



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF MARCH, 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; Harry Auerbach, Deputy City Attorney, and Officer Chuck Bolliger, Sergeant at Arms.

Agenda No. 315 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 309** Accept bid of Halton Company for furnishing one self-propelled asphalt paver for \$179,590 (Purchasing Report - Bid 85)
- Disposition:** Accepted; prepare contract.
- 310** Accept bid of Halton Company for furnishing two 11,000 lb. diesel powered forklifts for \$84,486 (Purchasing Report - Bid 86)
- Disposition:** Accepted; prepare contract.
- 311** Accept bid of Werbin West Contracting, Inc. for 12", 8", 6" and 4" water mains, SE 87th, 89th and 104th Avenues for \$402,700 (Purchasing Report - Bid 112)
- Disposition:** Accepted; prepare contract.
- 312** Accept bid of KLB Construction for Tanner Creek stream diversion Phase 1, Unit 2, Project 5913 for \$1,263,055 (Purchasing Report - Bid 114)
- Disposition:** Accepted; prepare contract.
- 313** Accept bid of Moore Excavation, Inc. for Insley Basin CSO sump project, Unit 4, Phase I and II, Project 5498, for \$373,339 (Purchasing Report - Bid 120)
- Disposition:** Accepted; prepare contract.

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- 314** Accept bid of Brattain International Trucks, Inc. for furnishing three 18,000 GVW cab and chassis with dump body for \$104,955 (Purchasing Report - Bid 124)

Disposition: Accepted; prepare contract.

- 316** Accept bid of Moore Excavation, Inc. for SW 37th Avenue/SW Vesta Street local improvement for \$319,216 (Purchasing Report - Bid C-9875)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

- *317** Agreement to provide photographic developing services to the City of Vancouver (Ordinance)

Disposition: Ordinance No. 170975. (Y-5)

Commissioner Charlie Hales

- 318** Amend Portland Plant List (Ordinance)

Disposition: Passed to Second Reading March 19, 1997 at 9:30 a.m.

- *319** Authorize a contract with Andersen Pacific Contractors, Inc. for emergency slide repair on NW Skyline Blvd. and provide for payment (Ordinance)

Disposition: Ordinance No. 170976. (Y-5)

- *320** Authorize a contract with Copenhagen Utilities & Construction, Inc. for emergency slide repair on SW Boones Ferry Road and provide for payment (Ordinance)

Disposition: Ordinance No. 170977. (Y-5)

Commissioner Gretchen Miller Kafoury

- 321** Intergovernmental Agreement with the Department of State Police, Oregon Emergency Management, for Portland to provide training to local emergency management and disaster services personnel (Ordinance)

Disposition: Passed to Second Reading March 19, 1997 at 9:30 a.m.

- *322** Contract with Housing Development Center and Albina Community Bank for a loan guarantee on a Contractor Support Program project and provide for payment (Ordinance)

Disposition: Ordinance No. 170978. (Y-5)

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- *323** Agreement with the Oregon Community Foundation in the amount of \$150,275 to support the Neighborhood Partnership Fund programs to assist non-profit housing development organizations and provide for payment (Ordinance)

Disposition: Ordinance No. 170979. (Y-5)

- *324** Amend Agreement with Portland State University's Portland Educational Network, establish \$50,614 as the new budget for this contract, extend through June 30, 1997 and provide for payment (Ordinance; amend Agreement No. 30654)

Disposition: Ordinance No. 170980. (Y-5)

Commissioner Erik Sten

- 325** Accept completion of the NE 158th Avenue and private property sanitary trunk sewer, Project 5331, and authorize final payment to Moore Excavation, Inc. (Report; Contract No. 30531)

Disposition: Accepted.

- 326** Accept completion of the Alder Basin relief and reconstruction, Phase II, Unit 1, Project 5434, and authorize final payment to Moore Excavation, Inc. (Report; Contract No. 30558)

Disposition: Accepted.

- 327** Accept completion of the N. Overlook Terrace, south of N. Mason Street, sanitary sewer extension Project 5876 and authorize final payment to Moore Excavation, Inc. (Report; Contract No. 30962)

Disposition: Accepted.

- *328** Authorize a contract and provide for payment for the Alder Basin sewer reconstruction project Phase 3, Unit 1, Project 5886 (Ordinance)

Disposition: Ordinance No. 170981. (Y-5)

- *329** Issue a Purchase Order to the lowest responsible bidder to provide a digester heating boiler for the digester rehabilitation project at the Tryon Creek Wastewater Treatment Plant (Ordinance)

Disposition: Ordinance No. 170982. (Y-5)

- *330** Authorize a contract and provide for payment for the SE 37th and Gladstone sewer rehabilitation project, Project 5880 (Ordinance)

Disposition: Ordinance No. 170983. (Y-5)

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- *331** Authorize a contract and provide for payment for the Oregonian Basin CSO sump, Project 5291 (Ordinance)

Disposition: Ordinance No. 170984. (Y-5)

- 332** Authorize the purchase of fifty-three microcomputers for the Water Bureau through the State of Oregon Price Agreement and provide for payment (Second Reading Agenda 297)

Disposition: Ordinance No. 170985. (Y-5)

REGULAR AGENDA

- S-315** Accept bid of Portland Motorcycle Co. for furnishing six police motorcycles for \$56,928 (Amended Purchasing Report - Bid 125)

Discussion: Commissioner Kafoury moved the Substitute calling for a reduction in the number of motorcycles from seven to six. Commissioner Hales seconded and, hearing no objections, the Mayor so ordered.

Mayor Katz noted that the Police had originally requested far more motorcycles and that this number is being paid for out of a grant.

Disposition: Substitute accepted; prepare contract.

Commissioner Charlie Hales

- 333** Consider vacating a portion of NE 16th Avenue between NE Clackamas and NE Halsey Street, as initiated by Resolution No. 35585, to return unused rights-of-way to adjoining property owners for redevelopment (Hearing; Report; C-9931)

Disposition: Approved; City Engineer prepare ordinance.

- 334** Vacate a portion of NE 16th Avenue south of NE Halsey Street (Ordinance by Order of Council; C-9931)

Disposition: Passed to Second Reading March 19, 1997 at 9:30 a.m.

- 335** Encourage Multnomah County to widen the sidewalks on the Hawthorne Bridge as part of the deck reconstruction and bridge repainting project in 1997-98 (Resolution)

Discussion: Commissioner Hales said this is a statement by the City and those interested in a balanced transportation system to not lose this opportunity, during major renovation, to make the Hawthorne bridge function better for pedestrians and bicyclists.

Citizens speaking in support of the resolution included:

Zephyr Moore, no address stated
Karen Frost Mecey, Executive Director, Bicycle Transportation Alliance

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Patrick Franz, no address stated

They described the need for safer passageways for bikers, pedestrians and the disabled across the Hawthorne Bridge, especially as more and more people use it.

Commissioner Francesconi said the bicycle crossing over the Steel Bridge is also important and he hopes money for these and other improvements on Transportation's list would not be diverted from that.

Ms. Mecey said that was not a high priority with the bicycle community. She said she is disappointed that the County has not come up with the money. If projects need to be shifted that is disappointing, but this work needs to be done no matter what.

Commissioner Hales said the bridge has needed these improvements for decades. This resolution urges the County to close the Hawthorne Bridge for a full year in order to do this right. He said other transportation funds should be used to fill any gaps here, either through the regional process or (if worse comes to worse) through our own resources, but other pedestrian bicycle projects should not be beggared. Perhaps the timing can be shifted and he hopes the legislature will grant more funds for such projects.

Commissioner Francesconi noted the long-time vision to complete the 40-mile loop and the East Bank Esplanade. A feasibility study is currently underway and there is some controversy about the Parks Bureau using ISTEA money for this. The possibility of taking this money and redirecting it to the Hawthorne Bridge is disturbing as the Parks Bureau has already let a contract out on this. He asked for assurances that the money for this study or the money the Portland Office of Transportation (PDOT) is using for the Steel Bridge connection will not be redirected.

Elsa Coleman, Office of Transportation, said Transportation will ensure that all projects will proceed as they come on line.

Commissioner Francesconi asked if the Hawthorne Bridge comes on line before the Parks contract, will the money go to the Bridge.

Ms. Coleman said the money would go to the Hawthorne Bridge to ensure that it can go forward with widened sidewalks. PDOT is committed to ensuring, through cash flow management, that other approved projects will not be held up even if they come on line the very next day. The region understands this is a difficult challenge and conversations are underway about how to handle this.

Mayor Katz asked where they will find the funds.

Ms. Coleman said they do not yet know what amount will be available from the County. They are also very optimistic that new revenues from the gas tax will be available to the region and the region has agreed that these projects are important.

Mayor Katz clarified that this was the region's share, not the City's, and that Council has not even seen the projections yet.

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Ms. Coleman said the estimated cost for the Hawthorne Bridge is \$1.3 million to widen the sidewalks and \$17.5 million to paint the bridge.

Disposition: Resolution No. 35590. (Y-5)

307 TIME CERTAIN: 9:45 AM - Approve the Memorandum of Understanding (MOU) with Hoyt Street Properties, LLC (HSP), authorize the Portland Development Commission to prepare a Development Agreement with HSP and direct the respective City Bureaus to undertake certain activities related to the MOU (Resolution introduced by Mayor Katz)

Discussion: Bruce Allen, Portland Development Commission (PDC), described the River District model on view in Council Chambers.

Robert Ames, Chair, River District Steering Committee, said 3,000 new mixed-income housing units are planned by HSP on 35 acres of privately-owned land. The revised MOU before Council today addresses the great majority of issues raised and has involved two years of negotiating. This is a good deal for the City although work will continue with the stakeholders and others, such as the League of Women Voters, who have expressed concerns. Plans for the final design, the open space, access to the river and achieving a healthy mix of housing types are still being finalized. Now is the time to secure the necessary funds, particularly at the federal level, to accomplish all the public investments called for in the plan. A formal development agreement will come next, signalling that Portland is doing something that no other city has even tried.

Larry Dully, PDC, said the MOU outlines the business terms for a legally binding agreement between the City and HSP as the City makes key investments to facilitate development of the River District, which is actually over 100 acres. He noted that language regarding housing affordability had been added to the MOU to reflect concerns raised at the Council Informal held two weeks ago. The League of Women Voters would still like more precise and prescriptive planning for the area and a better business deal for the City. He outlined the changes made to the MOU since the Informal. These include additional language concerning the daylighting of Tanner Creek, the Tanner Creek Park and the water feature. HSP has also gone on record in support of pedestrian accessways through the larger blocks. Housing affordability goals have been attached.

Commissioner Sten said these are probably the most aggressive goals anywhere in the country for a mixed-income development.

Mr. Dully said the goal is to have 5,500 units in the entire River district. About 800 to 1,400 units would be for extremely low/low income housing; moderate income would accommodate 1,100 to 1,700; and market rate housing would comprise 3,000 to 3,600 units. If the City goes ahead with the three key features -- removal of the Lovejoy ramp, the Streetcar and water feature -- then HSP could be required to do up to 2,900 of those 5,500 units. To date they have already done 456 and another 425 are underway, of which 200 are low income housing. With the PDC Union Station project, all the housing goals are being met. The goal HSP is being held to is for the entire River District so if other parties meet their goals HSP would have to do less. If other parties do not do as well, HSP will have to do more. He described the language specifying the circumstances that would allow the City to

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purchase, or cause to be developed, up to five pieces of property from HSP if it has not met the goals for the district. He also described one clarification, which adds a provision on reasonableness on Page 14, if Council wishes. He read the insertion language.

Commissioner Francesconi said the League of Women Voters raised a legitimate question regarding the land price the City would have to pay once the public infrastructure has been built. It would be much higher.

Mr. Dully said if the City exercises its right to buy, each side would hire an appraiser and if they do not agree, a third appraiser will be hired whose decision is binding. Then an appraiser will calculate the value of the City's investment, such as removal of the Lovejoy ramp, and any demonstrated added value would be discounted from the sales price. He noted HSF has to dedicate and build the local streets.

Commissioner Sten asked if there is a simpler way to get at the price, such as taking the average of two appraisals and discounting it by "x." If the City's improvements are more than that, it loses; if more, HSP loses.

Mr. Dully said he would be happy to explore a simpler way though they worked a long time to develop this method. He noted that the right to purchase land when the necessary financing is not in place is limited to two projects.

Commissioner Sten said everyone agrees that to reach 30 to 50 percent of median income, housing must be subsidized. There is no way around that. The issue is what is a fair price for the City to pay for housing. No one can say what that is. The concept he proposes is that if the City does not agree that the price the developer is asking is reasonable, then it has the right to develop the housing itself on the same terms the developer was given. He said this will give the City some leverage if an impasse is reached, which he does not actually think will happen. However, what the new agreement says is the City can counter-propose and then buy it back. This is a new concept that does not need to be there.

Commissioner Sten said his second concern is about the MOU language which says that during the 12 month period after no agreement is reached, the City may also attempt to secure another private entity. The word "private" needs to be deleted because, if the City can do it itself, it ought to do so. Those are the changes he would like to see. The whole concept that the City be allowed to purchase was final in his mind and he is less concerned about the appraised value. That language is relatively vague but needs to be in order to allow both sides to negotiate. He said he is completely in favor of this and the idea that the City can get 500 very low income housing units with no public money is crazy. The way the City retains its leverage is important and this concept changes it dramatically.

Mr. Dully said the only way to repurchase is if the City substantially modifies the terms to another party. Or, if construction does not begin 12 months after conveyance. It basically says that if the deal is substantially changed or if it never begins, then repurchase kicks in. Regarding the word "private," he said a non-profit could probably do the project cheaper than HSP and use of the word "private" provides a level playing field.

Commissioner Sten said the issue is how much the City pays for housing. The City ought to

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pay HSP at best an amount equal to what it could do on vacant land. The housing is going to cost a lot more money than HSP has but how much it takes is the difference between a good and bad deal and whether a developer is making more money than he deserves. To say that Hoyt would not have to match a cheaper price is unacceptable. If a non-profit group can do it cheaper it should be able to. At best housing will cost a lot more than HSP can put in.

Commissioner Francesconi asked if the City is foreclosed from doing the housing itself.

Mr. Dully said that would be precluded if the City brought in a non-profit or did it itself under substantially different terms than it had set for HSP.

Commissioner Sten said the City does not have the right to buy the property to begin with.

Mr. Ames said the repurchase provision protects the developer so the City does not take the property and then change the deal to the advantage of some other party. As he reads it, it precludes the City from offering a better deal to another private entity but does not preclude the City from doing it itself.

Commissioner Francesconi said he would like that clarified.

Harry Auerbach, Deputy City Attorney, said Council could make that clear by adding a statement that nothing prohibits the City from developing the property itself. Another point to clarify is closing of the conveyance to a third party entity in the repurchase provision.

Mayor Katz said she would like that to come back with those clarifications.

Mr. Dully said Pages 18 to 20 have additional clarifying language requested by both Transportation and the City Attorney relating to the conveyance of rights-of-way.

Commissioner Kafoury said an issue was raised about how flexible the language about the water feature is. There is concern that the City is not locked into building a huge one if resources are not available.

Mr. Ames said the River District Association has made it clear that it wants to see a large water feature. This language is probably more liberal than some will find acceptable. He pointed out the language on Page 6.

Mayor Katz said the River District Association has a wonderful vision, perhaps bigger than the City can afford today. She intends to work with all the parties to give the designers and the community some criteria for a water feature and let people begin working on other designs. Unless private dollars are available, the City has to be realistic.

Commissioner Francesconi said when the City is spending as much as it is on the streetcar, the park and water feature, he wants to make sure there is a mixed income neighborhood that will benefit. Under this agreement, the City is not bound to do anything regarding the streetcar or the basin.

Mr. Ames said yes, but it then does not get the same density.

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Mr. Dully said if the City proceeds with the streetcar, that triggers a \$700,000 local improvement district and increased density. The same thing is true of the water feature, although if it is not built after three years, the City will have to decide how much land it wants to hold. If the ramp is not removed within 18 months after the development agreement is signed, the developer is no longer required to meet the housing goals at 87 units per acre. Basically, the City decides when it wants to make these investments and then HSP responds with affordability and density requirements.

Commissioner Francesconi said some people believe the area will build to that density anyway, even without removing the ramp. Why is its removal critical to increasing density?

Mr. Dully said there is an economic boom time right now but who knows what will happen five to 10 years from now. This locks HSP into doing urban, dense development with affordable housing. If this agreement were not in place, the current zoning calls for only 15 housing units per acre.

Mr. Ames said the City has a unique developer here who owns a substantial land mass ready for development and who also has chosen to do this project over a more protracted period of time than many others could do. The developer is really guessing at the approximate rate of return and financing.

Commissioner Francesconi said Council cannot make public policy based on Homer Williams' good intentions. The legal effect of the document is that it passes with the land, regardless of who the developer is.

Mr. Dully agreed that is correct.

Mr. Ames said the value of the land could be reduced with all these restrictions, if certain economic changes occur.

Mr. Dully said the next step is to translate this MOU into a legally binding agreement. The negotiating team will brief Council and other interested parties. The business concepts will be consistent with what is in the MOU although some of the legal items will be clarified during the negotiating process. The goal is to return to Council by April 15, 1997.

Mayor Katz said she would like the parties to return this afternoon with new language reflecting the direction Council wants to go.

Mr. Auerbach said that can be done.

Commissioner Francesconi asked about the role of the neighborhoods in planning parks and schools.

Mr. Dully said the River District Steering Committee, composed of City officials and neighborhood organizations, has ongoing discussions and the dialogue will continue on those issues.

Mayor Katz said one issue is retaining a neighborhood scale.

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Mr. Dully said the Pearl District Neighborhood Association is proud of the fact that they want density and diversity and will be a very positive player.

Homer Williams, HSP, said this process has gone on for several years and is now at the point where the vision can be implemented. He said his company is committed to the affordable housing and density. He does not see anything that cannot be resolved very shortly.

Commissioner Hales said this is a case where the City is trying to foster development of a whole neighborhood. Such agreements have successfully occurred in the past in such places as Ladd's Addition and Eastmoreland. He said he hopes Mr. Williams still has the vision as people do make a difference and it is not just a matter of requiring rote compliance with legal agreements.

Mr. Williams said this is a unique opportunity and he is anxious to get going.

Commissioner Francesconi asked about inclusionary zoning, which he is pushing for the Urban Reserves, and why that would be difficult to impose in the River District. If low-income housing is required, without any subsidy, the price goes up on the other homes.

Mr. Williams said if inclusionary zoning is adopted, it must be Citywide because otherwise housing on one block may not be competitive with housing two blocks away on another development. The issue of affordability is a big one that has no quick solution.

Commissioner Sten said investors are going to ask a certain level of return and everything above that can be considered extraordinary profit. The City's goal is to provide 30 to 50 percent medium/low-income units and historically the City has put about \$50,000 to \$80,000 into those types of units. He sees no way to reach this goal without subsidies and to the extent the City forces builders, without any subsidy, to put 80 percent into a certain type of unit, that eats up the pool of money available. The question becomes how much the City should have to pay, in partnership with Mr. Williams and others, to get those units for the very poor. No one yet knows what the price will be. What he is trying to do is get a clause that says the amount that the City pays for those very low-income units is reasonable, giving the City a lot of leverage if it believes it is not getting a reasonable deal.

Commissioner Francesconi said the biggest concern in the region is for housing for those at 30 percent or less of median income. But another concern is starter homes for working-class people. His concern about putting inclusionary zoning on too narrow an area is that it will dramatically raise the cost of the remaining units. There needs to be a regional approach to this.

Mr. Williams said some solutions need to be found as housing prices are still skyrocketing although he does not agree that is due to the imposition of the Urban Growth Boundary.

Commissioner Francesconi said the City has to come up with a way to get funding for lower income housing, perhaps through a real estate transfer tax.

Neilson Abeel, President, Pearl District Association, recommended adoption of the MOU as a first step despite the remaining concerns.

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Tom Moore, Pearl District Planning Committee and Willamette Pedestrian Coalition, said the MOU addresses several important pedestrian issues. It maintains 200 feet of alignment and public streets, especially important because of the streetcar.

John Rodgers, Portland Organizing Project, 5425 NE 27th, said their concern is finding the correct balance between public investment and public benefit, and between public investment and private gain. He said that still needs to be clarified and recommended tabling this MOU until better data is available.

Susan Emmons, Northwest Pilot Project, said this is a beautiful vision with no specifics about housing goals. She said the income from the high and medium-income housing should subsidize the lower-income units and not require any subsidy. She said the City should not rely on the developer's good will; the question is how much money he makes. Ms. Emmons said the City should require that 300 of the first 3,000 units be studios renting for \$300 per month.

Commissioner Sten said he needs to see the numbers on the developer's costs and margins.

Shelley Lorenzen, League of Women Voters, said the question for the League is whether this is the best deal possible for taxpayers. More time is needed for review and comment. She said the MOU and development agreement are not precisely worded and this is important if disputes arise. She described the MOU as a "density for dollars" deal and said the 87 units per acre for the Lovejoy Ramp project gives the City little more than it can already expect from the market, making the City-financed improvements questionable. The River District is now the hottest market in town and they believe it will continue to be. It makes little sense to spend substantial but scarce tax dollars to make an already very good investment for the developers even better. The League also worries that the desired densities are at risk because the money required for future projects may not be obtainable and the City does not know if it can live up to its end of the bargain. She said if Metro does not provide money for the Lovejoy Ramp, under the MOU the developers are contractually free to do whatever they want. It makes more sense to wait until Metro makes a decision about its share before proceeding. The League supports this project but believes there is too much reliance on public funding and that it provides too much benefit to the developers.

Commissioner Francesconi asked Ms. Lorenzen if she could identify specific language in the agreement that she thought was too loose.

Ms. Lorenzen said she had proposed some new language to Commissioner Sten on the affordable housing and that issue appears to have been taken care of. They believe there is very vague language throughout the document that should be reviewed by the drafters of the document.

Commissioner Francesconi said rezoning would take a long time and the City would never get to 80 units per acre unless the ramp comes down. He said the public investment in taking down the ramp is worth the tradeoff for the density if they can also get more affordable housing.

Ms. Lorenzen said the League agrees there should be some tradeoffs. The question is

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whether the City is getting anything for the bargain it is striking. Without the ramp coming down, what densities would be built? Right now projects are going in at over 87 units per acre with the ramp in place.

Commissioner Francesconi said he does not think it would be developed at 87 units of housing per acre because of the ramp, although he may be wrong.

Ms. Lorenzen said nothing in the agreement compels Mr. Williams to build the housing if it does not make economic sense for him, and she fails to see any big risk for him. She said more specifics on the affordable housing provisions are also needed, as there are no incentives now for Mr. Williams to build affordable housing.

Mayor Katz noted that this is a Memo of Understanding, not a contract.

Garry Papers, Urban Design Committee, American Institute of Architects, said they have been carefully monitoring this project and suggest a number of revisions to the map regarding: 1) street connectivity on the super blocks; 2) the location and quality of open spaces; 3) siting of institutions and public facilities; and 4) commercial and neighborhood amenities.

Commissioner Francesconi asked if this is the end of the planning process.

Commissioner Hales said with adoption of the River District Design Guidelines, the development agreement will be more specific about these things. He emphasized that this is not the contract.

Mr. Papers said all the River District is zoned EX and the uses are completely up in the air.

Brian Symes, 3737 SW 87th, 97225, said this is a very loose agreement without sufficient detail. He compared it to a "bait and switch plan" because the models do not match the MOU, creating large super blocks which cut people off.

John Feit, AIA member, 1211 SW 5th Ave., 97204, also called for more definitive plans and specific proposals for the location of civic amenities and neighborhood services. He asked Council to postpone its decision until these are presented, as well as a more diversified open space plan.

Grant Greyer, Pearl District resident, 1009 NW Hoyt, 97209, said the MOU locks in the connection of Tanner Creek to the Willamette and suggested amendment language that adds some other less expensive options.

Pamela Alegria, Willamette Pedestrian Coalition, opposed creation of super blocks and supported a requirement for 200-foot blocks. She said pedestrian access should be required, not just desired, and that the current plan undermines pedestrian needs. She also opposed the creation of private streets.

Zack Semke, Coalition for a Livable Future, said the MOU should ask for more infrastructure investments from the developer, such as lowering the ramp or creating Tanner Park. The

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current one does not ask for anything the market would not provide on its own.

Commissioner Francesconi asked if the Coalition has hard numbers on the housing costs.

Tasha Harmon, Coalition for Livable Future, said they do not yet have the housing numbers. They have put a team together to see what is possible although they are still frustrated by the abstractions.

Mayor Katz asked what the Coalition has been able to accomplish regionally.

Ms. Harmon said they are working with Metro on inclusionary zoning.

Commissioner Sten said he favors signing the MOU today as the City needs to move forward with getting the Lovejoy ramp taken down.

Commissioner Hales said he is glad to see advocates active on a regional level and other entities need to be held to the same standard the City is.

Commissioner Francesconi asked about the 200-foot block issue.

Commissioner Hales asked about the effect of current design standards on pedestrian connections.

Mr. Dully said the question is how to get 5,000 housing units in the River District along with park space and an exciting urban scale. The ability to provide larger blocks, such as exist in Northwest Portland, makes more housing more feasible. Specifics about such issues as pedestrian access are land-use decisions and this MOU sets up a business framework but does not pre-empt any design or conditional use reviews. The River District Design Guidelines and Master Plan will deal with many of the issues raised today. The MOU does allow, however, for bigger and wider blocks on the same scale that is in place on the South Park Blocks, allowing for pedestrian connectivity and more housing units.

Commissioner Francesconi said he is confused about whether the development agreement or the Master Plan addresses the design issues that have been raised.

Mr. Dully said PDC's intention was to have the MOU outline the business terms of a development agreement, not add design details.

Commissioner Francesconi said he does not want the agreement to preclude these things.

Mr. Dully said one of the challenges is what to do when and there is no way to guarantee exactly what happens when.

Commissioner Francesconi said the MOU says (on Page 8) the Master Plan amendment shall only include the following, thus limiting its ability to address unforeseen issues.

Mr. Allen said they wanted to make sure the amendment regarding Open Space stood on its own in case the Hearings Officer or Council rejected the Master Plan amendment for other

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reasons. They do not want to jeopardize Tanner Park because of a possible amendment to the Master Plan.

Commissioner Francesconi asked the City Attorney to make sure these issues are not foreclosed by the language in the MOU.

Commissioner Hales said there is some confusion about what the controlling legal authority is for both the project's design and the extent of the right-of-way. Is the authority in the development review process only or is it nailed down further in the Master Plan and development agreements.

Mr. Dully said, according to the City Attorney, they must have a development agreement and a Master Plan that reflects that agreement, at a minimum. They have to make sure developers are not able to do 15 units per acre, which is what the current zoning allows. There are super blocks in the current Master Plan which Council may want to modify. Right-of-way and River District guidelines apply regardless of whether anything is done. The Master Plan needs to be amended to eliminate any loopholes.

Mayor Katz said she wants the Planning Bureau to respond to that.

Commissioner Francesconi asked whether spending \$15 million for the Centennial Mill site was realistic and whether there was some flexibility regarding Tanner Park.

Mr. Dully said the agreement calls for a minimum 45,000 square feet for Tanner Park and a maximum of 155,000 square feet. By entering the agreement with HSP, the City is not obligated to buy the Mill.

Commissioner Francesconi said the size of the park would be limited without that parcel, however, and asked if another parcel was obtainable.

Mr. Dully said Mr. Geyer suggested that by rearranging the location of the Park there would be no net increase in the amount of Open Space. That may be true but they need to go through the park design and planning analysis first.

Commissioner Hales suggested adopting the amendment language Mr. Geyer suggested adding Tanner Creek Park to the section stating that the size, location and type of water feature may vary significantly.

Mr. Allen said the Tanner Creek Park location has generally been agreed to by everyone although the water feature itself may need more study because of the cost. There are more options about the water feature property.

Mr. Dully said the MOU spells out the maximum and minimum size of the water feature and the location. If you change to a new location, that is a different business matter.

Commissioner Hales asked why PDC included the language at all on Page 6 regarding the significant variation of the water feature.

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Mr. Dully said Parks Bureau staff felt it was important to point out that when the planning effort was done, the design of the water feature property may look quite different and did not want to mislead anyone. Some people think it should be 130 or 150 feet wide and that analysis will occur.

Commissioner Francesconi asked if widening it will take area away that was supposed to be used for housing.

Mr. Dully said yes, if you make it more than 220 feet total it will take away from the area where there is housing.

Council agreed to discuss this and the other issues over the noon hour and return to Council in the afternoon with some amendment language.

Mayor Katz said this MOU is a business document outlining the responsibilities of the City and the developer on this project. The question for her is at what point will the design issues be dealt with and she wants that response from the Planning Bureau this afternoon.

Disposition: Continued to March 12, 1997 at 2:00 p.m.

***308** **TIME CERTAIN: 10:00 AM** - Adjust the FY 1996-97 Adopted Budget for Period One Adjustments (Ordinance introduced by Mayor Katz)

Discussion: David Agazzi, Director, Office of Financial Planning, said this ordinance does three things: 1) approves new appropriations, either as a result of new revenues from contingency; 2) makes technical adjustments; and 3) adds a minor supplemental that increases the budget by \$603,000 as a result of new revenues.

Disposition: Ordinance No. 170986. (Y-5)

336 Encourage Metro Council to approve funding for widening the sidewalks on the Hawthorne Bridge as part of the deck reconstruction and bridge repainting project in 1997-98 (Resolution)

Disposition: Resolution No. 35591. (Y-5)

***337** Authorize a State Historic Preservation Office grant application requesting \$2,000 to augment the funding of the Historic Landmarks Commission's Historic Preservation Awards program (Ordinance)

Disposition: Ordinance No. 170987. (Y-5)

***338** Authorize a State Historic Preservation Office grant application requesting \$36,000 to augment the funding of the program to prepare national register nominations for Historic Districts and Main Streets in the City of Portland (Ordinance)

Disposition: Ordinance No. 170988. (Y-5)

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- *339** Contract with David Evans and Associates, Inc. for transportation services for the South Portland Circulation Study (Ordinance)

Discussion: John Perry, Corbett/Terwilliger/Lair Hill Neighborhood Association, distributed a map of the study area and noted that this affects the oldest residential neighborhood in Portland, now unfortunately separated by the road system. Removal of the road system along Front Street would revitalize and reconnect three neighborhoods and could also free up 13 acres for redevelopment.

Disposition: Ordinance No. 170989. (Y-5)

Commissioner Gretchen Miller Kafoury

- *340** Amend loan agreement with the Oregon Film and Video Foundation, signed October 22, 1996, to extend loan due date (Ordinance; amend Agreement No. 50793)

Discussion: Rick Metzger, Board Chair, Hollywood Business Association, said an angel has appeared and, with a five-year extension on the loan, purchase can be guaranteed.

Disposition: Ordinance No. 170990. (Y-5)

City Auditor Barbara Clark

- 341** Assess benefitted property for the cost of street, storm sewers, sidewalks, street lighting, water, sanitary sewer and other improvements in the NW 11th Avenue/NW Hoyt Street Local Improvement District (Previous Agenda 272; C-9894)

Disposition: Continued to March 26, 1997 at 9:30 a.m.

Communications

- 342** Request of Lanny Swerdlow to address Council regarding operation of his business, Evolution (Communication)

Discussion: Lanny Swerdlow, owner of Evolution, explained the operation of his business, a gay and lesbian youth club.

Commissioner Francesconi noted that Mr. Swerdlow signed a Stipulated Agreement that he would no longer operate City Niteclub. After that closed, however, he immediately reopened this club. What is the difference.

Mr. Swerdlow said he signed the agreement because he ran out of money and wanted to sell. He had no intention then of running another club but could not find a buyer.

Commissioner Francesconi said there is a need for such places but he has questions about how this operation differs from the one that was shut down.

Mr. Swerdlow said he is not operating any differently than before. He asked the police to

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offer suggestions for improvements but they failed to make any.

Commissioner Francesconi asked if he had talked to Phoenix Rising about integrating what they do with his operation.

Mr. Swerdlow said he asked them, and other such organizations, to come to the club but none have, except for Cascade Aids.

Disposition: Placed on File.

At 12:30 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF MARCH, 1997 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Kafoury and Sten, 4.

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

307 **TIME CERTAIN: 9:45 AM** - Approve the Memorandum of Understanding (MOU) with Hoyt Street Properties, LLC (HSP), authorize the Portland Development Commission to prepare a Development Agreement with HSP and direct the respective City Bureaus to undertake certain activities related to the MOU (Resolution continued from March 12, 1997 9:30 a.m. session)

Discussion: Mayor Katz said a lot of design and other issues still need to be discussed, but not through this MOU. She noted that Council had asked the parties to meet over the noon hour to prepare amended language regarding the concepts discussed this morning, even though this is not a legally binding document.

Larry Dully, Portland Development Commission (PDC), read Amendment No. 1, which would replace the first three paragraphs on Page 14 regarding the steps that may be taken if HSP submits an application that is not funded on a reasonably equivalent basis or within a time frame similar to what is offered other affordable housing projects in the City. Options include allowing the City to develop the property itself or to seek another entity to do so.

Commissioner Kafoury moved its adoption. Commissioner Sten seconded and the motion carried. (Y-4)

Mr. Dully said the second issue raised was about the planning and design process for Tanner Creek, including the park and the water feature. He said PDC believes the MOU already has sufficient flexibility and proposes no changes.

Bruce Allen, PDC, said the neighborhood association also thought the City should not do too much tinkering with the location of Tanner Creek, although everyone agrees another look at the water feature is needed.

Commissioner Kafoury said the record will show Council's support for a flexible, realistic water feature.

Mayor Katz noted a concern about specifying what would be done when, and through what documents.

David Knowles, Planning Bureau Director, summarized the regulatory framework that will be in place following passage of the MOU. The first layer is the Central City Plan which lays out the fundamental guidelines, followed by more specific plans and policies as laid out in the

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River District Plan, the River District Right-of-Way Framework Plan and the River District Design Guidelines. These cover such elements as open space, block structures, building heights, etc., that get at the quality issues raised by the League of Women Voters and other groups. He noted that these plans were the result of intensive neighborhood input and that the MOU is consistent with all those documents. Mr. Knowles noted that the Master Plan has some things the City does not want, such as 600-foot blocks, and some things it does want, such as street dedication. That is why the MOU calls for an amendment to the Master Plan to conform to the planning documents and provide a modified block structure consistent with the MOU. Several blocks would be 300 by 400 feet but that results in additional open space. That is 100 feet wider than the traditional Northwest Portland or Irvington block and access ways will be required through those blocks. The final piece, the development agreement, will deal with density and infrastructure. The MOU shows what the density will be on specific blocks.

Mayor Katz said these issues will return to Council through the Master Plan review.

Mr. Allen explained a proposed amendment regarding the last paragraph on Page 20 (paragraph 8) to change the second sentence to add the word "not" between the words "shall" and "constitute."

Commissioner Sten moved to amend Item 8 to add the word "not." Commissioner Kafoury seconded and the motion carried. (Y-4)

Commissioner Francesconi asked, regarding the issue of the purchase price of land by the City, if language would be included to state that the price can be reduced if it can be shown that the improvements made by the City have driven up the price.

Mr. Dully said they will do that.

Commissioner Francesconi said he will vote yes because the ramp needs to come down and the \$3 million cost to the City is reasonable. He said he is worried about the ability of the City to deliver a broad range of housing in the Central City and noted that the job growth there is the lowest in the region. This project will help contribute to the economic strategy for downtown. He said he hopes Council can look at housing affordability before committing on the streetcar and Tanner Creek basin.

Commissioner Kafoury said this is a very aggressive and responsible approach although she understands the nervousness of some groups. She said the City is getting a lot more here than just buying density and the land set aside for open space and housing makes this worthy of public investment.

Commissioner Sten said this is an exciting project and the worse case scenario is that a vacant, decrepit area will be built out. He said this is the best mixed-income project in the City and he believes the City has enough leverage here to make this not just a good but a great project.

Mayor Katz said this shows the City's commitment to maintaining the Urban Growth boundary and noted that this abandoned land provides one of the few opportunities the City

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has to create a new neighborhood and meet Metro 2040 goals. She said the district will have design standards and, along with higher density, there will be infrastructure improvements including a commitment from the School District for a new school.

Disposition: Resolution No. 35592 as amended. (Y-5)

343 TIME CERTAIN: 2:00 PM - Appeal of Downtown Community Association against Design Commission's decision to approve application of Alder and Morrison Block, a General Partnership, for a design review to develop a 23-story office building with retail space and six stories of parking located at the block between SW 2nd, SW 3rd, SW Morrison and SW Alder (Hearing; 96-01017 DZ)

Discussion: Kathryn Beaumont, Senior Deputy City Attorney, said two process issues have been raised. The first is whether a proper appeal is before Council and the second is whether this should be an evidentiary or on-the-record hearing. Regarding the first issue, the applicant contends this is an invalid appeal because the request for a fee waiver did not conform to Code requirements and there was no timely payment of the appeal fee. The appellant, the Downtown Community Association (DCA), contends that the fee waiver is appropriate and that the Planning Director's decision on the waiver is final. Ms. Beaumont said she has reviewed the arguments of both and noted that in similar circumstances Council has dismissed appeals by a neighborhood association when the decision to appeal was not made in an open meeting in a timely fashion. She said the necessary prerequisites for a valid appeal have not been met and suggested this be dismissed. Ms. Beaumont said recognized organizations may request a fee waiver if the appeal has been approved beforehand by a vote of the general membership of the board or the land-use subcommittee in an open meeting. In this case, the land-use chair conferred with the neighborhood association chair and decided to file an appeal. The decision to ratify this action was made two days after the appeal period elapsed.

The second procedural issue regards the neighborhood association's request for an evidentiary hearing on the grounds that one of the Design Commission members had a conflict of interest and should have recused himself. The neighborhood association believes the only way to cure that is to hold an evidentiary hearing.

David Knowles, Planning Bureau Director, said Chris Kopka, a member of the Design Commission, consulted with him and with staff and was told he could participate after disclosing his conflict of interest. That was incorrect advice in this case as Mr. Kopka should have recused himself because his company has a financial interest in the building. The responsibility for this error lies with the Planning Bureau. Mr. Kopka would not have participated except that his vote was necessary to constitute a quorum.

Ms. Beaumont said the appellant says the only cure is an evidentiary hearing while the applicant contends there was no error in the way the evidence was collected by the Design Commission and the Council can conduct a de novo review by simply looking at the evidence made before the Commission and hearing arguments about whether this design should be approved. She does not believe Council needs to hold an evidentiary hearing in order to cure the error and believes it can reach an independent decision on its own. However, Council could hold an evidentiary hearing, if it wishes, or remand this back to the Commission. She

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added that the City is operating under the 120-day clock and not a huge amount of time is left.

Mr. Knowles asked if Council could also look at the other votes on that decision by the Design Commission, knowing that even if Mr. Kopka had not participated there was a decision.

Ms. Beaumont said yes.

Commissioner Francesconi said he would like to hear the appellants respond to the legal question. Council decided to allow each side five minutes to address this.

Bob Stacey, Jr., attorney for the applicant, said the appeal was filed on the last day required for a waiver and falsely stated that the DCA Board and Land Use Committee had voted to appeal. He said this surprised his client who had hoped to have a further opportunity to meet with the DCA and should, as residents, been invited to attend that open meeting. That did not happen as there was no open meeting. He said the Code language stating that the Planning Director's decision on the fee waiver is final means an aggrieved party cannot appeal the fee waiver decision to the Hearings Officer or Council. This is not a review of the fee waiver decision; the issue is whether the land use appeal was properly filed. They believe it clearly was not as the DCA made a false statement and did not abide by its own by-laws allowing affected applicants to participate.

Tim Sercombe, attorney representing the DCA, said it is up to Council to determine if belated compliance with the Code waiver provision still allows an appeal to go forward. He noted that a fee waiver was granted by the Planning Director and the Code says that decision is final. That is the Director's decision, not the Council's. He said the waiver was proper; it was authorized by the land-use committee and ultimately authorized by the DCA board. While it was authorized after the appeal was filed, it was consistent with the DCA by-laws. The DCA wants to address the merits of the appeal, the design of this building, traffic issues, etc., and Council should not be distracted by this process issue or dismiss this appeal on a technicality. He said the Design Commission's decision was legally flawed and this may have consequences apart from this appeal.

Commissioner Kafoury asked if the DCA is saying it does not really matter if the organization met the requirements and voted later. She said her reading is that the vote has to be taken before filing the appeal.

Mr. Sercombe said they believe the appeal is valid as long as the vote is taken before the date the fee waiver is granted.

Commissioner Sten asked if he believes one person in the neighborhood association can ignore the deadline, which is there to give certainty to a developer, and file an appeal regardless of that association's position or whether any meeting has been held.

Mr. Sercombe said all neighborhood associations have rules about who is authorized to file an appeal. The City has small windows of time in which to appeal and sometimes this does not allow for a full meeting of the neighborhood group in order to file within that window.

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The DCA allows the president to authorize an appeal if it is then ratified by the appropriate people later.

Commissioner Kafoury disagreed and asked about the by-laws which state the association will work with the developer. She said a basic tenet of the City is to have people work these things out without coming to Council. In this case the developers might have agreed to do all the things the DCA lists in its appeal if they had been asked to the meeting.

Mr. Sercombe said the DCA has been meeting with the developer. He said the issue of the fee waiver and its timing is a different issue than whether the person who filed the appeal had that authority.

Commissioner Kafoury said when one or two people are able to file an appeal it flies against everything Council believes about the neighborhood role in land use.

Commissioner Francesconi asked if it is true that a false statement was included in the application.

Mr. Sercombe said it is true that when the form was filed the neighborhood group had not approved it, although the form indicated that it had been. The meeting was scheduled two days later.

Commissioner Francesconi said Mr. Sercombe is saying that Council cannot look behind a false statement. He asked him if he thought the legal opinion was wrong.

Mr. Sercombe said he yes because it dealt, not with whether the appeal was authorized, but whether a fee waiver was appropriate.

Commissioner Kafoury moved to reject the appeal. Commissioner Francesconi seconded.

Disposition: Appeal dismissed. (Y-4)

At 2:55 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 13TH DAY OF MARCH, 1997 AT 2:00 P.M.

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

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

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TIME CERTAIN: 2:00 PM - Liquor license application for Coco Entertainment Group, Inc., dba Club Coco, 4108 NE Sandy Blvd., restaurant liquor license (change of owner); Unfavorable recommendation (Report introduced by Commissioner Francesconi)

Discussion: Mike Sanderson, License Bureau and Perry Christianson, Police Bureau, outlined their reasons for forwarding an unfavorable recommendation to Council. They noted that the licensee proposes to operate in an area that has been designated a prostitution-free zone and one that has had serious and persistent problems related to prostitution. Mr. Sanderson said both the Hollywood and Grant Park Neighborhood Associations have indicated their opposition.

Sergeant Bromfield, Police Drug and Vice Detail, said the connection between such exotic dance clubs as Club Coco and prostitution is difficult but not impossible to show. He said there is some documentation indicating that two to six offers to engage in prostitution are made per dancer per evening. He said there are also several land use studies which show that such businesses are a detriment to neighborhood livability.

Mayor Katz said she understood the Supreme Court overturned the position that such businesses degrade neighborhood livability because the connection between crimes on the street could not be shown.

Bob Ueland, Hollywood Neighborhood Association, expressed concern about the effect of a nude dancing establishment on Sandy Boulevard, which has reached the carrying capacity for businesses attracting prostitution and johns. He said Hollywood and the surrounding neighborhood associations request that Council find a way to zone against adult establishments in some neighborhoods.

Others speaking in opposition to granting this license included:

Norm Stoll, 3830 NE Hancock, 97212
Helen Stoll, 3830 NE Hancock, 97212
Linda Worthington, 4010 NE Hancock, 97212
Jeff Stoll, 7417 SW Beaverton-Hillsdale Hwy, #525, 97225
Roberta Barger, 5115 NE Sandy, 97213
Susan Marshall, 321 SW 9th, #800, 97204
Ann Ames, 2215 NE 39th, 97212

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Opponents said this will conflict with the Hollywood revitalization plan and negatively impact other businesses, making customers so uncomfortable that they go elsewhere.

Commissioner Kafoury read a statement from Commissioner Francesconi, who was absent, supporting legislation to allow zoning against such businesses. She moved to forward an unfavorable recommendation to the OLCC. Commissioner Hales seconded.

Commissioner Hales noted that the applicant did not show up and said the City should be able to request that both the applicant and property owner show up at these hearings.

Commissioner Sten said zoning is a very difficult legal issue.

Mayor Katz said she finds it odd that such businesses can hire dancers who are 16-years old and would not legally be allowed as customers until they are 21. She acknowledged that the connection between such businesses and criminal activity is very difficult to make and thanked staff and volunteers for their efforts to gather this information. She said the City will use whatever tools it can to try to keep adult businesses out of residential neighborhoods. In this case it has been the prostitution-free zone.

Disposition: Unfavorably recommended.

At 2:35 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland



By Cay Kershner
Clerk of the Council