



CITY OF

PORTLAND, OREGON

OFFICIAL
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 9TH DAY OF SEPTEMBER, 1998 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.

Mayor Katz read a proclamation declaring the month of September as Willamette River Watershed month.

Dean Marriott, Director, Bureau of Environmental Services, described some of the activities that have been scheduled during the month to make the public aware of what steps they can take to protect the River.

Commissioner Francesconi noted that one of Council's top priorities is to make the River the City's focal point.

On a Y-5 roll call, the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 1323** Cash investment balances July 23 through August 19, 1998 (Report; Treasurer)
- Disposition:** Placed on File.
- 1324** Accept bid of Pacific Service & Supply Co., Inc. to furnish chlorine residual analyzers for \$129,300 (Purchasing Report - Bid 99007)
- Disposition:** Accepted; prepare contract.
- 1325** Accept bid of Pacific Coast Construction, Inc. for Lincoln Park development for \$342,496 (Purchasing Report - Bid 99012)
- Disposition:** Accepted; prepare contract.
- 1326** Accept bids of Waste Management of Oregon and Trashco to furnish refuse hauling services for various City locations for \$151,585 annually for two years (Purchasing Report - Bid 99015)
- Disposition:** Accepted; prepare contract.

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1327 Accept bid of USA Waste Management to furnish refuse hauling services for Bureau of Parks and Recreation for \$226,885 annually for two years (Purchasing Report - Bid 99016)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

1328 Adopt City of Portland Investment Policy (Resolution)

Disposition: Resolution No. 35725. (Y-5)

***1329** Agreement with Youth Outreach Program to address crime prevention (Ordinance)

Disposition: Ordinance No. 172662. (Y-5)

Commissioner Jim Francesconi

***1330** Lease agreement for training space at 5010 NE 33rd Avenue for the Bureau of Police (Ordinance)

Disposition: Ordinance No. 172663. (Y-5)

***1331** Issue a revocable permit to M.B. Terminal Co. to construct, operate and maintain a private sanitary sewer line within a portion of park property at N. Columbia and N. Chautauqua Boulevards (Ordinance)

Disposition: Ordinance No. 172664. (Y-5)

Commissioner Charlie Hales

1332 Set hearing date for Wednesday, 9:30 a.m., October 14, 1998, for the vacation of SE Knight Street west of SE 14th Avenue (Resolution; C-9956)

Disposition: Resolution No. 35726. (Y-5)

***1333** Authorize indemnification agreement with NIKE, Inc. as a condition of receiving donation for play equipment and rubberized safety surfacing at Alberta Park (Ordinance)

Disposition: Ordinance No. 172665. (Y-5)

***1334** Modify intergovernmental agreement with Tri-Met to extend its duration by five years for construction of accessible carriage walks by the Bureau of Maintenance along selected bus routes within the City (Ordinance; amend Contract No. 50003)

Disposition: Ordinance No. 172666. (Y-5)

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Commissioner Gretchen Miller Kafoury

- *1335 Agreement with Open Meadow Learning Center for \$104,280 for the Corps Restoring the Urban Environment program and provide for payment (Ordinance)

Disposition: Ordinance No. 172667. (Y-5)

Commissioner Erik Sten

- *1336 Authorize a contract with Robinson, Stafford & Rude, Inc. for value engineering for the Tanner Creek stream diversion, Phase 2, Project No. 5500 (Ordinance)

Disposition: Ordinance No. 172668. (Y-5)

- 1337 Consent to transfer of Arrow Sanitary Service, Inc. solid waste and recycling franchise to Arrow Sanitary Service, Inc. as a wholly owned subsidiary of Waste Connections, Inc. (Ordinance)

Disposition: Passed to Second Reading September 16, 1998 at 9:30 a.m.

- *1338 Authorize a contract and provide for payment for the installation of a new roofing system at the Hazelwood Building, 1017 NE 117th Avenue (Ordinance)

Disposition: Ordinance No. 172669. (Y-5)

- 1339 Authorize amendment to contract with KPFF Consulting Engineers for \$40,000 to provide additional professional engineering services to accommodate increased scope of work (Second Reading Agenda 1314; amend Contract No. 30457)

Disposition: Ordinance No. 172670. (Y-5)

- 1322 **TIME CERTAIN: 9:30 AM** - Approve the Lents Town Center Urban Renewal Plan (Second Reading Agenda 1291 as amended; introduced by Mayor Katz)

Disposition: Kathleen Lansing, President, Foster Business Association and chair of the advisory committee appointed to work with the Portland Development Commission on the plan, said this was a very long and difficult process for the community but the end result is overwhelming support for the Plan. She noted, however, that this neighborhood has not had a strong past history of dealing with City bureaus and there is still a great deal of concern about certain aspects. She called for continued community involvement regarding property acquisition/condemnation and the prioritizing of projects.

David Nemo, Portland Development Commission, said one of the key elements of the plan is continued public involvement. Members of the advisory committee will meet soon to talk about the budget and prioritize projects. Right now the momentum in the community is strong and positive.

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Mary Davis, Brentwood Darlington representative to the advisory committee, said this plan is a tremendous tool for neighbors to achieve consensus for their future. The identification of Lents as a Town Center will help center the dynamics.

Art Lewellan, Brooklyn resident, expressed concern that the transportation element of the plan not be a low priority as Lents should become a central point for east side transit. He said the large, flat warehouse being constructed now on Springwater Corridor is a mistake.

Raymond Hites, SE Holgate, said an earlier urban renewal proposal was opposed by the community because of concerns about condemnation and negative experiences in the past. He said it was critical that this Plan come from the community and not be imposed from above. He supported its long-term focus and said the benefits to Lents are worth the risk of being targeted by the City.

Commissioner Francesconi said this plan recognizes that the City is only as strong as the weakest neighborhoods and, while Lents is not weak in spirit, it does lack infrastructure. He said the plan will allow transportation improvements, home repairs, more job opportunities and additional parks. The plan is a result of community leadership and the benefits should accrue to current residents of Lents and their children.

Commissioner Hales said while Lents has been planned several times before, Council has discovered that unless such plans are community based they tend to gather dust and are never implemented.

Commissioner Kafoury said every Council member has been intimately involved one way or another in the Lents area over the years and the passage of this plan is a proud day for the City.

Commissioner Sten said he never thought this day would come. It would not work without first developing this kind partnership with the community. He noted that there has never been an urban renewal district in an area like this before.

Mayor Katz said everyone knew two areas were not sharing in the wealth of the City -- Northeast and Outer Southeast. Council first focused on Northeast because of the urban renewal district there and has seen a growth in its social capital brought about by citizen organization. In Outer Southeast, the situation has been even worse. The residents did not like City and the community was very diffuse with no one group to which the City could turn. Over the past few years the community has organized itself and today there is an urban renewal district and growth in the area's social capital. She cautioned that the work is only beginning as major decisions lie ahead about priorities and what residents really want the neighborhood to look like.

Disposition: Ordinance No. 172671 as amended. (Y-5)

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REGULAR AGENDA

Mayor Vera Katz

- *1340 Accept an additional grant award of \$18,037 from the Oregon Department of Transportation, Motor Carrier Safety Assistance Program (Ordinance)

Disposition: Ordinance No. 172672. (Y-5)

Commissioner Charlie Hales

- 1341 Consider vacating a portion of N Macrum Avenue north of N Junction Street, at the request of Columbia Steel Casting Company, Inc. (Hearing; Report; C-9953)

Disposition: Approved; City Engineer prepare ordinance. (Y-5)

- 1342 Consider vacating a portion of SW Multnomah Boulevard between SW 40th and 45th Avenues at the request of Leonard Gionet (Hearing; Previous Agenda 991; C-9943)

Discussion: Marcia Wilder, Office of Transportation, said this vacation concerns a portion of SW Multnomah Boulevard which is undeveloped and lies below the existing right-of-way by 30 feet on a steep slope, adjacent to the petitioner's property. The petitioner proposes to consolidate the property for landscaping.

Michael Roche, 8920 SW 40th, Multnomah Neighborhood Association, said this was approved by the Planning Commission on a split vote. He said this is a 14,350 square foot area at the bottom of a ravine. Immediately behind the lot is a wetland area. Currently the area is mostly grass but it is also being used as a parking area and has some gravelled areas. The Neighborhood Association is concerned because on several occasions they were told the applicant intended to park cars there or expand the apartments. It is constantly wet and the water runs off into the wetland area. Amanda Fritz, a Planning Commission member, recommended that it be considered for a regional stormwater holding area. The initial memo from Amin Wahib of the Office of Transportation, says that it is probably in the City's long term interest to retain the open, pervious character of this site. That recommendation was then changed, for reasons which are not clear. Given the concern about stormwater in Southwest, potential development and traffic increases, the neighbors believe that area should be retained for possible stormwater and runoff storage.

Ms. Wilder said one condition of the vacation is that any building permits to further improve Tax Lot 67, the adjacent parcel, or the addition of any impervious surface to the vacated portion of the right-of-way, will require the owner to install stormwater facilities and erosion controls in accordance with State and City stormwater regulations. A review will thus be triggered if anything is put on the property being vacated.

Commissioner Hales said Mr. Roche is suggesting that this portion might be usable for stormwater retention for more than this site. He said his first reaction is to hold off and not

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take action yet. If it is approved, perhaps a condition should be added calling for it to be used only for landscaping rather than allowing its later use for construction. He asked that this be referred back to his office for further review by staff.

Mayor Katz agreed and noted that this is a piece of public property and becomes a policy issue.

Disposition: Referred to Commissioner of Public Safety.

Communications

1343 Request of Burnside Cadillac, The Campaign for Legal Places to Sleep, to address Council to propose amending or abolishing the City's camping ordinance (Communication)

Discussion: Cay Kershner, Clerk of the Council, noted that Burnside Cadillac had requested nine minutes.

Commissioner Kafoury moved to suspend the rules and allow them nine minutes. Hearing no objections, the Mayor so ordered.

Ted Doronila, Campaign for Legal Places to Sleep (CLPS), listed the documents being submitted in support of amending or abolishing the anti-camping ordinance, including a petition with 8,200 signatures. He said people have a constitutional right to have a place to sleep and the City should stop the criminalization of homelessness. He said enforcement of the anti-camping ordinance is a shameless waste of City resources and also discriminates against poverty-stricken citizens. While unable to solve its homeless problems, which are quite obvious in the downtown, the City takes prejudicial police action against downtown homeless people prior to major events, trying to sweep them under the rug. He said the problem is worsening as more and more homeless people are unresponsive to traditional help. They are tired of being institutionalized and treated as criminals and would rather face the elements and possible arrest than subject themselves to dehumanized governmental controls. Mr. Doronila cited several recent court decisions in support of homeless people's rights. He said there is nothing that declares that people must live in strictly coded and expensive housing that only the middle class can afford or that taxpayers must subsidize. People have the right to live elsewhere and other shelter options, including camping, must be available as a matter of right.

Sharon Pearson, CLPS, said since February they have talked to thousands of homeless and non-homeless people and their campaign has been given widespread media attention. She said sleep is a basic human right and homeless people who reject institutionalization will not go away. They are constitutionally free to live as they choose as long as they do not harm others. Homelessness should not be a crime in the City and people should stop being arrested for sleeping in public places. If such arrests do not cease after 30 days, CLPS will

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take civil disobedience actions. She said the City's anti-camping ordinance is unjust and prejudicial. She said CLPS requests a reply from Council within 30 days regarding the legalization of camp sites and the decriminalization of homeless people for sleeping in public places.

Disposition: Placed on File.

At 10:30 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 9TH DAY OF SEPTEMBER, 1998 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; Linda Meng, Chief Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

1344 **TIME CERTAIN: 2:00 PM** - Appeal of Cully Association of Neighbors against Hearings Officer's decision to approve with conditions the application of Margaret Mercier for a zoning map amendment from R10 to R5 in compliance with comprehensive plan, and a seven-lot subdivision with adjustments, located at 4903 NE Ainsworth Street (Hearing; 98-00219 SU ZC AD)

Discussion: Linda Meng, Chief Deputy City Attorney, outlined the procedures to be followed at this hearing.

Duncan Brown, Planning Bureau, described the proposal for a zone change from R10 to R5 in conformance with the comprehensive plan in order to allow a seven-lot subdivision with public streets. Also requested is a variance to meet the requirement for a temporary turnaround and an adjustment to reduce lot depth from 80 to 77 feet on three lots. The site, which includes one detached dwelling, is located on the interior of a large block with 127 feet of frontage on NE Ainsworth and 19 feet on NE 50th Avenue. There is one detached dwelling and the site is surrounded almost exclusively by land zoned R10, developed as single dwelling units on large lots. The development has significant frontage only on Ainsworth and on 50th Avenue, to the east. Mr. Brown described the character and zone designations of the surrounding neighborhood and the adjacent major streets. The applicant is proposing seven lots averaging just over 5,200 square feet in size although Lots 1 and 2 are 4,325 square feet. This is allowable in the R5 zone as long as the overall lot average is above 5,000 square feet. The Hearings Officer approved the zone change, adjustments for lot depth and the variance for a temporary turnaround. She also approved the subdivision with conditions. The neighborhood association appealed, contending that the street design will not meet future traffic loads and does not meet Code 34.70 and 34.50.020, which deals with the need to extend streets. He said the Planning Bureau, with the support of the City Engineer, determined that the street proposed by the applicant should be extended to the interior of the block. This is supportive of the Cully Neighborhood Plan which identifies this block as needing a street extension to the interior. Code Section 34.70 deals primarily with the provision of services and the Hearings Officer found that those services can support the additional six lots.

Mr. Brown said the second point raised by the appellants is that there is an environmental connection to Whitaker ponds, making it subject to 33.430.040 (E). A memo from the Bureau of Buildings notes that stormwater disposal on site will have an insignificant effect

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on the Whitaker Ponds. When the City imposed environmental zones in Northeast Portland, it determined that these areas were not environmentally significant and no environmental zones were placed on any property in the Cully neighborhood. He showed slides of the applicant's site, the adjacent area and nearby streets.

Commissioner Hales said the site plan approved by the Hearings Officer shows the new street (49th) extending north into a temporary turnaround, which curves to the west. Is it assumed, once the street is fully extended north to Holman as other development occurs, that an S-curve will be needed to get through the parcels rather than going straight north?

Mr. Brown said the road will go north and turn directly west, eventually extending to Holman.

Commissioner Hales asked if that is more feasible than going straight north into the adjacent parcels.

Mr. Brown said the lot directly north of the street has a house on it.

Steve Yett, Vice Chair, Cully Association of Neighbors, 5949 NE Cully Blvd., said this project is located in the corner of a very large parcel, about eight city blocks square. There are few internal streets in this section and the Cully Neighborhood Plan calls for an east/west street running from 50th to 46th. As originally proposed this had a cul-de-sac but that was later changed to reflect the Cully Neighborhood Plan. However, what they find disturbing is that the street does not go through to 50th. Transportation staff indicated that street design hinged on the lot layout, particularly the one on the east corner adjacent to the pedestrian easement. The plan shows a 20-foot wide street with parking on one side and while the City's literature says the street is 270 feet, the scale map shows that the street is over 300 feet. That exceeds Fire Bureau standards by a small distance but the Bureau believes that is adequate although not ideal. The neighborhood questioned other service providers, i.e. moving companies and garbage collectors, who expressed some concern about their ability to turn around at the end of the street, especially if cars were parked there. If the property to the west develops it will eventually have to hook up to this property and until the property to the north dedicates its 20-foot matching right-of-way, there will probably be an unimproved or non-existent street through there. The neighborhood believes the design would be more functional if the street extended out to NE 50th. Mr. Yett said people at the Audubon Society have told them there is an environmental connection between Whitaker Ponds and this area, specifically for bats. The area is now currently zoned R10 with an R5 overlay so there will be a lot of infill going on there and that is one reason why they believe the grid pattern of the streets is so important. Another concern is the lack of a consistent plan for handling traffic.

Commissioner Hales asked how a connection to 50th could be accomplished with only an 18-foot wide finger of land without getting the adjacent property owner involved in the creation of the street.

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Mr. Yett said he assumes the street would go west with a 20-foot right-of-way. As shown, he sees little opportunity that it would go to 50th.

Curtis Falbo, 4802 NE Holman, 97218, said Cully was a hodge podge of development even before it became part of the City. He said they would like to keep development well planned and, at times, in check. This area has a natural depression between Holman and Ainsworth running east and west and he has been told by several people involved with Whitaker Ponds that this depression would be an ideal place for stormwater management. He said it is not a good idea to have this road go through with no consideration of the wetland or the rural nature of the area.

Barbara Fritz, 4705 NE Ainsworth, 97218, said the hammerhead street proposed will make it difficult for garbage trucks, moving vans and emergency vehicles to negotiate the right-hand turn, particularly if parking is added.

Jeffrey Armstrong, PO Box 18153, representing the property owner, Margaret Mercier, said they worked closely with City staff to come up with a street pattern acceptable to the City Engineer. This property does not have environmental zones, nor does any area in the immediate vicinity. They have been trying to do something that meets all the regulations and they also met with the Cully neighborhood.

In rebuttal, Mr. Yett said Cully is an area that is rapidly densifying but has many streets that are unimproved or substandard. Cully is still establishing a grid pattern and it is very important that good street plans be implemented as development occurs so that the mistakes of the past are not repeated. Street design is something residents have to live with for a long time .

Commissioner Hales asked why staff reached the conclusion that a full street connection to east was not practicable.

Elizabeth Papadoplous, Office of Transportation, said Transportation had to evaluate the possibility of getting enough pieces to extend the road. When this site came through it appeared that three parcels would be needed in order to get the full width needed. She said east of 50th will never be extended so that while it is desirable to connect, staff felt that as long as they could get a good connection into the interior of the block it was less important to get a connection due east. A pedestrian connection to the east is proposed, however.

Commissioner Francesconi asked if emergency vehicles could make the turn at the hammerhead configuration.

Ms. Papadoplous said while it is not perfect, the Fire Bureau finds it is acceptable.

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

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Commissioner Hales said while he appreciates Cully's emphasis on connectivity it will take decades to create a network of streets where one does not exist. Within the confines of a single land-use decision, this is probably as good as the City can get.

Disposition: Appeal denied. (Y-5)

At 2:44 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 10TH DAY OF SEPTEMBER, 1998 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 Officer Chuck Bolliger, Sergeant at Arms.

1345 **TIME CERTAIN: 2:00 PM** - Appeal of the Arlington Heights Neighborhood Association et al of the City's decision to approve the application of the Oregon Holocaust Memorial Coalition to place a memorial in Washington Park (Hearing introduced by Commissioner Francesconi)

Discussion: Commissioner Francesconi said today Council is considering the appeal of his decision affirming Parks Director Charles Jordan's decision to approve siting the Holocaust Memorial in Washington Park, adjacent to Wright Avenue in the northern part of Washington Park. Council needs to decide if that decision meets the siting criteria and the applicable laws. He said in listening to both sides, it was clear to him that there was broad acceptance by all parties of having a Holocaust memorial in the City. The issue, therefore, is not whether there should be a Holocaust memorial. In August, 1995 Council passed a resolution approving the Memorial and appearing to adopt the Wright Avenue site. He said he felt the process laid out for siting memorials may not have been adequately followed and there was also an issue as to whether adequate notice had been sent to some of the neighbors because a specific location in Washington Park had not been identified. For those reasons, he decided a different process was needed and sought input from the Design Commission, held a public hearing and has now scheduled this hearing before Council. With those actions, he believes some of the issues, including notification, have been taken care of, although he feels they should have been handled differently. The issue now is whether this site is appropriate, not whether there may be other sites. He said Parks Director Jordan hired a mediator to work with the interested parties both prior to and after his decision. Commissioner Francesconi said he also got personally involved to see if a solution could be worked out. While both sides exercised good faith and raised legitimate issues, no agreement about an alternative was reached. However, there needs to be, and will be, a Holocaust Memorial in the City. He read a statement from Commissioner Hales, who was out of town, regarding his willingness to review the meeting tapes if necessary.

Harry Auerbach, Deputy City Attorney, reviewed the policy issues raised in this appeal. He said Commissioner Francesconi's decision is in keeping with Council policy adopted in 1989 for placement of memorials in public parks. That policy establishes a variety of memorial types and the processes for evaluating them. This proposal is for a memorial garden or plaza and the process set out for that involves a written proposal with a schematic design that receives conceptual approval from Design Review and is followed by a site plan

with detailed drawings. That in turn is reviewed by the Parks staff for concurrence with any master plan governing the Park, by the Arts Commission and an internal review by bureau managers and the Commissioner's office. There is then a final design review and ultimately a decision by the Parks Director, which is then appealable to the Commissioner-in-Charge and Council. The policy sets forth criteria for evaluating these proposals and recognizes that there is a balance between preserving open space and the benefits to the community of an appropriate memorial. One decision Council needs to make is to determine whether the benefits of the memorial outweigh the loss of open space. He cited the seven specific approval criteria, taking special note of criteria about which there is disagreement. Those include Criterion 4 which calls for the location to be in an appropriate setting. Under that criterion, the policy specifies that, in general, there should be some specific geographic justification for the memorial being placed at that location but, in special circumstances, such a justification is not needed. Criterion 4 states that the location of the memorial should not interfere with existing circulation and use patterns of the Park and Criterion 6 calls for it to be compatible with the Parks current or historic master plan, if existing. Finally, Criterion 8 calls for the memorial to contribute to the park setting from a functional or design standpoint.

Mayor Katz asked if Council has to make its findings based on those criteria.

Mr. Auerbach said those are the criteria for making the decision and, while there is no requirement that Council make findings, staff has proposed that it do so. The appeals have raised the issue of whether this is a land-use decision and it appears that Council will ultimately be making a land-use decision because it has been called on to interpret a number of Planning and Zoning Code provisions. The Planning Bureau has advised that because the proposed memorial is a plaza or public square it is a parks and open space use as a matter of right in the open space zone and therefore does not require a land use approval, such as a conditional use. The appellants contend that this is an improvement designed to draw spectators to an event in a park which would require a conditional use under the Zoning Code. So Council must make an interpretation of those two provisions of the Code and determine whether this type of memorial is a public square or plaza and thus a use of right in the zone or whether it is something which requires a conditional use. A second issue concerns the question of the master plan for Washington Park, which was adopted by Council in 1981. The appellants believe the memorial is inconsistent with the master plan and requires a conditional use master plan amendment under the Master Plan chapter of the Planning and Zoning Code. The Planning Bureau, however, has advised that the Washington Park master plan is not governed by that Code chapter because it was an administrative plan adopted for the Park, not a Planning Bureau master plan. The ultimate question is whether the memorial is or is not consistent with the master plan. The appellants have suggested it is not consistent because the Washington Park master plan recommended that certain streets be closed to automobile traffic in that section of the Park -- Sterns Drive, Washington Way and Washington Circle. In the intervening 17 years several of those streets have been closed but Washington Way has been kept open about half the time to meet occasional public demand for automobile access. The memorial proposal makes no recommendations regarding the streets, either to open, close or add them. The appellants argue that the proponents cannot do that without violating the recommendation of the old

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Master Plan. Parks Director Jordan and Commissioner Francesconi found that the memorial was consistent with the master plan because it identified this area on a map in the Plan as suitable for moderate development.

Commissioner Francesconi said with regard to the legal issues and the conflict with the Zoning Code and master plan, the Planning Bureau advised Director Jordan and him that it did not want to go in that direction. The other issues concern parking, traffic and the visual impacts on the neighborhood. Director Jordan, in his approval, is requiring screening of the memorial and some redesign which he must approve before the memorial can actually be built.

Mr. Auerbach said the policy states that if a memorial is approved, the next step is that the applicant has to negotiate the terms of a permit with Parks before being allowed to actually build it. The decision being appealed calls for the applicant to return with additional screening or other design modifications to minimize the visual impact on the houses across the street.

Mayor Katz asked legal counsel to summarize the two legal issues again.

Mr. Auerbach said one legal issue is whether this is a use of right in a park zone or whether it is an improvement designed to draw spectators to an event and therefore a conditional use. The other issue is whether the 1981 master plan for Washington Park is a master plan covered under the Zoning Code and therefore required to go through a planning process in order to amend it. Council does not have to answer that question if it decides the memorial is consistent with the plan. If, however, Council finds there is a variance between the proposal and the historic master plan, then it must decide whether a master plan amendment is required through the Zoning Code.

Phillip Worth, Kittelson & Associates, 610 SW Alder, #700, 97205, said currently two projects are under consideration in Washington Park. The first is the Washington Park Improvements Project, a bond-funded project which includes specific improvements to a concession stand and restrooms plus further improvements to wayfinding, circulation and other transportation-related concerns. As a member of the consulting team on that project, Kittelson was examining those issues when the memorial siting project arose and they were asked to look at the potential traffic impacts associated with it. He described the streets around the proposed memorial, including Cedar Loop (the main entrance/exit via Park Place), Washington Way and Washington Circle. As part of the Parks improvement project, it was noted that this was a confusing roadway for visitors. To address those issues, a number of improvements in the area were identified, including better signage and establishing a simpler way to exit the park. In addition to improvements at the intersections, a sidewalk to complete the pedestrian connection from Park Place up to the Rose Garden area and striped pedestrian crossings across the key roadways were proposed. Currently parking is allowed on sections of Cedar Loop and parts of Washington Way, which is controlled with gates that allow access only on weekends. At such times, parking is available along Washington Way and in Washington Circle. These improvements will provide better pedestrian circulation and accessibility to the park in general. In reviewing

the potential impacts of the memorial siting with those improvements in mind, his firm looked at the availability of on-street parking and pedestrian accessibility. He said Washington Way and a portion of Cedar Loop provide an excellent location for school bus drop-offs and parking will be available in a number of locations, including along Cedar Loop and along Washington Way on weekends. Under peak circumstances, five parking spaces for visitors to the memorial are needed and the parking supply is more than adequate to accommodate them.

Phil Grillo, attorney representing Doris Carlson, asked that the Washington Park Master Plan and the map that is part of that plan be part of the record. He said the appellants believe the approval or denial of the coalition's discretionary permit request to locate this memorial in Washington Park cannot be based on the Parks Bureau's memorial siting policy. First, this is a discretionary permit, which means it involves discretionary approval of a proposed development of land either under ORS 227.215 or City legislation or regulation. He said under the ORS regulation cited, development means a material change in the use or appearance of a structure or land. Under another statute, ORS 227.173, all discretionary permit decisions have to be based on standards and criteria that are set forth in the City's development ordinance. As an example, he cited the BCT Partnership case having to do with the Schlesinger project and the Goodman appeal that resulted. What State law says is that the criteria either have to be contained within the development ordinance, or at least referred to in that ordinance. However, the memorial siting policy adopted in 1989 is a stand-alone policy that is neither contained in or referred to by the Zoning Code. For that reason, appellants believe that policy cannot be used either to approve or deny a permit for development. Finally, anytime one makes a decision regarding a permit, one also makes a land-use decision. At least some of the provisions of the Zoning Code must be interpreted in order to arrive at a decision in this case and with a land-use decision comes all the procedural protections that go along with ORS 197 and 227. If the policy cannot be used in this case, then the Zoning Code, Title 33, and the Washington Park master plan certainly apply. There has been some debate about what to do if the Master plan predates the provisions in the Zoning Code (33.820), which is now referred to as the conditional-use master plan process. That part of the Code specifically states that master plans approved by the City prior to January 1, 1991, as this one was, are deemed to be in conformance with this chapter and continue in effect until their expiration dates. Those without expiration dates continue in effect until the development allowed by the plan has been completed. The Washington Park master plan was approved by the City by resolution and has the effect of being a conditional-use master plan. He said this is completely consistent with what the City has done in the past with many institutional master plans. He cited the Kaiser master plan, originally approved in 1990, and the Good Samaritan plan, originally approved in 1985, both of which became conditional-use master plans on January 1, 1991 when the new Zoning Code was adopted. What the Planning staff thinks those plans might be is irrelevant for purposes of what the City's standard is.

Mr. Grillo said the appellants believe this is a conditional use in the Open Space zone. He said there has been a debate about whether this is a plaza or something that draws spectators to an event in the Park. Commissioner Francesconi concluded in his decision that the memorial would not draw spectators to an event but no definition was used. He cited the

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dictionary definitions of spectator and event and said he does not understand how visitors to the memorial will not "look on or watch" it or think they are not at a noteworthy happening or social activity. He said the Coalition itself says the memorial is meant to be a multi-faceted, interactive teaching media designed to educate visitors, not a passive public plaza or square. Even when there are plazas that draw spectators to scheduled events, those events need conditional-use permits. Mr. Grillo said the master plan provisions also kick in here as any proposed development within 400 feet of the Master Plan boundaries requires a Type III master plan amendment. The appellants believe that the Parks memorial policy cannot be used to make this decision. Instead the applicants must go through the conditional-use permit process and obtain an amendment to the Washington Park master plan. He said his client, Doris Carlson, recommends that this be remanded to the land-use Hearings Officer to allow the applicant to submit applications for both the conditional use and master plan amendment and that the matter be scheduled for a Type III hearing. If that occurs, Ms. Carlson will be willing to abide by the decision of the Hearings Officer and not pursue any appeals to the Land Use Board of Appeals (LUBA). He said as a precaution, the appellants have already filed an appeal with LUBA of Commissioner Francesconi's earlier decision.

Greg Hathaway, attorney representing the Arlington Heights Neighborhood Association, said the issue here is not with the concept but with the siting and process. He said families in the Arlington neighborhood are legitimately concerned with the impacts the memorial siting will have on their properties. The major concern, however, is a process one as it is very clear to them that this is a land-use decision. When the issues are very complex and there is some question about whether a matter is or is not a land-use case, then most jurisdictions choose to go through the land-use process because it is the safest procedure and the one least likely to create procedural error. It also protects all the participants from criticism about the fairness of the process. The land-use process allows Council as the decision maker to rely upon evidence in the record and make specific findings that all the criteria have been satisfied. When Mayor Katz asked if Council needs to make findings, the City Attorney said not really. That is a problem because when Council makes a decision to site this memorial, it needs the protection of findings to show it relied on the evidence and right legal standards. Nowhere in the current policy is there a requirement that Council has to look at the impact on adjacent properties and that is a critical issue. He asked Council to follow the right process.

Commissioner Francesconi asked if several picnic tables are more like a plaza or structure, or more like an event.

Mr. Grillo said several picnic tables are not a noteworthy event unless somebody noteworthy is at the tables. It is a case-by-case call. A memorial honoring the Holocaust is certainly a noteworthy event and the idea behind it is to have some social interaction as part of the teaching element. Conditional uses are not just spectator events like car races but things like swimming pools, concession stands and parking areas. All are conditional uses in the open space zone.

Ross Miller, Pastor, First Methodist Church and representative of the Ecumenical Ministries of Oregon on the Holocaust Memorial Coalition Board, thanked Council for its initial

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support of the memorial three years ago. He named some of the constituencies represented on the Coalition.

Tad Savinar, Holocaust Memorial design team member, said the existing clearing where the memorial is proposed is 23,850 square feet while the square footage for the proposed cobblestone and granite to be placed there is 1,400 square feet plus with an additional 2,000 square feet of crushed gravel. This would result in about a 15 percent impact to the walking area. He said from the beginning the design team intended to design a memorial which blended into the existing nature, architecture, mood and sensibility of Washington Park. Team members were also very cognizant of the adjacent residential area and its relationship to the site. The team also wanted to create a unique design that sprang from the direct experiences of survivors who now live in Oregon. What they designed is a self-guided sequential story told in the words of the survivors through the use of bronze, granite and other stone materials. The current design has been reviewed and approved by the Landmarks Commission, the Regional Arts and Cultural Council, Public Art Advisory Committee, Design Review Commission, an American Disability Act representative, the Police Bureau and the Parks Planning, Design and Maintenance Bureaus. He described the location and design elements of the proposed memorial, including a nine-foot tall wall which sits down in a bowl and is more than a block from the property line of nearby residents so that it does not block their view of the glen. He said the Coalition would be happy to engage the neighbors in discussions about screening as by using regular plant materials the entire site of the memorial can be screened if that is desired.

Steve Moskowitz, attorney for the Oregon Holocaust Memorial Coalition, said after approvals by many previous review boards, the Coalition now hopes this will be the final confirmation of a very sensitively designed memorial in a very appropriate setting. He cited the applicable approval criteria in the siting policy and the ways in which this memorial meet them. Regarding balancing the enrichment of the memorial with the preciousness of open space, he said the improvements the Coalition will make to drainage on the site will make the open space more accessible and usable. He also explained why the Coalition believes the Holocaust is worthy of memorializing, stating that it was perhaps the most challenging event in human history in the twentieth century. The memorial has been designed not so much to recollect the horror of the event as to enable generations to reflect on the commitment to the virtues that human beings maintained in the face of evil, which ultimately triumphed. He listed some of the reasons why the memorial has timeless qualities and why Washington Park, as the City's pre-eminent park, is the appropriate site for it. Mr. Moskowitz said the location will not interfere with existing and proposed circulation and use patterns and is compatible with the Park's current and historic Master Plan. The Kittelson study shows that there will be no negative impacts from traffic and that the memorial is consistent with the type of moderate development anticipated in the Washington Park master study. He said this is a proposal to place something that is allowed in open space and does not trigger any type of land-use review. It is not the type of facility that Code Chapter 33.100 indicates would generate some type of land-use review.

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Supporters of the appellants who dispute the selection of this site for the memorial included:

Joe Angel, 356 SW Kingston, 97201
Louisa McCleary, former chair of the West/Northwest
Neighborhoods Coalition, 231 NW Seblar Dr., 97210
Doris Carlson, 211 SW Wright, 92701
Mary Dinnis, 2869 SW Rutland Terrace, 97201
Brook Constable, 229 SW Wright, 97201
Rob Wherley, no address stated
Ruth Raske, 208 SW Marconi Ave., 97201
Bruce ffitc, 141 SW Wright, 97201
Rudi Nussbaum, 2393 SW Park Place, 97205
Carol Adler, 2823 SW Rutland Terrace, 97201
Amy Kohnstamm, 2803 SE Main, 97214
Jacob Avshalmov, 2741 SW Fairview Blvd, 97201
David Ferriday, 122 SW Marconi Ave., 9201
Robert Butler, 824 SW 18th, 97205
Gunter Hiller, 623 SW Park, #707 97205
Jeff Boly, 2870 SW Champlain Dr., 97201
Rose Marie Opp, 1135 SE Yamhill

Opponents of this site said they would like to see the memorial sited in a less contentious, more suitable location using a process that was not flawed from the beginning. They contended that the memorial, which is planned as a teaching tool, will become a major attractor bringing bus loads of school children and other visitors to one of the most congested parts of Washington Park with a particularly negative impact on Wright Avenue. As a major attractor, it requires proper land-use planning and review. They said there were no objective findings regarding the use of this valuable open space and that this site was chosen specifically because it is the last level open space in Washington Park. The issue of saturation has also not been addressed and opponents noted that this would be the fifth memorial sited in Washington Park. Those testifying questioned the process used and criticized the lack of notification and input from the neighborhood prior to the selection of this site for the memorial and only after the Coalition had already undertaken a costly design process. They said the process was skewed in favor of the Coalition from the beginning and those who questioned it later were told it would be tough to change the site at that point. Many testified as to the value of retaining the existing use and having an unstructured, recreational use preserved as open space. They also questioned the scale and design of the memorial, particularly the need for a nine-foot wall. A few of those testifying questioned the need for another Holocaust memorial, given the unending stream of victims of new disturbances which are overwhelming the United Nations. They said helping today's victims would be a better use of the money.

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Individuals testifying in support of the memorial included:

Rabbi Joseph Wolf, 8626 SW Capitol Highway
Mary Jo Tully, Archdiocese of Oregon and Coalition member,
2838 E. Burnside, 97214
Dr. Marshall Lee, Portland State University, 15366 NW
Aberdeen Dr., 97229
Rich Maloney, President and C.E.O., Meier and Frank Co.
Barbara Walker, 1891 SW Hawthorne Terrace, 97201
Father Rick Sirianni, Director, Office of Ecumenical and Interreligious Affairs for the
Archdiocese of Portland
Irwin Mandel, 1511 SW Park, 97205
Lilly Mandel, 1511 SW Park, 97205
Morton Shapiro, 32425 Boones Bend Rd., Wilsonville, OR
Jerome Russell, 10235 SE Stephens St., 97216
Robert Fredericks, 301 SW Lincoln, #405
John Larsen, 5829 SE Salmon
Evelyn Thomas, no address stated
Debbie Montrose, no address stated
David Lokting, 107 SW Kingston
Eva Aigher, 4675 SW Flower Place,
Alice Kern, SW Boundary
Paul Norr, 931 SW King
Fern Schlesinger, 4829 SW Stonebrook Court
Marlene Ceylon, reading a letter from Bob Lustberg, 2389 SW Cedar
St., 97205
Miriam Greenstein, 15837 NW St. Andrews Dr., 97229
Eileen Hines, 5319 SW Westgate Dr., #139, 97229

Supporters of this site said there is no better place for this memorial, which belongs in a prominent, accessible place in the City's front yard and which will enhance the beauty and purpose of the park. They said no one knowingly violated the process or tried to keep the site a secret. When concerns were raised everyone stopped and went back through the process, reviewing other possible sites before determining that this was the most appropriate one. The Coalition itself did not choose this particular site but was given it by Parks Bureau staff. They said the memorial is less than half an acre and that its quiet, contemplative design is totally appropriate here in an area of unused open space and very sensitive to neighboring residents. Supporters said no factual, substantive reasons have been stated today to give Council a reason to overrule all the other entities which have already reviewed and approved this. They said no new or better solution would result from starting over again with the siting process and it is not realistic to think that 100 percent agreement can ever be achieved. They said this will not have negative traffic impacts and with proper screening, residents along Wright Avenue will never be bothered. A number of Holocaust survivors and members of their families testified as to the significance of siting this memorial in this Park so that future generations will not forget one of the darker moments in human history.

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In rebuttal, Mr. Grillo urged Council not to first decide what the right outcome is and then make the facts and legal determinations to support that. He said Council should first look at the law. Regarding the process, he said procedural error by itself is not enough to cause a remand from LUBA but there is more than process at stake here. If the City does not use the conditional use and plan amendment process, it does not get to the relevant approval criteria. Council cannot decide what the relevant facts are until it knows what the relevant law is. He said the City stands a very substantial chance of losing on the process issues which means it could end up where the opponents suggest it should be now. The other issue regarding time and delay, is that if this project gets stuck at LUBA and beyond, there will be a longer delay than if this were returned to the Hearings Officer for the right process in which the right criteria are applied. This is not the kind of process to finesse word definitions and Council should use either the definitions in its Zoning Code or the dictionary. It should use the process in the Code, not a stand-alone policy to which even staff has made derogatory references.

Commissioner Francesconi said Mr. Grillo has raised some legitimate legal issues but in neither the opening or rebuttal, did he mention traffic, open space, visual impacts on the neighborhood or about the site itself. What is it about the site that is a problem?

Mr. Grillo said there are both subtle and not so subtle differences in criteria that apply under the policy the City is using versus the criteria that exist in a conditional use permit process and the master plan amendment process. These differences are very important as in a master plan process you look to protect the neighborhood, not just do a balancing act between memorial and transportation issues. The reason he did not focus on those is because the relevant criteria have not been used yet. Right now they are talking about what are very squishy criteria in the policy. He said he does not have enough time to lay out all the facts and plug them into the relevant conditional use and master plan criteria, which are not yet before Council.

In his rebuttal for the Coalition, Mr. Moskowitz raised four issues. Regarding the process, he said this is eighth review this process has gone through including an additional level of public hearing that was not actually required by the policy. Although also not required, the Coalition did an alternative site analysis, considering such issues as slope and grade, drainage, accessibility to the handicapped, cut-and-fill and whether retaining walls are needed. It found that this site was by far the best one. Second, regarding land use, the placement of allowed use such as this memorial does not trigger a land-use review. Third, the Washington Park master study is not a Zoning Code related document. The ordinance in place in Title 33 when the study was done makes it very clear that a master plan is intended to be used to approve various conditional uses. That is not what this document did. This study actually anticipated this kind of development at this location so there is no variance with the master study. Regarding open space, he said it is clear that the memorial will not detract but enhance the open space, allowing a connection with something eternal. The mere extension of existing screening would completely eliminate the visibility of the wall.

Mr. Grillo asked that a memo from Jeff Joslin to John Sewell be made a part of the record.

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Mayor Katz asked the City Attorney to review the legal issues.

Pete Kasting, Senior Deputy City Attorney, said he has reviewed the legal arguments contained in Mr. Grillo's letter. The first cluster of arguments contends that Council's decision in this matter is going to be a decision on a discretionary land-use permit. He said he does not agree with that analysis as it hinges on a string of definitions found in various portions of ORS 227. One of the key definitions is the definition of development (ORS 227.215). That section authorizes cities to enact development codes which the City has done in Titles 33 and 34. However, the matter before Council is not regulated by either Title 33 and 34 and he does not believe that definition is applicable to this decision as it is not an issue arising under the City's development codes. The second basic argument is the contention that there was a conditional use master plan applicable to Washington Park and that Council's decision must be processed as an amendment to a conditional use master plan. He said he agrees with Mr. Mostkowitz' comments on this issue as he believes the facility plan adopted for Washington Park was not a conditional use master plan and not subject to Code Chapter 33.820. Another contention made is that this a conditional use because it will attract spectators to an event. In Chapter 33.100 of the zoning code it states that some developments in parks, such as athletic fields and other facilities that attract spectators to events, have to be processed as conditional uses. It is possible to make a theoretical argument that looking at materials embedded in this memorial is being a spectator at an event, but that is a pretty strained interpretation of the words "spectator" and "event." He said the question Council needs to address in written findings is whether the use proposed here is more akin to spectators coming to a baseball or soccer game as opposed to visitors to a sculpture garden or a plaza with plaques embedded in it. It would be within Council's interpretative authority to decide that this is an outright permitted parks use if it decides that looking at the materials proposed for this memorial is more akin to looking at sculptures or plaques in a plaza than attending a baseball game. This is an interpretative decision for Council that needs to be addressed in the findings. While the arguments set forth by the opponents are creative and thorough, he does not believe they are likely to prevail upon appeal.

Commissioner Francesconi asked if it is clear that a sculpture garden would not require a conditional use.

Mr. Kasting said that is an interpretive decision for Council to make in its findings.

Jeff Joslin, Bureau of Planning and staff to the Design Commission, addressed the definition of allowed uses. He said this interpretation is consistent with all past and recent practice related to other memorials, including the Vietnam and Japanese memorials. He said it was not difficult for the Planning Bureau to make its decision, based on such consistent practice. Regarding the master plan itself, this was clearly not what the Bureau considers to be a conditional use master plan, simply a facilities plan. It was not adopted by ordinance but accepted by resolution. If a more legally binding land-use decision was intended, the master plan would more likely have been adopted by ordinance.

Mayor Katz asked him to comment on the review by the Design Commission.

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Mr. Joslin said the Commission considered three areas -- design, pedestrian/traffic circulation and process. Since this was an informal review, the Commission applied the criteria that would have applied if Design Review had been required on this site. He noted that he had described in detail the Commission's deliberations in his memo to Parks Director Jordan.

Commissioner Kafoury asked if the reason there was only one hearing was because the longer design review process was not required.

Mr. Joslin said the difficulty with the memorial policy and process is that because this is not a formal land-use process someone has to know how to trigger it. The policy is pretty loosely written and needs to be revisited. He noted the amount of review this has been subject to and said while there were not two reviews by the Design Commission, there were two earlier reviews by the Landmarks Commission and design review staff. Those occurred roughly a year before this process started. The Landmarks Commission took a cursory look at the design and deemed it appropriate and acceptable. He said nowhere in the memorials policy is there any detailed description about the amount of public notice and participation although it is clear the intention of the policy is to allow some public review. The primary role of the policy is to provide internal review by a number of bodies, some of which are citizen commissions.

Commissioner Francesconi said it was very important to him to follow the law and make determinations about what process to use. It was also important to be consistent with current policy. He said he will return to Council soon with some policy changes about memorials and park uses but right now this issue has to be dealt with.

Mr. Joslin said one of the challenges of this particular process is that this is the first time it has been applied, in the ten years of its existence, to the placement of a major memorial.

Mr. Kasting said the City Attorney responsible for completing findings on this matter has requested three weeks to prepare them.

Commissioner Kafoury moved to tentatively uphold the decision of the Commissioner-in-Charge (Commissioner Francesconi).

Commissioner Francesconi said Council may need to add that this memorial is consistent with a public square or plaza and is not a facility designed to draw spectators to events. Commissioner Kafoury agreed.

Commissioner Sten seconded Commissioner Kafoury's motion with the addition of Commissioner Francesconi's clarifying statement.

Commissioner Kafoury said when Council members were approached by the Holocaust Memorial Coalition she never dreamed there would be any controversy about it. This seemed like such a tasteful design and an appropriate memorial, which had been featured in the newspaper so there was no secrecy. Regarding the recommendation that this be

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remanded to some sort of land-use appeal process, Commissioner Kafoury noted this has been processed extensively. Not only have people been able to testify but there has been an opportunity for people to go back and revisit the decision. The committee looked at a number of additional sites and this is not like a typical land-use case where a proposal is presented and then Council rules. The final arbitrator in a land-use case is Council, so even if this were remanded it would return to basically the same body which would make the same decision. She said she believes the findings today are as legitimate as they would be a year from now. She said she was very saddened to hear from several of those testifying that this memorial is not welcome here. She said the community needs to get to a point where every proposed change is not greeted with that kind of response. She said with appropriate findings Council should approve this and get on with it.

Commissioner Francesconi thanked Design Commission members and City staff for all their work, particularly John Sewell in the Parks Bureau. He also thanked representatives from the Arlington Heights Neighborhood Association and the Memorial Coalition for trying to work out a solution. He said this was a very painful decision for him but he believes out of this will come something beautiful. He believes there were some mistakes in the process and plans to make some changes to it. He will also reexamine the issue of what can be placed in the public parks. He said while he believes there were other places this memorial could have gone, special consideration was given to the neighborhood and will continue to be given to it in this case. He said public places do belong to all the citizens of Portland and this memorial is very appropriate in a regional park such as Washington Park. He believes the visual impacts can be resolved for the neighborhood through the redesign which Director Jordan will have to approve, with siting and perhaps even minimal redesign of the structure itself. He said he expected much more testimony about traffic and transportation but supports the Kittelson study findings, which show that the memorial will add only six additional cars. They can be handled given the planned improvements. The impacts on the open space can also be handled and it is now time to move on and build this memorial.

Commissioner Sten said he believes both sides have good arguments. He has tried to look both at the use itself and at the importance of this memorial and what it stands for. It is clear to him that the City has an inadequate memorial siting process which must be changed. He said the policy does not contemplate any problems, only whether a memorial is appropriate. Key people at the City decided it was appropriate but there was no process that allowed neighbors to raise legitimate questions. However, he sees no reason for more process in this case as it will only end up back at Council anyway. He said it is unfortunate that this has become so emotional for both sides. It is a fair argument to ask whether this should go into a park or not but this clearly fits the character and is an appropriate site that is very important to the City. He does not believe it will disrupt the Park or attract a steady stream of people and it will be a good place for people to go and contemplate a very important memorial. He does not have a clue as to whether the memorial constitutes a picnic bench or a ballpark. This is an important memorial and people of good will have spent a lot of time but have not been able to find a better site. The question is whether this is an appropriate use of this public facility and in his mind it certainly is. However, he would not like to see another memorial sited until there is a clear way for people with legitimate questions to state their concerns. Currently the City does not have that and it has created an unnecessary mess.

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It was not unnecessary to have the argument as people have a right to feel strongly about what should go in a park. A person can think something is inappropriate for a meadow without having any disrespect for the use itself. However, he believes Council has the authority to approve this despite the fact that the City's memorial policies are not very good. He commended Commissioner Francesconi for trying very hard to sort out this bad process and come to a fair decision.

Mayor Katz said she believes this is a lawful use by right and therefore no conditional-use findings are appropriate. She also believes the memorial is consistent with the Washington Park master plan and not in conflict with the Zoning Code. Consequently, for her the legal issues are resolved. Like Commissioner Kafoury, she never foresaw the conflict that would arise from this decision but perhaps it is inevitable that siting a Holocaust memorial comes out of conflict and frustration. She disagreed with Mr. Nussbaum, who testified that a lasting spirit of remembrance and a commitment to justice cannot be borne out of strife. She said if she thought for a moment that all could agree on a site, she would probably have urged Commissioner Francesconi to go through the process again. But after hearing today's testimony in opposition to the site, the design and even the idea of the memorial itself, she does not believe it is possible to come to a community agreement about this.

Disposition: Tentatively uphold Commissioner Francesconi's decision to approve application; prepare findings for October 1, 1998 at 2:00 p.m.

At 5:55 pm adjourned.

BARBARA CLARK
Auditor of the City of Portland



By Cay Kershner
Clerk of the Council