



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF APRIL, 1997 AT 9:30 A.M.

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

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

Agenda Nos. 555 and 558 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 547** Accept bid of Insituform West, Inc., for Alder Basin sewer reconstruction project phase 2, unit 2 for \$999,714 (Purchasing Report - Bid 143)
- Disposition:** Accepted; prepare contract.
- 548** Accept bid of Elf Atochem North America for furnishing an annual supply of sodium hydroxide for \$216,363 (Purchasing Report - Bid 157-A)
- Disposition:** Accepted; prepare contract.
- 549** Accept bid of Brundidge Construction, Inc., for Oregonian Basin CSO sump project for \$663,049 (Purchasing Report - Bid 158)
- Disposition:** Accepted; prepare contract.
- 550** Waive performance bond requirement for City Services, Inc. for furnishing janitorial services at the Kerby Building (Purchasing Report - Bid 159-A)
- Disposition:** Accepted.
- 551** Reject all bids for furnishing an annual supply of fabricated drinking fountains (Purchasing Report - Bid 163-A)
- Disposition:** Accepted.
- 552** Accept bid of Parker Northwest Paving Co. for SW Palatine Street, SW 43rd to SW 45th Avenues local improvements for \$141,086 (Purchasing Report - Bid C-9855)

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**Disposition:** Accepted; prepare contract.

**Commissioner Jim Francesconi**

**\*553** Contract with 2KG Contractors, Inc. for \$178,200 to construct a replacement basketball shelter at Alberta Park (Ordinance)

**Disposition:** Ordinance No. 171083. (Y-4)

**\*554** Contribute \$18,750 towards the purchase price of the Featherston property in southeast Portland adjacent to Powell Butte Nature Park (Ordinance)

**Disposition:** Ordinance No. 171084. (Y-4)

**Commissioner Charlie Hales**

**\*556** Grant an underground distribution right of way easement to PacifiCorp in East Delta Park for the purpose of securing electrical service at the East Delta Park ballfields (Ordinance)

**Disposition:** Ordinance No. 171085. (Y-4)

**\*557** Authorize the Purchasing Agent to sign purchase order for ornamental light poles as a contract with lowest responsive prequalified supplier without advertising for bids (Ordinance)

**Disposition:** Ordinance No. 171086. (Y-4)

**Commissioner Erik Sten**

**\*559** Authorize a contract and provide for payment for the N Interstate Avenue sewer repair, Project No. 6162 (Ordinance; Emergency Purchase Order 4783)

**Disposition:** Ordinance No. 171087. (Y-4)

**\*560** Contract with ONSI Corporation, Inc., with contingencies, to purchase a fuel cell power plant for Columbia Boulevard Wastewater Treatment Plant and provide for down payment of \$120,000 (Ordinance)

**Disposition:** Ordinance No. 171088. (Y-4)

**\*561** Authorize the Mayor to submit a proposal to the US Department of Defense for a grant of \$200,000 to purchase a fuel cell power plant to generate electricity at Columbia Boulevard Wastewater Treatment Plant (Ordinance)

**Disposition:** Ordinance No. 171089. (Y-4)

- \*562** Authorize an extension contract of \$36,500 with the International Council for Local Environmental Initiatives and Public Technology, Inc. to promote the US EPA and US DOE Climate Wise program to local industries (Ordinance)

**Disposition:** Ordinance No. 171090. (Y-4)

### REGULAR AGENDA

- 544** **TIME CERTAIN: 9:30 AM** - Hear appeal #96-22 (Lorena Williams) to the Police Internal Investigations Auditing Committee (Report introduced by Mayor Katz)

**Discussion:** Emily Simon, Vice Chair, Police Internal Investigations Auditing Committee (PIIAC), said by a four to two vote, PIIAC voted to recommend to Council that it inform the Chief that Internal Affairs Division's determination (IAD) was not supported by the findings and that the finding should be "sustained," not "exonerated." This involves an excessive use of force issue based on injuries the appellant sustained when she was dragged across a driveway by Police officers to their car. The split vote may reflect a philosophical difference concerning the General Order on excessive use of force, which states that someone in the lawful enforcement of their duties will only use the degree of force necessary to subdue a person for self defense or in defense of another person. The Police Bureau's position is that they have not been trained on how to handle heavy individuals who resist arrest. Four advisors believe, however, that a lack of training should not be the standard and felt excessive force was used. They also believe this issue should be raised with Council as no further investigation of the facts would be helpful. Lack of training should not be used as an excuse. ( She noted two officers, A and B, were involved with Officer B, the acting supervisor.)

Robert Wells, PIIAC Citizen Advisor, said he believes PIIAC has done as much as it can in this case. He voted to bring this to Council because of his concern about police training in such situations.

Ms. Simon said the police officer who was interviewed (Officer A) said they considered no alternative to the actions they took and that is another reason why the Advisors are here today.

Bob Ueland, PIAAC Citizen Advisor, said he is one of the two advisors who voted in favor of "exoneration" of the officers even though he would like Captain Jensen to take a further look at training that deals with how to handle the large proportion of people who are overweight. The Police Bureau currently does not recommend lifting and there was no alternative to dragging in this case, especially as a General Order cannot cover every incident. There is no reason to think the officers intended to cause injury here and it is questionable to add a finding of use of excessive force to a police officer's record. He called

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this an unfortunate incident but there is no indication the officers wanted it to happen.

Lisa Botsko, PIIAC staffperson, said the complainant was also intoxicated and there are significant discrepancies between her account and the officers which will never be resolved as both sides are telling the truth as they see it. The complainant says she told officers she could not get up because of her size but they did not give her a chance to get up. The officers, however, claim that she just lay there and had no intention of helping them whatsoever. The Advisors noted that backup had been called and wondered if the four officers together might have lifted her off the ground. However, officer training discourages lifting a person off the ground unless the subject is restrained. The Advisors are split over what the officers should have known to do, other than what they did do. She said it very tricky when one starts talking about would and should and she personally supports this going to training to see there are alternatives that can be used in the future.

Commissioner Sten asked what an officer does with someone who is not overweight.

Captain C. W. Jensen, Police Internal Affairs Division, said he reviewed the General Order and training to see what should have been done. He believes the officers did the best they could and did not violate the General Order even though no one was pleased about the unilateral injuries to the complainant's lower extremities. However, she would not get up and would not help. He noted that the same procedure, on another surface, might not have caused any injury.

Officer Richard Austria, Training Division, said they do not recommend that a resistant subject be lifted, unless her feet and hands are restrained, because of concern that the officers may be injured or that, in a struggle, the subject could be injured also. He said the officers did get the complainant halfway up, giving her an opportunity to get her legs under her. However, she made no attempt to do so, forcing the police to drag her. A four-officer carry is not recommended because it can result in a lot of respiratory stress to the subject. The General Order may be somewhat vague but training cannot imagine every situation that might happen.

Commissioner Sten asked if the police had instructions to drag a subject who does not comply.

Officer Austria said no, police first attempt to get people on their feet. Dragging is an option that is left up to the officers.

Commissioners Hales and Sten asked whether they considered moving the car closer to the subject.

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Ms. Simon said they did not attempt to move the car. She was on a driveway and there was no other car in the way.

Mr. Wells said the squad car was ten to 15 feet from the complainant. He believes Officer A used every technique listed in the technical manual, including rolling, as she was patted down for weapons. He thinks something needs to be changed in the training manual itself rather than the General Orders.

Commissioner Francesconi asked what the officer might have done differently.

Ms. Simon said he could have waited five minutes to see if the subject got to her feet. She did not resist getting out of the car and was partially raised. She said everyone agrees that no General Order was violated but after that they have a difference of opinion. She was intoxicated and Officer B states that he felt she was too "blotto" to understand what was being said to her. No DUII investigation of blood alcohol testing was done. She noted that the General Order in this area is vague and comes down to an officer's judgment. Looking at the officers' history, one of them has a series of complaints while the other does not.

Officer Jensen noted that the subject was arrested for reckless driving on a hit and run, with discretion to add the other charge, drunk driving. All traffic crimes are treated with equal severity.

Ms. Simon noted that the DUII and breathalyzer test have the most severe consequences.

Commissioner Francesconi said he is still concerned about the alternative for an officer and is not sure what he should have done differently.

Ms. Simon said one option might have been waiting five minutes to see if she would get up, particularly because she did not resist getting out of the car, once she had been stopped. This is a matter of the officers' judgment as the General Order and Officer B's past complaint history is of some concern.

Commissioner Francesconi said as a lawyer he believes one should not prejudge the officer by looking at his past. He asked Ms. Simon if she would have supported "exoneration" if there had not been this prior record.

Ms. Simon said yes.

Officer Austria said the subject was able to get out of her vehicle and get to the ground. She also got into the holding cell on her own. He believes she could have but did not want to get to her feet. The officers could have used a control hold but did not in order to avoid hurting her.

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Ms. Botsko said there is some discrepancy here between the complainant's testimony and the officers'. She said she lay down to show she was not a threat while the officer said he escorted her out of the car and at that point she was compliant.

Commissioner Francesconi asked for a further explanation of "exoneration."

Officer Jensen said it means an officer complied with and was within bureau guidelines and procedures. "Unfounded" means there was no basis for it. (In the case of Officer B, they were fully investigated.)

Mayor Katz asked if any of those cases appealed.

Ms. Simon said this stood out because of a prior appeal to PIIAC regarding Officer B, which was sustained.

Officer Jensen said he reviewed 500 complaints over the last 11 months and this is the only one of this type, which indicates that most people, when rolled to the side as happened here, can get up on their feet.

Lorena Williams, appellant, described the incident and added that the officers kept her in the car for 2-1/2 hours before booking her. She asked why she would have contusions and gravel on her head and permanent scars if the police had not mishandled her. She said she is appalled that it is okay for officers to do this and to keep her in the car for so long. Ms. Williams responded to questions from Council about her actions before being dragged to the car.

Ms. Simon said she is not sure what the pictures of the abrasions mean as PIIAC does not have access to the medical records. She said four PIIAC members voted to ask Council change the IAD finding from "exonerated" to "sustained."

Mayor Katz asked Ms. Botsko what her recommendation would be now.

Ms. Botsko said her recommendation would still be to send this to training for analysis but she does not think the evidence is sufficient to "sustain."

Commissioner Hales asked if the usual procedure during an arrest calls for people to lie down on the ground.

Captain Jensen said that is one option, especially when an officer is alone.

Ms. Simon said PIIAC has had other complaints about this procedure and the officers have routinely been exonerated. She said in this case PIIAC's motion was to send this to Council to recommend to the chief that a finding of excessive force be changed from exonerated to sustained.

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Commissioner Kafoury noted that Officer A was the primary arresting officer and she is confused about how the history of Officer B played into this.

Ms. Simon said it is Officer A and B together who drag her to the car and that is where you come to the excessive use of force issue.

Commissioner Sten noted that the recommendation was to have Council sustain the charge of excessive force and not exonerate the officers.

Commissioner Francesconi moved to exonerate the officers because this is something that should be covered in training, and he does not totally accept the police view on the four-point hold. He does not totally accept complaint's testimony and supports his conclusion that she was under the influence and intentionally resisting. While the officer might have waited, how long is an issue to be addressed in training. Finally, to consider (Officer B's) prior record does not seem appropriate. There was no second.

Commissioner Kafoury moved to sustain the Citizen Advisors' finding. For her the issue is a matter of judgment and she believes the officers had other alternatives.

Commissioner Hales seconded.

Commissioner Sten said he has a hard time believing the complainant could not have been taken to the car without this level of injury on a ten-foot drag. The lack of a breathalyzer test by police raises doubts in his mind about the level of her intoxication. On the other hand, he has trouble believing she was compliant after fleeing the scene of a crime. He will probably vote for a finding of "sustained," as he does not understand the insufficient evidence finding.

Mayor Katz said insufficient evidence is when there is a lot of conflicting information and is one way of saying no one is really sure what happened. That is the route she prefers here.

Commissioner Hales said he believes the subject was treated more roughly than the circumstances required and that all the options about getting her on her feet and to the car were not exhausted. He is very upset that an apparently drunk person operating a motor vehicle was not given a breathalyzer test and charged with DUII.

Commissioner Sten said this is a very close case but the burden is on the officer here to prove that she was intoxicated to the point that she could not cooperate. The complainant did suffer significant injuries.

Mayor Katz said she is concerned with Officer B's history and that needs to be addressed by the officer's supervisor during a Command Review. However, she

will vote no on the motion and she would prefer a finding of insufficient evidence with Commissioner Hales' recommendation regarding breathalyzer tests.

Commissioner Francesconi said he would like to address the exoneration issue at some point with the police.

**Disposition:** Appeal Sustained. (Y-3; N-2, Francesconi, Katz)

545 Hear appeal #97-04 - (Dennis Sorenson) to the Police Internal Investigations Auditing Committee (Report introduced by Mayor Katz)

**Discussion:** Lisa Botsko, PIIAC staff person, said the appellant was arrested for possession and distribution of marijuana and asserts that the officer deliberately misrepresented the amount of marijuana seized causing him to receive a much harsher sentence. Normally Citizen Advisors decline requests from people seeking post-conviction relief. However, in this case a private forensic examiner hired by the complainant pointed out a discrepancy. IAD then reported that the officer made an error in recording the amount of marijuana seized, seven pounds instead of seven ounces. This error was made known to the judge and district attorney and did not affect the sentence. Defendant also had certain legal options and, for that reason, the Citizen Advisors voted unanimously to support the IAD's declination.

Commissioner Francesconi asked what the options are if information is deliberately or accidentally falsified.

Ms. Botsko said the subject's attorney could have made that an issue. The subject plead his case from the very beginning but believes that affected his sentence. She said the forensic report was one of the most poorly written she has ever seen.

Captain Jensen said this error had already been discovered by the officer's supervisors who were reviewing the case and an investigation was done for the court. They had just not let IAD know. This kind of error does not happen very often.

Commissioner Kafoury moved to uphold the Advisors' recommendation of declination. Commissioner Hales seconded.

**Disposition:** Appeal denied. (Y-5)



546

Accept 1st Quarter 1997 Police Internal Investigations Auditing Committee Citizen Advisory report per City Code 3.21.050 (Report; introduced by Mayor Katz)

Bob Ueland, Chair, PIIAC Advisors, summarized the complaints handled by the Advisors and some of their current concerns. They recommend to the Chief that letters to complainants indicate that their complaints have been reviewed by IAD, which is true, even if they are sent from the precincts. The Advisors are also concerned about the proper use of Law Enforcement Data System (LEDS) by police personnel and appropriate officer identification. Complaints keep coming up where an officer does not immediately identify himself upon request and there are inconsistencies in how precinct commanders treat such complaints.

Captain Jensen said he is working on a project to reclarify LEDS use.

Mayor Katz said she understands there will be a General Order to require that an officer give both his number and name.

Captain Jensen said that has been published and he believes that goes into effect May 1.

Mr. Ueland said the Advisors are still concerned about the timeliness of complaint investigations but are pleased with the quality. They are still trying to develop standards on declination of Use of Force complaints by the IAD commander. The mediation center has just issued its draft report on 10 pilot mediation cases and the Advisors will review them during the next monitoring report.

Dan Handelman, Portland Cop Watch, thanked PIIAC for initiating the use case numbers to identify the complaints it reviews. He said it is very important for citizens to see that IAD has looked at their complaints and hopes the Police Chief supports adding this statement to the disposition letters. He noted the discrepancy in the number of complaints from African-Americans, 20 percent, as opposed to their representation on the police force, which is four percent.

Commissioner Francesconi asked about the disparity in complaints from African-Americans and asked how long this has been occurring.

Neither Ms. Botsko or Mr. Handelman knew. Mr. Handelman noted that there is also a higher percentage of African-Americans in jail.

Commissioner Francesconi said he would like more discussion of this and a review of the historical data as well as arrest figures.

**Disposition:** Accepted. (Y-5)

**\*555** Agreement with Metro, a metropolitan service district, to provide for the Martin Luther King Jr. Blvd Corridor Study (Ordinance)

**Discussion:** Commissioner Francesconi said economic development needs to benefit the community and include people of color, including Hispanic leaders. He said some groups are not well represented and he would like the manager of this project to see if African-Americans are actually working on the MLK construction.

Andre Baugh, Project Manager for the MLK Corridor Study, said the funding and draft work plan for this study was written by Metro and the Portland Development Commission (PDC) plans to include Alberta Street as part of the Concordia Study.

Commissioner Kafoury noted that there is no reference to PDC, given all the work they have done.

Mr. Baugh said PDC is doing a marketing study of MLK now which will be used in the Corridor study and as part of the Main Street Manager.

Mayor Katz said this deals mainly with the transportation issues along MLK and said she hoped that it would not duplicate other work currently going on. She hopes there will be flexibility in the phasing as the proposed housing along the northern end, which is not included in the phasing, may allow the City to get rid of the median there.

Mr. Baugh said PDC raised that issue and it makes sense to put limited funds where development is happening. The housing is happening quicker than their quarter study so they are trying to catch up.

Commissioner Sten said the City has to make sure that the infrastructure spent on transportation is driving development. The idea of a joint venture with the business association is of great interest that would help get some of the economic development dollars out into the groups that already exist.

Commissioner Kafoury noted that the median strip was originally placed there in the 1970s as part of a beautification project to assist with development and now, with the push to remove it, things have come full circle.

Mayor Katz agreed, noting her call to remove it. She said some difficult transportation issues need to be resolved before it can be removed.

Commissioner Hales said because MLK is a State highway, a lot of interagency cooperation is required. They are trying to get parking back into the district without cutting down all the trees. During the first phase, some of the median was left and that will be a continual goal.

Commissioner Francesconi said he was impressed with PDC's work here.

Mr. Baugh said PDC is being included in the quarter study because of the dollars they are developing out there.

**Disposition:** Ordinance No. 171091. (Y-5)

- 558** Accept completion of the Ramsey Lake Storm Trunk, Project No. 5273, and authorize final payment to Brundidge Construction, Inc. (Report; Contract No. 30433)

**Disposition:** Accepted as Amended. (Y-5)

- 563** Recognize April 28th as the kickoff of the Portland Public Schools Foundation's Schools Matter campaign, support the Coalition for School Funding Now!'s \$5.75 billion statewide school funding goal and encourage other municipalities to pass similar resolutions (Resolution introduced by Mayor Katz, Commissioner Francesconi, Hales, Kafoury and Sten)

**Discussion:** Cynthia Geyer, Portland Public Schools Foundation, thanked Council for its support and described the Schools Matter campaign to increase public awareness of the schools' importance. She noted that the Portland Public School district is the largest in the Northwest and similar in size to San Francisco's.

The Commissioners discussed what they, as Council members, are doing and should do to strengthen financial support for schools from the Legislature and ensure that students can meet the higher standards recently established.

**Disposition:** Resolution No. 35603. (Y-5)

- \*564** Contract with Multnomah County and Metro to develop, maintain and integrate a multiple county, Geographic Information System (GIS) cadastral data set (Ordinance introduced by Mayor Katz, Commissioners Francesconi, Hales, Kafoury and Sten)

**Discussion:** Mike Rosenberger, Director, Water Bureau, spoke as Chair of the GIS Executive Committee and reviewed the work plan for implementing GIS, including hiring a new manager, Glen Meyer, and filling one of two technical positions. They have also begun development of a Citywide hub, which they hope to begin in the summer, and to develop a prototype business project. That entailed making some of the cadastral maps and other information available on-line in the Permit Center to improve customer service. They are working now, through this intergovernmental agreement with Metro and Multnomah County, to convert the cadastral base maps for GIS use.

Glen Meyer, Corporate GIS Manager, explained the importance of the mapping component of the GIS program and of establishing standards in cooperation with Metro and Multnomah County so the information can be integrated. Cadastral, from the French word for property ownership, is one of the fundamental elements of a GIS as from that one derives zoning districts, neighborhood boundaries, etc. He acknowledged the other partners in this effort.

Mayor Katz asked which was the lead agency.

David Knowles, Director, Planning Bureau, said administratively the Planning Bureau is the lead agency in the City. Mr. Rosenberger chairs the executive committee of Bureau Managers who manager the project and Mr. Meyer.

David Ream, no address stated, objected to lack of a pledge of allegiance and to the number of emergency ordinances on today's Agenda. He said Council is not enforcing the Charter and is engaging in hypocrisy to label these as emergencies.

**Disposition:** Passed to Second Reading April 30, 1997 at 9:30 a.m.

**Commissioner Charlie Hales**

**\*565** Authorize a contract and provide for payment for the SW Multnomah Boulevard at SW 48th Avenue slide repair (Ordinance)

**Discussion:** Terry Bray, Office of Transportation, said this and the following two ordinances provide for slide repair work. Since they were filed, however, the Ash Creek Neighborhood Association has asked that Transportation consider a different method of revegetation. Transportation has agreed and asks that Items 565 and 566 be referred back.

**Disposition:** Referred to Commissioner of Public Safety.

**\*566** Authorize a contract and provide for payment for the SW Multnomah Boulevard at SW 56th Avenue slide repair (Ordinance)

**Disposition:** Referred to Commissioner of Public Safety.

**\*567** Authorize a contract and provide for payment for the SW Multnomah Boulevard at SW 61st Avenue slide repair (Ordinance)

**Disposition:** Ordinance No. 171092. (Y-5)

- 568 Amend condition in the Engineer's Report and vacate certain portions of NE 70th Avenue between NE Roselawn and Emerson Streets, under certain conditions (Ordinance by Order of Council; C-9913)

**Disposition:** Passed to Second Reading April 30, 1997 at 9:30 a.m.

**Commissioner Gretchen Miller Kafoury**

- 569 Direct the Bureau of Housing and Community Development to submit an amendment to the City's Economic Development Initiative program grant application (Resolution)

**Discussion:** Commissioner Kafoury said this requests resubmission of a grant application that seeks funds to add to the City's capacity to do some economic development work in some Northeast Portland housing projects. This application is much more in keeping with the purpose of the fund than the City's first proposal. She said successful examples of mixed-income housing are needed in order to get banks on board for future projects.

Mayor Katz asked if Housing and Urban Development's (HUD) job creation standards are being met.

Martha McLennan, Bureau of Housing and Community Development, said yes, the draft calls for the creation and retention of 360 jobs and will be held to HUD's standards for documenting how they are filled and retained. The HUD income standard is that 51 percent of jobs must be for people below the 80th percentile of median income. In the Enterprise Zones, HUD regulations do allow for a presumed benefit although she does not think that presumption will satisfy this Council. She said their goal is to fill those jobs with low and moderate income residents of Northeast Portland. Ms. McLennan said they propose to make funds available for a revitalization loan program and will ask Council to review the public benefits of each individual project funded under that. A protocol is being prepared to identify the questions that Council and the public needs answers to.

Mayor Katz said Council needs to know the issues ahead of time so they can answer all these questions. She asked if some projects have been identified yet.

Ms. McLennan said they have some projects right now with a financing gap and, if HUD approves, they will begin running them through.

Mayor Katz said she saw no mention of the Enterprise Zone Commission that should be reviewing this.

Ms. McLennan said they have a letter of support with them and will make sure they have community support for each of the activities.

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Commissioner Francesconi asked if the money will be limited to the Enterprise Zone.

Ms. McLennan said that is basically a HUD requirement as they believe HUD would not approve this amendment if the funds were for use outside the Enterprise Zone.

Commissioner Francesconi expressed interest in finding some funds for Outer Southeast.

Ms. McLennan said Housing Investment Funds can be used there.

Commissioner Kafoury said often a project will be funded out of Housing Investment Funds because it is not in a particular urban renewal area and then the money is in order to balance the demands. However, she is the first to admit that not enough attention has been directed to Outer Southeast.

Ms. McLennan said there are some gaps in the commercial financing of some of these projects. They hope with this fund to demonstrate to private lenders that mixed-use projects are viable and help bring them into future projects.

Commissioner Francesconi asked how the job creation component will work and how that differs from tax abatement.

Ms. McLennan said the notion here is to bring in new businesses or expand existing ones that create jobs, particularly in neighborhoods that are currently underserved with neighborhood-based businesses, such as pharmacies and dry cleaners.

Commissioner Francesconi said this is a wonderful program but he doubts its ability to produce many jobs.

Commissioner Sten said how to create jobs for low-income people is very uncertain. Any jobs in the Enterprise Zones are presumed by HUD to be low-income jobs because they know they cannot show the link between the programs. He supports this application because it will redevelop Alberta Street although he has doubts about the jobs.

Mayor Katz agreed with Commissioner Sten. She said the City wants family-wage jobs and what one generally gets in commercial areas pay less than that. However, the City should go ahead with this but not kid itself about the number of jobs created and whether they are well paid. The question to ask is will this make a difference. To meet the City's goals a whole tool chest is needed, and this is only one.

Ms. McLennan agreed about not overstating either the kinds or numbers of jobs that will be created under this commercial revitalization project. Many of the jobs created here may be skill-building rather than living wage jobs. Adding commercial resources to under-served neighborhoods is also of value.

Mayor Katz said if family wage jobs are what is wanted this may not be the route to go. However, with the revitalization of MLK, Alberta and other streets, eventually there will be the critical mass to support services like dry cleaners and shoe repair stores. Financial institutions are still not ready to support mixed-use development but hopefully some day there will be developments like the Belmont Dairy all over the City, including Outer Southeast.

**Disposition:** Resolution No. 35604. (Y-5)

**\*570** Amend Agreement with Portland Development Commission for Rental Housing Development Program to increase the contract by \$2,583,793 (Ordinance; amend Contract No. 30856)

**Discussion:** Mr. Ream, 909 SW 12th Avenue, again voiced his objections to the use of emergency ordinances.

Commissioner Francesconi asked if the funds can be switched from the rental to the home ownership fund and if he could make a motion to do so.

Ms. McLennan said yes, with HOME, the block grant program.

Commissioner Francesconi said his concern about the prior item is that when the City brings in these commercial projects, without a jobs or housing strategy, it is increasing the pressures for gentrification. There is a real need for home ownership for the Hispanic population and when the City approves projects that do not consider the home ownership side, it is making a serious mistake, given the absence of a meaningful job strategy. He does not think the balance between rental units and home ownership is right and that it does a disservice to the poor.

Commissioner Kafoury said there is a constant struggle over the housing money to determine what is the best use of the money and how to balance the needs. She said the length of affordability of the rental projects has been found to be longer than a single home. While the strategies have to be linked, home ownership is not the only way to impact affordable housing.

Commissioner Francesconi said creative strategies are needed to recapture some of the wealth that is created and he would like to be included in such discussions.

Ms. McLennan cited the City policies, including the Consolidated Plan and the

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Housing Investment Fund, which provide the framework for allocating the funds sought under this grant. She said she will be happy to review the resource allocation as these policies are reviewed..

Commissioner Francesconi asked if gentrification was addressed at the time the allocations were set between home ownership and rentals.

Ms. McLennan said not explicitly. The Housing Committee looked primarily at the need and how to get people into housing, given the resources.

Commissioner Sten said he has studied and supports these allocations. He said prior Councils decided what income levels to help and the market right now means that unless you are willing to put about \$80,000 into a home ownership unit, you will not get home ownership for the people the policy aims to help. Federal policy gives over double the money that goes to poor people in housing through the mortgage deduction so is weighted very heavily towards the middle class. Unless Council comes up with a better solution, the City will simply be transferring home ownership to just below middle class, about 100 percent of median income. A few years ago HOST sold units at \$42,000; now it is lucky if costs are under \$100,000, which working class people cannot afford. If Council starts putting \$50,000 or \$60,000 into a unit which a person can sell the next year it is a great transfer of wealth to that family. Two things keep people from buying homes, education about savings and price. He said unless Council explicitly says it will give a lot of money per house to stop gentrification, moving money to home ownership will funnel to people who are not the people in the neighborhood who are getting moved out. Those people need a lot of help to fill that big gap. Being able to give \$50,000 or \$60,000 a unit is part two of the gentrification strategy.

Commissioner Francesconi said he does not totally accept that and believes that some down payment help could make that figure a lot less than \$50,000 to \$60,000. He said he does not favor that level of subsidy for home ownership. If it is correct that you cannot combine private sector dollars with targeted dollars to recapture some of the public investment then he will back off but these issues still need to be addressed. Perhaps revitalization should be reconsidered if it drives up the costs.

Ms. McLennan said a recent PDC project had subsidies of \$40,000 to \$45,000 per household to serve people in about the 60 percent median income. To go lower than that, the subsidy must be higher. Another mortgage assistance project is available to help people close to the 80 percentile buy non-new homes.

Mayor Katz said gentrification first hit Northwest Portland and she does not think it had more to do with condominium conversion rather than rental versus home ownership. She said options-to-buy is one thing that could be encouraged.



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Commissioner Sten said he is strongly against moving money from existing programs because they are not set up to help the people Commissioner Francesconi is concerned about. Some possibilities that might help are lease-to-own models and increased sub-division of larger, existing homes.

**Disposition:** Ordinance No. 171093. (Y-5)

**City Auditor Barbara Clark**

**571** Assess property for sewer development contracts for the period ending March 11, 1997, for the Mid-County Sewer Project and Non Mid-County area (Second Reading Agenda 536; Z0651, Z0652, Z0653)

**Disposition:** Ordinance No. 171094 as amended. (Y-5)

**572** Assess property for sewer connection contracts processed through the Private Plumbing Loan Program for the period ending April 7, 1997 (Second Reading Agenda 537; P0025)

**Disposition:** Ordinance No. 171095. (Y-5)

**573** Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through March 11, 1997 (Second Reading Agenda 538; Y1016)

**Disposition:** Ordinance No. 171096. (Y-5)

At 12:20 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF APRIL, 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; Kathryn Beaumont, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

574 **TIME CERTAIN: 2:00 PM** - Appeal of Multnomah Neighborhood Association against Hearings Officer's decision to approve application of Leonard and Carolyn Faria, for a conditional use and adjustment to install a permanent, unnamed cellular broadcast facility at 4350 SW Multnomah (Hearing; LUR 96-01075 CU AD)

**Discussion:** Kathryn Beaumont, Senior Deputy City Attorney, explained the procedures to be followed in an on-the-record appeal.

Steve Gerber, Planning Bureau, showed slides and described the location of the proposed 130-foot tall monopole directly behind a commercial building, adjacent to a service alley. He said the applicant has also requested a landscaping adjustment to install a visual buffer to replace the existing fence and provide screening between it and the closest residential use. The Hearings Officer found that the proposal met all Code requirements and relevant approval criteria. That includes providing evidence that no other location will provide adequate coverage and that the facility can accommodate future collocation. This facility will accommodate two other facilities. Mr. Gerber noted that several monopoles already exist in the neighborhood and that two more proposals are in process. The City's goal is to accommodate the cellular companies' needs with as few monopoles as possible. The Hearings Officer also approved the adjustment to allow the applicant to provide extra landscaping instead of required parking.

Michael Roche, representing the Multnomah Neighborhood Association, said both the Executive Committee and the entire association membership voted to appeal this proposal. He also noted a request by Southwest Neighborhood Information for a moratorium on monopoles in residential and abutting residential areas until adequate regulations can be put into place. He displayed a map indicating the location of current poles. Mr. Roche contended that the Hearings Officer made procedural errors, noting that the application for a 100-foot tower was denied for failure to collocate. Then, when faced with a second application from Western Wireless, she increased the height to 130 feet with no evidence to support that. The Hearings Officer also erred in allowing

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the record to remain open one additional week to allow evidence regarding collocation. He said when he asked for an additional week for review this was denied.

Mr. Roche raised the issue of the monopole's height on the livability of the neighborhood. He said no one reviewed the application at 130 feet, which widens the base, creates more water runoff and decreases emergency access by the Fire Bureau. He said a 130-foot pole will have a significant visual impact on the Multnomah/Garden Home Scenic Corridor, which is approximately 60 feet across 45th Street, and the surrounding residential zone which has been proposed for increased density. He noted that both Salem, Tualatin and Lake Oswego now have stricter regulations than Portland and described their height and setback requirements. He said the commercial zone in which this is proposed is narrow and surrounded by residential areas. From the building to the fence line in the alley is 26 feet and the pole is two feet from the building, so the pole is only 18 feet from the fence line. If the pole base is broadened you have less than 18 feet and landscaping with 10- to 12-foot trees there will not be sufficient. Mr. Gerber is proposing to add a setback of 20 percent of the tower height which, for a 130-foot pole (really 140 feet) becomes 28 feet. The 18 feet is a violation of Mr. Gerber's proposed changes to the Planning Commission.

Mayor Katz asked about the designated scenic resource area, noting that the Hearings Officer states there are no scenic resources.

Mr. Roche said in 1989 Multnomah Boulevard from SW 45th to Olsson Road was designated a Scenic Corridor.

Commissioner Hales asked where the setback requirements come from.

Mr. Roche said the Bureau's suggested standard is 20 percent of the tower height.

Commissioner Hales asked for clarification of Mr. Roche's map regarding the location of other cell sites.

Mr. Roche described the location of various sites and noted that the neighborhood association did not oppose the US West facility at SW 27th and Troy on a two-story building because they believe that is the way these should be handled.

Commissioner Francesconi asked what evidence Mr. Roche wished to introduce in rebuttal that was not in the record and whether he was prejudiced by this.

Mr. Roche cited the documents filed with the Hearings Officer during the week the record was left open, including the letter Spencer Vail filed regarding

contact with the property owner. He said that was part of the decision and he had no chance to review or rebut it. Without a review of those documents he has no evidence to submit.

Commissioner Francesconi asked the City Attorney how much discretion the Hearings Officer has on granting rebuttal and whether this prejudiced the appellant.

Ms. Beaumont said in general when there is a request to leave the record open the Hearings Officer will grant it and often allow an equal amount of time for parties to review and respond to that evidence. In this case, as she understands it, the Hearings Officer held the record open for the applicant and was willing to allow a response on request, but apparently she did not receive one. In terms of prejudice, Mr. Roche would have to indicate how his interests have been harmed by the Hearings Officer's error.

Mr. Roche said Ms. Beaumont's statement about what the Hearings Officer did is hearsay.

Commissioner Francesconi asked if the neighborhood would oppose this monopole if it were 100 feet instead of 130. What about 70 feet?

Mr. Roche said yes, although 70 feet would obviously be less intrusive but that does not address the fact that the Planning Bureau wants to put low and medium density, two and three level apartments in this area, and even at 70 feet this would still be the dominant feature.

Commissioner Sten asked if the residences are 60 to 80 feet away.

Mr. Roche said one resident is 57 feet from the fence line. He said Mr. Vail told them this pole is supposed to fill a hole in cell phone service on SW 45th but the American Medical Association recently stated that cell phone driving is as dangerous as drunk driving. As more sites are sought in this area eventually all residential areas will face these issues.

Commissioner Francesconi asked him if he would prefer one pole at 80 feet or three or four poles nearby.

Mr. Roche said at that site he would prefer 70 feet but this imposes on the scenic corridor.

Martie Sucec, Co-Chair, Multnomah Neighborhood Association, 7005 SW 34th Ave., 97219, disputed the Hearings Officer's finding that this area had no scenic designation, citing Page 163 of the Scenic Views, Sites and Drives Inventory issued by the Bureau of Planning in March, 1989. She said the monopole will go across the street from the scenic resource, which is a gateway into their

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neighborhood. The neighborhood would prefer that this be co-located at SW 28th and Troy and said PGE has indicated it would grant use of its premises for a monopole at the power station. While this is not currently the greatest looking corner, it should not be blighted any further. She said Multnomah does not want its "dead air," as the applicant describes it, to be filled with gadgets and called for a moratorium on approval of these towers.

Commissioner Kafoury asked if the issue for scenic corridors was not blocking the view with a large building. Were poles even mentioned?

Ms. Sucic said she did not know the intent. Why do such designations exist if they do not mean anything?

Richard Becker, 7954 SW 48th, distributed a map to indicate the scenic zone and stressed that this location was not appropriate for a pole.

Commissioner Hales said the Scenic Corridor Report was a source document for the City's compliance with Goal 5 and the portion of Multnomah Blvd. west of this site was then designated as a scenic corridor. He said there are special rules for conditional uses and asked if the scenic corridor impact should be weighed when the Council considers the impact on the "desired character" of the area.

Mr. Gerber said yes.

Commissioner Francesconi asked if the Hearings Officer made a mistake.

Mr. Gerber said the Hearings Officer states in her report that the scenic resources are preserved, which is an approval criteria for a conditional use. He said typically there is no scenic resource on or near a site. He believes the first sentence in the paragraph which states "scenic resources are preserved" is erroneous and the second sentence is more appropriate, stating that "no known scenic resources are affected by the proposal." The scenic resource zone is approximately 175 feet from the proposed pole location and it was the Hearings Officer's judgment that it had no effect on the corridor as the requirements for the scenic corridor almost exclusively deal with what happens in front yards, the number of driveways, etc. There are no height limitations, leaving that up to the base zone regulations.

Commissioner Francesconi asked if there was anything in the proposed amendments now at the Planning Commission that would change the outcome here.

Mr. Gerber said yes, the Commission is considering increased setbacks and possibly prohibition in residential zones and within a certain distance of them.

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Commissioner Francesconi asked if there was any option for collocation.

Mr. Gerber said there is no option for AT&T to collocate but he is not sure that is the case for AirTouch or Western PCF, which had proposed a 130-foot tower approximately 1/4 mile away.

Dan Chandler, attorney representing AT&T Wireless, said the scenic resource issue was not raised before the Hearings Officer and it is hard for them to address after hearing this for the first time today.

Mayor Katz said the Hearings Officer states that no scenic resources are affected by the proposal.

Spencer Vail, consultant for AT&T Wireless, described the need for a cell site in this area to alleviate capacity problems and improve coverage for users, whether in their cars or homes. He said the need for a site at this location is well documented and what is at issue is the increase in height the Hearings Officer allowed so that additional providers can use the tower, thus complying with City policy. Three users plan to use this tower, which must be tall enough to see over the trees. AT&T's request was for 100 feet and they cooperated with the Hearings Officer in leaving the record open to see if the other providers could work out a lease agreement with the landlord. That was the only reason the record was left open. The answer was yes and there is no evidence to challenge that. He noted that much of the testimony presented today had little to do with what is on the record or what was in the written appeal. He asked for denial of the appeal.

Mr. Chandler said the two additional letters entered into the record during the week the Hearings Officer left the record open simply said that Western could lease enough ground space and the second letter confirms that AT&T will collocate with Western and AirTouch. That was the only reason the Hearings Officer left the record open and there is no way to challenge those letters. The notice of appeal talks about a violation of the height criteria but radio and television antennae are exempt in commercial zones. He said AT&T believes it has a right to have its application considered under the rules and regulations in place at the time it applied and believes it has not only complied with those rules, but gone beyond them in allowing two other providers to collocate on the tower. If the 130-foot issue works against them, then they request that a tower height of 100 feet be approved now and let someone else apply for a 130-foot tower; then AT&T would collocate there when the new tower was built. They would hate to lose the tower because they cooperated with the City on the height limitation.

Mr. Vail said 100 feet is the minimum height they must have and they agreed to co-locate so that the number of towers could be reduced. He said the industry has tried, where possible, to locate on existing structures but in this case there

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are no existing structures that will satisfy their needs. They try to lessen the impact by locating in a commercial area. He said service areas are dictated by terrain and capacity users and adequate coverage is needed in Southwest Portland, benefitting not only emergency service providers but neighborhood crime watchers.

Commissioner Hales said the standard that needs to be met to approve a new tower says it must be accompanied by evidence that application was made to locate on existing towers, with no success, and where technically feasible new facilities must locate on existing towers or other structures to avoid new construction. He said the record indicates that if the site were any further east it would interfere with other sites, such as Barbur Blvd. and I-5.

Mr. Vail explained why the cell site was needed here to pick up areas on the west side of the mountains not served by other cell sites.

Commissioner Hales said if the standard is technical feasibility, is this the only way to solve the problem.

Mr. Vail said they have documented in the record that there are no existing tall structures where they can collocate. Other people have asked to co-locate on the proposed pole and they have agreed. They cannot infringe on other cell sites without disrupting their operations. There is a very definitive area where they need to be.

Commissioner Hales said the Code says there has to be no other way that relies on existing towers or buildings. He asked if the record shows that there is not a building in the vicinity, i.e. the apartment buildings on 30th and Multnomah Blvd. Could you serve this area using multiple sites with less impact visually on the neighborhood? Is there evidence in the record to show this cannot be done for technical reasons?

Mr. Vail said as they infill the towers they do not need to be as tall as they did when the system was first started or be on as high ground. He said now they cannot be on higher elevations without disrupting other cell sites. Evidence in the record shows that this area is served now by property on SW 34th, the water tower in Raleigh Hills and the Garden Home site. They have limited coverage area as well as terrain problems. The tower at 45th & Multnomah gives them coverage along 45th and picks up capacity and coverage problems elsewhere in Multnomah.

Mayor Katz asked what the company would do if this were denied.

Mr. Vail said he does not know. Their engineer would have to go back and try to find another way of making it work. He said they have to have universal coverage within the City and if the City does not allow a hole to be covered, the

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company will be in violation of federal licensing rules.

Mayor Katz said but this is proposed for a geographic area where Council could deny it so they would have to figure out something else.

Ron Fowler, real estate manager, AT&T Wireless, said they do not know that they could. The only evidence in the record is that, from a technical standpoint, they cannot.

Mr. Vail said the company hires engineers to come up with answers and that is what they are presenting today. The two other companies collocating here will all come in at once.

Commissioner Sten said these two companies would also have to prove their inability to do anything else.

Commissioner Francesconi asked if it could be done for 100 feet, rather than 130.

Mr. Vail said AT&T needs 100 feet but he assumes the other companies need more height.

In rebuttal, Mr. Roche again objected to the City Attorney's characterization of the Hearings Officer's intent in her ruling. Keeping the record open for one party without arranging to have that evidence provided to the other party is a clear procedural error. He said this is a growth industry and there will always be holes in coverage, always needing more poles. Clear guidelines are needed for how these will impact residential areas. He also said there was more material presented during the week the record was left open than Mr. Chandler stated. Because of the 10-foot difference between the top of the pole and the antennae the height is really 140 feet, not 130 feet. He does not believe the pole is really needed for the network. An industry representative testifying before the Planning Commission on the proposed revisions to this Code, stated that networks could be designed to go lower and that it would not necessarily mean more poles would be needed. Mr. Roche said no one knows exactly how many sites the engineers looked at and there are sites at 36th and Troy, the water tower at Custer Park and elsewhere that might provide coverage. The many poles on Barbur do not seem to interfere with each other and he does not understand why that issue is being raised now.

Mayor Katz asked what happens in a commercial site surrounded by residential. She said the Hearings Officer's report reflects the fact that the site is near residential zones and then says allowing the adjustment will provide adequate landscape screening for the immediate adjacent residential use to the south but otherwise would not be required. Is she using the argument that providing the adjustment takes care of the residential sites?



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Mr. Gerber said he believes the intention is that the landscape screening will better the appearance of the area.

Commissioner Francesconi asked if Council had the option of approving a 100-foot tower and then seek additional proof that 130 feet is really needed.

Mr. Gerber said another application for a 130-foot tower ten blocks to the east of this site, which was withdrawn, did include evidence that 130 feet was needed.

Commissioner Francesconi noted that was not in this record. He asked if a condition could be added granting a 100-foot tower but stating that if someone else came in and proved the tower needed to be 130 feet, it could be modified.

Mr. Gerber said he believes it would be virtually impossible to convert a 100-foot tower to 130 feet. A brand new tower would have to be erected.

Mayor Katz asked if the list of other sites looked at and rejected was in the record.

Mr. Gerber said yes, and staff had reviewed it.

Sylvia Cate, Planning Bureau, reviewed the issues raised in written and oral testimony today that was not part of the record. They include Scenic Corridors, information provided by the appellant regarding the Code of other jurisdictions and setbacks for this particular site. The issue of other sites and how they relate to this one was raised at the original hearing but additional sites were identified today that are not part of the record, as were health and safety impacts, driving with cell phones and the Scenic Resources and Inventory document.

Commissioner Francesconi asked if Council can take notice of other City documents or if they have to be in the record.

Ms. Beaumont said typically Council and LUBA can take official notice of documents adopted by ordinances or comprehensive plan and Code provisions but she does not know if that particular Scenic Resources document was adopted by ordinance or if it is just a support document that led ultimately to scenic resource designations on the Comprehensive Plan or Zoning Maps.

Mr. Gerber said the Scenic Resources document is on the record.

Commissioner Hales said he assumes the sites named that are not on the record are the ones he named.

Ms. Cate said there are some others that did not exist at the time of the original

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hearing. Some of the ones Commissioner Hales mentioned are in the record, some are not.

Commissioner Hales said he will not apologize for that because the standard is feasibility and if there is no information in the record about those sites, he will withdraw the questions but the fact that omission exists in the record can still be noted. The burden of proof is on the applicant to show that every available site has been looked at and met the feasibility test.

Mayor Katz questioned whether the rules about entering new evidence apply to Council members.

Ms. Beaumont said yes.

Mr. Roche said the Nextel site on Barbur was part of the record. The only ones he mentioned not a part of the record were 36th and Troy and the application of US West at 28th and Troy.

Mayor Katz said everything mentioned (by Ms. Cate) except for the City document identifying Scenic Corridors is not part of the record.

Mr. Chandler said Mr. Roche's statement about testimony before the Planning Commission last night is clearly outside the record.

Commissioner Kafoury moved to tentatively deny the appeal and accept the Hearings Officer's findings. Commissioner Sten seconded.

Commissioner Kafoury said this is a painful decision but she knows Mr. Gerber has worked tirelessly to work with these towers and radio frequency issues. She has confidence in staff's ability to address the changing technology. She wondered what would have happened if people objected as strenuously to phone poles going up. This is a major City and cell phones are a part of the way people live now and to act as if this is foreign is troubling. She supported Scenic Corridors as in some places it does not make sense to build high rises and block everyone's view but this is a pole that will not obscure views. The issue of 100 and 130 feet does not mean much to her.

Commissioner Hales said the Code in effect now must be separated from how it might work in the future. The current Code is cutting edge in the country and the premise is to limit the impact of cell phones on neighborhoods by encouraging location either on existing structures or collocation. In this case three companies will share one tower. Only the Council can declare a moratorium and he does not believe it can meet the very specific standards for moratoriums set out by State law. He does not support the motion, however, because the applicant has not proved that all the options for existing towers and buildings have been exhausted. They have looked at some others and done

a good job of collocation but have not met the standard.

Commissioner Sten said he supports the motion and believes Commissioner Hales' point is made on pure instinct. If there is a substantive case for finding that they have not met that criteria he is willing to deny this but the City's experts, staff and the Hearings Officer, are saying it has been met. However, he does not want to decide based on anecdotal evidence, particularly as the appellants made no case whatsoever that the requirement has not been met. Their case was built on the contention that the tower hurt the desired character of the neighborhood. There was no testimony stating that Mr. Vail's testimony was not true and City staff has not refuted it. He does not want to sit up here and decide where a cell phone tower should go. These cases do not come to Council unless they are difficult but he does not think this goes over the line of ruining the desired character of the neighborhood. It is not in the Scenic Corridor; it is next to it. This is a better proposal than the original one and if this is turned down there will be three companies looking for another site.

Mayor Katz said she does not think staff or the Hearings Officer have the expertise to make an engineering judgment. There is no independent review of other opportunities, only the applicant's. Perhaps the City should contract with some independent review of that so it knows all the sites were looked at.

Commissioner Sten said that is completely arbitrary criteria that has no meaningful way to be decided by this Council if no one is qualified to look at it.

Commissioner Hales said the current Code puts the burden on applicants to do independent analysis of the engineering work. They must demonstrate that they have exhausted all other feasible options. The fact that he asked about potential sites, not on the record, that were not examined and that the applicants did not answer the Mayor's question about what they would do if this were denied, does not convince him that there is no other technically feasible way to solve this problem.

Commissioner Kafoury asked where that is in the Hearings Officer's discussion.

Commissioner Hales quoted from Page 7 (in the Hearings Officer decision) where it states that staff recommends that the known collocation opportunities are fully and completely explored. He said he is not satisfied that is correct as in the prior paragraph she states that the applicant has failed to adequately document collocation that a facility 10 blocks to the east was not technically feasible. He realizes that application was withdrawn but it sounds like there is some uncertainty.

Commissioner Sten asked what instructions a company might be given to satisfy that criteria. Is there a certain type of study?

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Commissioner Hales said that is one of the problems with the current Code.

Commissioner Kafoury said Council has to go on what is in the Code now and she believes there is enough evidence that they have met the test.

Commissioner Francesconi said these towers are ugly and diminish the neighborhood. He also thinks the Code is inadequate to address some of these issues and gives too much discretion. However, given the current Code, he supports the motion because the evidence in the record meets the test and Council cannot substitute its own thinking for what is in the Code.

Mayor Katz said she is voting no even though it is risky. She believes it will impact the scenic corridor and that it is nonsense to believe a landscaped screening adjustment will enhance the livability and desired character of this area. If this were denied, she believes the applicant could probably find another location meeting his or her needs. Regarding the growing city argument, the same argument could be made about billboards, which they have been having a heck of a time removing. The burden ought to be on the companies to figure out sites and locations to meet their needs, although she understands the FCC requirements on siting.

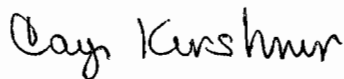
Following the vote, Mr. Chandler requested that they be allowed to enhance the findings before the final vote.

Mayor Katz said siting in a commercial zone surrounded by residential needs to be discussed.

**Disposition:** Tentatively deny appeal; applicant prepare findings for May 7, 1997 at 2:00 p.m. (Y-3; N-2, Francesconi and Katz)

At 3:55 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland



By Cay Kershner  
Clerk of the Council