parks. That, however, cannot be done by changing the goal posts in a land-use hearing by changing the goal posts.

Commissioner Hales said Council must make its decision based on the Code. Council must apply its judgment and decide, for instance, whether the Transportation system is capable of safely supporting the proposed use. That is sometimes difficult when people are so split over the issues. One issue raised tonight is livability and whether the community will be safer or more livable if the center is built in Gabriel Park. He believes the testimony is compelling that a vital neighborhood is more than houses and green space nearby. It is also a place where people gather and where there are "eyes on the street." There will be more eyes on the park if it is used in this way, as is the case in seven other community centers in seven other parks. He believes the Hearings Officer was right and that the testimony heard tonight supports her decision. Second, he believes this decision is in conformance with the ASCP and that the transportation system is capable of safely supporting the proposed use. In fact, in both this case and the question of Open Space, Council would be making a tortured interpretation if it said you cannot build a community center at the intersection of two collector streets. That means they would always have to be on arterial streets. But how many want their 12-year olds to use arterial streets to get to a community center? That is a crazy notion. Third, there is the question of Open Space. If the Hearings Officer's decision were overturned, Council would have to accept an extreme and distorted idea of what the Open Space zone is about. For instance, there is not a blade of grass in Pioneer Courthouse Square, which has the same zoning designation as this site. Civic Stadium and the Portland International Raceway are other examples. Parks are capable of handling the recreational habits of all and do not all have to be empty. If one accepts the appellant's arguments, it would mean the City could not build club houses at golf courses. The site of the proposed community center is in the athletic center of the park, the northern third where all the ball fields are. It is as reasonable to build this facility in a park as to build a club house in a golf course. Personally, he has lost more sleep and had more arguments with neighbors over this issue than any other in the last four years. He believes strongly in the therapeutic value of Open Space but thinks there will still be lots of places to seek solace in Gabriel Park. But the corner with the sewage pumping station and busy intersection is not that place, as is shown by the fact that there is almost no one there most of the year. Most of the year it is an adult dog walk park. He said opponents should look at the record and see how many people talked about kids tonight. There were less than four mentions by opponents and more than 25 by supporters. The parks system is for kids too and so is this decision.

Commissioner Kafoury said she agrees with almost everything Commissioner Hales said. The proposal meets the criteria for siting a facility in Open Space and she does not believe the character of the neighborhood will be damaged. Public services, transportation and transit, are adequate though not superlative. Livability is perhaps more subjective but she believes it will be enhanced. She has done a lot of siting over the years of unpopular facilities like jails and homeless shelters but has been absolutely floored at the level of opposition to this center and cannot really understand

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what this means, whether it is fear of change, a reaction to growth or what. She hopes this does not signal a backing away from a sense of community as she believes a sense of separateness can develop without facilities like this. She said her aye vote is for all the kids in Southwest, whether rich or poor.

Commissioner Sten said this decision was not a done deal as he knows Council members have been struggling with this for weeks. The testimony of both sides was compelling and he sees the opposition's point very strongly. Where he is most troubled is that this qualifies under the land-use criteria but not under the aspirational goals. If anybody needs to meet the highest goals in the City, it is the City itself. He is troubled by the fact that the bus service is not good enough and that he likes the Multnomah and Wilson sites better. He will vote aye in this case, however, as this is a perfectly qualified place but he does question whether there is a better place. He said if this process was done right the next question is whether the City can afford to operate it in the light of Measure 47. All the other sites cost a lot more money and though he likes them better, he believes the citizens and Commissioner Hales made the best decision they could with the resources they have. If the City does not build this now, there will be no community center at all, given the current constraints. He hopes staff can work with Tri-Met to see about bus service and Sunday and similar issues. This is a very close decision for him. This is not a perfect site, as opponents have indicated, but this is not a perfect world and it can be improved by putting the center here.

Mayor Katz said she is voting aye but wants to address some of the issues raised by opponents apart from the land-use criteria. She said tension about this site arose last summer and many recall the discussion about who makes the decision about where a community center is located. Is it the Council or the Commissioner-in-Charge? She recalled that Commissioner Blumenauer raised that question and Council then decided to hold a public hearing to hear citizens. She has since decided that, under this form of government, it is the Commissioner-in-Charge who makes some of these very tough decisions, with and without citizens, and then brings them to the Council for a public hearing and deliberation. That was a difficult concept for everyone to accept and is one reason Council was very lenient in allowing the kind of testimony it heard at last summer's hearing, much of which was not on point. There was also a lot of anger and disappointment. Someone said "You are turning our good will against us." The choices Council will be making in the next 10 to 20 years, even next week, are much more difficult and controversial than those Council had to make in previous years. This is no longer a small, little town and is almost twice as large as when Council sat here in the good old 1970s. She said she hopes once the decision on the center has been made, the Southwest community will get back together and move on. Part of the fear is the fear of growing and what that means for one's neighbor, oneself, one's street and one's City. Council needs to revisit and talk more about this issue.

Mayor Katz said lack of trust and questioning of the democratic process concerns her probably more than anything else. There is the idea that if Council does not agree, it is not listening. Council is listening and this was not a done deal. Council members rarely talk to each other about any decision and she does not know ahead of time how they are going to vote in most cases. She said part of the joy in being Mayor is voting last and listening to the Council members give the reasons for their votes. Finally, all the Council members are concerned about the consequences of Ballot Measure 47. Council did not scream about the horrors that would result from its passage but did tell the public that serious choices would result. Today's decision is a quasi-judicial one and Council is absolutely right -- there is nothing else it can do but vote aye on the land-use decision. The next, and most critical issue, is whether the City can afford to operate the center. The City has the

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resources to build it, thanks to passage of the Parks bond measure, but she frankly does not know if the City will be able to operate it. Council made a lot of commitments prior to passage of Ballot Measure 47 to deal with growth and make the community more livable. All those commitments will be tested against each other and the center will have to compete with Broadway/Weidler, removal of the Lovejoy ramp, the Housing Investment Fund and a variety of projects that every Council member here has committed to. She asked citizens to join Council at the eight community budget forums scheduled this month to help make some of the decisions. She voted aye.

Disposition: Tentatively deny the appeal and approve the Hearings Officer's decision (Y-5). Applicant prepare findings for January 29, 1997 at 2:00 p.m., Time Certain.

At 9:45 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council