

CITY OF PORTLAND
PUBLIC MEETING
COMMUNITY DEVELOPMENT COMMITTEE
July 11, 2007
5:00 p.m.

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APPEARANCES:

- JAMES CLOUTIER, Chair
- JILL DUSON, Councilor
- KEVIN DONOGHUE, Councilor
- BILL NEEDELMAN, Senior Planner
- LEE URBAN, Planning and Development Department Director
- MARY COSTIGAN, Associate Corporate Counsel
- ELLEN SANBORN, Assistant Director of Finance
- CARRIE MARSH, Urban Designer
- JEFF MONROE, Director of Ports and Transportation, City of
Portland
- JOE CUETARA, Moors & Cabot, Inc.

PROCEEDINGS

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3 MR. JAMES CLOUTIER, CHAIR: Good evening, everybody.
4 Thanks for coming. This is the Community Development
5 Committee's regular July meeting, and we have two items on
6 the agenda, the first being an industrial revenue bond,
7 the second being the Maine State Pier. Maybe I could ask
8 the -- whoever's guilty of the industrial revenue bond on
9 the staff to give us a good, quick description of what
10 this is all about, and then we'll take it from there.
11 Hearing none --

12 MR. LEE URBAN: Mr. Saffian, is he -- Jim Saffian,
13 here? This is a continuation of the process that the
14 Council started a while back, with an inducement
15 agreement, which is something that's simply required by
16 tax law for the Council to sponsor a project. And the
17 project is a cargo-handling facility out at the Jetport,
18 so you've already started that. This is to say, yes, the
19 city continues to sponsor it, and there's no liability on
20 the city's part. But Aero then goes out and finds a
21 lender and says, yes, the City Council has continued to
22 vote to sponsor this project.

23 CHAIR: Any public comment on this item? I assume
24 our fearless leader of economic development thinks it's a
25 good idea, as does our airport staff. So Council, any

1 questions? Close the public comment period. Discussion?
2 Can I have a motion?

3 COUNCILOR JILL DUSON: (inaudible)

4 CHAIR: Moved by Councilor Duson.

5 COUNCILOR KEVIN DONOGHUE: I guess I'll second it.

6 CHAIR: Seconded by Councilor Donoghue. Any
7 discussion? Seeing none, all those in favor? Opposed?
8 It's unanimous. Okay.

9 The next item is the Maine State Pier. Again,
10 welcome everybody. I think this might very well be the
11 last CDC meeting on this topic for a while, and the next
12 stop will be the City Council. I'm going to invite the
13 staff to make a brief update presentation, and then the
14 committee will begin its proceedings.

15 MR. BILL NEEDELMAN: Thank you, Chair Cloutier. I'm
16 going to be talking about the selection criteria, as -- as
17 presented in the RFP document just very briefly. And if
18 there are any financial issues, I'd ask Ellen to weigh in
19 on the financial aspects of it. We have, as everyone, I
20 think, who has watched this process knows, provided an
21 ongoing evaluative criteria chart, which is provided in
22 the packet that provides sort of a running commentary on
23 the selection criteria and -- and the proposals as they
24 have evolved. Before I get into that, I don't intend to
25 go through the blow by blow because we have done that in

1 the past at a previous meeting, and I think that probably
2 the best way to dig into it for the CDC is -- is through
3 questions and answers. I would like to thank both the
4 teams for their responsiveness and the quality of the
5 material that's come forward. It's made this a much
6 easier process. And I'd also like to thank the -- both
7 the CDC and the public for the close attention that's been
8 giving to -- given to the process. It certainly warrants
9 it.

10 At the previous meetings, as I've said, we have gone
11 over the criteria box chart criteria by criteria and box
12 by box. I don't really see the value in doing that right
13 now, but am available to ask any questions. I'd like to
14 re-state, as we've noted at the -- on the June 27th
15 meeting, that the architectural review has not been
16 conducted yet, and we would provide that for the full
17 Council, as requested. But we did provide general
18 comments on architecture at that July 27 meeting, and am
19 happy to answer any questions.

20 CHAIR: If any member of the committee has any
21 questions at this point, that would be fine. Otherwise,
22 as we go along, obviously we have a full complement of
23 staff here tonight, it looks like, so I understand Mr.
24 Urban may need to leave us about the same time I have to
25 leave, or earlier, which is at 6:30, so -- but the --

1 we're in order for any questions that anybody might have
2 of staff. Councilor Donoghue?

3 COUNCILOR DONOGHUE: I just wish to touch on the
4 minimum requirements and ask pretty much a yes or no
5 question. As of the February 22nd submittals from each
6 team, were there any minimum requirements which were not
7 adequately met by either team?

8 MR. NEEDELMAN: We asked for additional detail from
9 both -- from both teams regarding specifics on different
10 aspects of their -- of their materials. And at that
11 meeting, it was -- we were under the assumption that we
12 were going to be receiving additional material and
13 accepting additional material. But as of the -- as of
14 February 22nd and when we did the review originally, we
15 did note a number of different details that we would need
16 clarified in order to make sure that the minimum
17 requirements would be -- would be met. And those are
18 still -- those comments are still retained in the
19 development review chart -- excuse me, the -- the review
20 criteria chart that you have. The original comments are
21 provided in black, and those have not been changed.

22 COUNCILOR DONOGHUE: Okay. I guess I'm going to have
23 to ask more specifically, minimum requirement number one,
24 were -- did both teams adequately meet that on February
25 22nd or not?

1 MR. NEEDELMAN: Subject to the additional details
2 that we asked for, it appeared that they were going to be
3 able to preserve and maximize deepwater access.

4 COUNCILOR DONOGHUE: Okay. Given that we didn't ask
5 for any additional materials on February 21st, were all
6 requirements met on February 22nd?

7 MR. NEEDELMAN: I think I'd look to the Chair for --
8 how we're going to approach the -- the different material
9 that has been received since then. We -- we received the
10 -- we received the proposals on the 22nd and have asked
11 for clarifying material based on that proposal and
12 proposals that have come in since.

13 CHAIR: Well, the -- my -- I mean, I think it's
14 obvious what -- what's -- what's being discussed here,
15 which is, Councilor Donoghue has in the past indicated
16 that he wishes to -- to focus very closely on the details
17 of whatever was submitted on February 22nd. The committee
18 has used a different procedure than that. If you're able
19 to describe a particular criteria that you believe did not
20 have substantial support on February 22nd, then -- then
21 that would, I suppose -- are we able to glean that by
22 looking at your sheets?

23 MR. NEEDELMAN: No.

24

25

1 COUNCILOR DONOGHUE: And I'm happy to ask the same
2 question, substituting the word June for February, but
3 first I'm asking about February.

4 CHAIR: All right. So --

5 MR. NEEDELMAN: In order to make that determination,
6 we asked for additional details. If we had been forced to
7 make a determination, yes or no, we know that they will
8 meet the minimum criteria based on the February 22nd, we
9 would probably have said, we don't have enough
10 information.

11 CHAIR: So when you -- and Councilor Duson wants to
12 discuss this, as well, but when you're talking about
13 determinations, what you're talking about is your
14 observations about the status of the information that's
15 received, and that's advice that's given to the committee,
16 right?

17 MR. NEEDELMAN: Certainly, and thank you for the
18 clarification.

19 CHAIR: Yeah. Councilor Duson, did you have
20 something here?

21 COUNCILOR DUSON: Hi. I just wanted to make sure I
22 understood the answer, Mr. Needelman. If we're going to
23 talk about the minimum requirements, I guess I would like
24 to ask, the -- use the specific language of the
25 requirement and ask, if I might, as of the 22nd, as best

1 you can separate out what you had then and what you had
2 later, which must be a little bit difficult, did you think
3 you had enough information from each applicant to
4 determine whether they had the ability to preserve and
5 maximize the deepwater berthing access, including utility
6 access, coordinated with occasional city needs for use?

7 MR. NEEDELMAN: Subject to clarification?

8 COUNCILOR DUSON: Right.

9 MR. NEEDELMAN: Yes. We feel that they had met that
10 minimum requirement --

11 COUNCILOR DUSON: That they would --

12 MR. NEEDELMAN. -- in our opinion, as recommended to
13 the CDC.

14 COUNCILOR DUSON: Uh-huh. So I'm understanding you,
15 you needed more detail to be sure of that, but based on
16 what you had at that point, it appeared that each would
17 have the ability?

18 MR. NEEDELMAN: On what we had -- the ability and --
19 and certainly under the assertion of each of the
20 applicants.

21 COUNCILOR DUSON: Thank you.

22 COUNCILOR DONOGHUE: I -- I appreciate the more
23 precise language employed by Councilor Duson, and that's
24 essentially to avoid the tedium of it, going through every
25 single minimum requirement. That's my intention, if

1 necessary. I would like to know, if you had to determine
2 on February 22 or June 22nd -- you can use both dates, as
3 it satisfies me -- but I want to know if the -- if the
4 minimum requirements were met on both dates, if there
5 weren't a pre-existing supposition that we would keep the
6 door open, because I think it's clear that some new
7 information has been clarifying and some has been
8 modifying. And there's a very significant difference
9 between clarifying and modifying. So we're going to go
10 through each one? Okay.

11 CHAIR: Maybe -- maybe I can help here. On February
12 22nd, based on the staff review of the materials, was the
13 staff recommending that one or the other of these
14 proposers was not qualified to proceed through the
15 process?

16 MR. NEEDELMAN: Certainly not. There -- there --
17 subject to receiving clarifying information, it certainly
18 appeared that there were two strong proposal teams and two
19 strong proposals, and that there was a decision-making
20 process that was going to ensue, based on additional
21 information as it came forward.

22 CHAIR: Okay. Thank you. I -- I think that might be
23 the same question, but I'll leave it to Councilor Donoghue
24 to try to decide that.

25

1 COUNCILOR DONOGHUE: Okay. Well, the question of
2 qualified, these were minimum requirements of a proposal,
3 not -- this was not an RFQ. This was an RFP. So I
4 understand that some of the minimum requirements do speak
5 to ability to pull off a certain feat, and I suppose I'll
6 let the minimum requirement rest then. But I would -- I
7 would do well to see if there's any sort of normative
8 advice that our staff, who's been charged to rank these
9 proposals for us, can give us on the selection criteria.
10 If it's going to be a given that once the door was left
11 open for four months that everybody met the minimum
12 requirements, I would do well to get some professional
13 advice that's normative, rather than just prosaic, about
14 the selection criteria. So I'm ready to give up on
15 actually knowing for certain when minimum requirements
16 were met, as that's clearly not popular right now. I
17 would just ask that staff be forthcoming with some
18 normative language on selection criteria, so as I can make
19 an informed decision because I cannot -- I cannot make out
20 from the tables, as thorough as they are, which proposals
21 succeed, perhaps more compellingly than others, at
22 satisfying or exceeding at particular selection criteria.
23 And I feel that without something that's somewhat
24 normative that references the -- our goals in the
25 selection criteria and how well a proposer has succeeded

1 at it, I don't know how I make a decision outside of
2 politics.

3 CHAIR: Councilor Duson?

4 COUNCILOR DUSON: (inaudible)

5 CHAIR: Okay. If you come up with an answer to that
6 question, that will be --

7 COUNCILOR DUSON: Fresh.

8 CHAIR: We'll -- we'll be glad to hear it, other than
9 what you've told us over the last 90 days. But, Councilor
10 Duson, go ahead.

11 COUNCILOR DUSON: I -- I guess I have a slightly
12 different question. I have been operating under the
13 understanding that if there were reason to believe that
14 neither applicant was qualified to go forward with this --
15 into this process, that is, neither -- either applicant's
16 original proposal was so diminimous that it appeared that
17 neither -- that either of them could not meet the minimum
18 requirements, that we would have stopped the conversation
19 there, as to at least one or the other applicant. My
20 understanding from reviewing the earlier submittals was
21 that each had put in enough to establish that they were a
22 strong applicant, reasonably financially secure. Of
23 course, at that time we had not yet reviewed the
24 financials, but they'd made assertions, and each was
25 vitally interested and engaged in going forward with the

1 process. If I -- surely, if at any point along here
2 either applicant was -- their proposal wasn't going to
3 make it, we would have bounced them out of here by now,
4 wouldn't we? I would certainly hope so.

5 MR. NEEDELMAN: We certainly would have noted it in
6 the review material. Yes.

7 COUNCILOR DUSON: Yes. I -- I guess I just -- I
8 appreciate the detailed work that the staff has put into
9 reviewing the pile of documents. Every page of these
10 documents has been available to the public for review, as
11 well. We've had a pretty thorough process, open to anyone
12 who wished to spend that much time on every page of the
13 documents. And also for those who didn't have the
14 opportunity, energy, or interest to spend time looking at
15 every page of the document, the staff summary has been
16 very detailed and color-coded to make it possible for us
17 to be able to distinguish when certain materials came in.
18 I've appreciated the openness of the process, and I just
19 wanted to make that statement.

20 CHAIR: Any other questions of staff? All right.
21 Like I say, as we go along, we certainly have the
22 opportunity to -- to talk about -- and -- and talk with
23 staff about additional issues that are then of current
24 interest. Councilor Donoghue, you had something else?
25

1 COUNCILOR DONOGHUE: Mr. Needelman, you'd made
2 reference to a selection criteria, architectural review,
3 that has not been undertaken, but would be undertaken for
4 the full Council. Could you elaborate on that, please?

5 MR. NEEDELMAN: With the original proposals, we did a
6 detailed analysis, going to both proposals, according to
7 the Eastern Waterfront design guidelines, which are the --
8 the relevant document for review that's cited in the RFP.
9 Given the change in architectural program that's occurred
10 with the Ocean Properties proposal, we abandoned that
11 after updating it once, and then having it be out of date
12 again. And so we are now at a place where we have a
13 completed architectural review for one, but not the other.
14 The -- we stated at the last meeting, June 27th, that in
15 general we felt that the Olympia project was probably
16 going to be able to meet the -- in our opinion, the design
17 guidelines. The Ocean Properties proposal, in terms of
18 the siting of the building and the location of some
19 vehicular circulation in front of the building, would
20 probably need to be modified to meet the specific language
21 of the design criteria, and that we would take both
22 projects, again, with a fresh look at the design criteria
23 of the Eastern Waterfront design guidelines and bring that
24 forward to the full Council. And this was laid out in a
25 memo for the June -- for the June 27th meeting.

1 COUNCILOR DONOGHUE: And that is the only outstanding
2 selection criteria without full staff review at this
3 point; is that correct?

4 MR. NEEDELMAN: Yes, subject to the work that Mr.
5 Monroe has done and Mr. Cuetara, as well.

6 COUNCILOR DONOGHUE: Thank you, Mr. Needelman.

7 CHAIR: Bill, can I ask you about the -- the
8 alternative proposal by the Olympia Companies? Has that
9 had an architectural review or design criteria review at
10 this point?

11 MR. NEEDELMAN: No, it has not. We have received a
12 layout, a schematic site plan, and just a -- a section
13 outline, which would show relative building heights, but
14 other than the PowerPoint presentation at the last
15 meeting, we haven't seen any architectural material that
16 would be the review, and at this point, I'm not really
17 clear if that's their proposal or not. So we haven't
18 engaged in any sort of review of that under the criteria.

19 CHAIR: And I think they've been pretty clear that
20 they would rather build their first proposal than their
21 second, based on -- I think that's right, but -- Ellen,
22 did you have something?

23 MS. ELLEN SANBORN: Just a clarifying thing. As we
24 talk about this, it -- from the beginning of time when we
25 started talking about doing this process, it was never the

1 intent that the staff was going to be making
2 recommendations. It was always the intent that we take
3 the information we got and just summarize it and lay it
4 out there as best we can because we knew it was a lot of
5 stuff for people to get through. And that's been the
6 focus, from the staff side anyway, going forward, is does
7 this do this, does that do that. But is one better than
8 the other and passing judgment has never been our charge,
9 I guess, from the CDC whenever this started, you know, way
10 back. So I understand the desire to have selection
11 criteria rated by staff, but in this particular case, that
12 was never the charge that was given to us.

13 CHAIR: Okay. Any other questions? The -- this --
14 this is a different -- a different process than what we
15 normally do with the Community Development Committee and
16 RFPs like this because we normally go through this
17 process, select someone to negotiate with, and then
18 negotiate a contract. And then that is the earliest point
19 at which we would seek Council approval of -- of the
20 undertaking. And that has a certain negotiation dynamic.
21 And the negotiation dynamic, even in -- in dealing with
22 the -- the Community Development Committee in -- in
23 developing a contract includes the fact that the party
24 with whom we're negotiating is aware, if for no other
25 reason than because we repeatedly remind them, that we are

1 a recommending party. And when they're negotiating with
2 us, what they're really trying to do is make an
3 arrangement, which is commercially feasible for them, but
4 at the same time will attract the support of no less than
5 five members of the Portland City Council. And so there's
6 a lot of -- there's a lot of pressure inherent in the
7 process to do what's reasonable and to do what can
8 withstand public scrutiny because there's going to be
9 public scrutiny. And in this case there's going to be
10 public scrutiny, too, of course. But the negotiating
11 dynamic probably changes fairly substantially before the
12 contract is -- is actually negotiated because, frankly,
13 once someone is designated as the negotiating partner,
14 it's -- at least for 60 days, it's fairly likely that --
15 that their opportunities include a presumption that --
16 that within reason, some agreement is going to be reached
17 consistent with -- with what they've described as the
18 purposes of their undertaking.

19 So I have to admit that I have spent a long time
20 thinking about this and how that dynamic interplays with
21 this because there are two things that are very evident to
22 me. First is that the City Council, in its entirety,
23 should be involved, and -- and from the outset so that we
24 don't get into a situation where somebody would have to
25 devote the -- the resources that would be required to

1 putting together a contract based on something that's
2 fairly uncertain going into a public vote. And so I
3 support the idea that the Council should be involved in
4 the designation of the -- of the partner, and that -- that
5 does things for the process that are important, I think.

6 The second thing is, this is -- this is a very
7 important project for the City of Portland, and it's
8 important on two axes. The first is just the plain size
9 of the place and its location near other important
10 economic activities that the city has devoted a great deal
11 of time and effort to -- to stimulating. The second is
12 that the Maine State Pier truly is, at least in my
13 opinion, the most important deepwater infrastructure for
14 working waterfronts in -- in Maine. And the -- and the
15 people of Portland actually, by referendum that they
16 initiated 20, 20-odd years ago, probably just about
17 exactly 20 years ago, made it plain that they wanted to
18 take the -- the path that honored kind of the historic and
19 the cultural significance of -- of the kind of the gritty
20 working waterfront, as opposed to what was going on at
21 that time, which was the wholesale really re-development
22 of the waterfront into pretty posh living quarters,
23 condominiums and that kind of stuff, which -- which had,
24 actually, I think, their most -- the -- the characteristic
25 of those that was the most offensive was that they tended

1 to wall off the waterfront from the -- the kind of the
2 informal access that everyone had had for years, the
3 opportunity to see the water, the opportunity to walk down
4 a stumble-down pier and some of the other things that
5 people in Portland had grown accustomed to. So this
6 process was initiated, as many of you know, once we
7 learned that as a practical matter, we were going to
8 encounter what seemed to be insurmountable, or very
9 difficult to surmount, at least, difficulties in
10 continuing the economic activity that was brought to the
11 pier by B.I.W., to some degree, and Cianbro to a greater
12 degree, as this was a ship-building facility and then a --
13 a facility combined with other infrastructure to re-build
14 those oil rigs. So -- and we searched the world. I mean,
15 Jeff Monroe could sit here and talk to you for an hour
16 about all the various things we did and tried to do and
17 who we talked to and the chances we had. And I can
18 remember at least three times when we thought we were
19 going to, you know, be doing headstands and handstands and
20 -- and having a wonderful press announcement about what we
21 were going to be able to do down at the Maine State Pier,
22 and none of that came to pass. So that was a great
23 disappointment, frankly, to me. The -- so this comes from
24 -- from two things, really, the need, once we found out
25 about it, to re-build the structure of that pier because

1 we came to understand that it is deteriorating
2 structurally in several different ways. We also came to
3 understand that the -- that the city's capacity to re-
4 build -- re-use the buildings in ways that we thought we
5 might be able to was -- that was a much smaller
6 opportunity than we had thought at first.

7 So we're looking for a business plan. We have been
8 looking for a business plan. And that, in -- in some
9 ways, was what this was about. We're looking for a
10 business plan that would preserve and -- and improve the
11 public's opportunity to -- to use this pier, to enjoy its
12 characteristics. And we hope that part of the business
13 plan means that people will be coming to the pier more
14 often than they now do in -- in October and February, and
15 -- in addition to during the summer. This is a
16 transportation facility, and a million people get on and
17 off the Casco Bay Island Transit District ferries every
18 year. Almost a hundred thousand end up, for commercial
19 purposes, on the pier for some other reason, either cruise
20 ships, visiting vessels, military vessels, a variety of
21 other uses. It's also a working pier. A lot of the
22 tankers that make us, at times, one of the largest cargo
23 ports, based on tonnage -- because heating oil is pretty
24 heavy -- in -- in the East Coast. A lot of those tankers
25 who come into the port, for that or for other reasons, end

1 up using the Maine State Pier to -- to get water, and
2 there's some vessel repair that occurs there from time to
3 time. There are other uses. So I repeat, I think that
4 this is critical marine infrastructure.

5 Now, the -- the two proposals that we've had are both
6 acceptable proposals. They -- we spent some time, we
7 spent a lot of time, frankly, assuring ourselves that each
8 one of these applications involved an entity who we had
9 good reason to think could execute the plans that they'd
10 submitted. It's -- marine construction is a very tricky
11 thing. We just built the Maine State Pier. We missed the
12 cost estimates, and we were doing it -- it wasn't us,
13 really. It was the state's engineers who, by and large,
14 were doing this. They missed the -- but we were present.
15 The cost estimates on that were missed repeatedly. They
16 were missed, at least on the marine construction, by
17 something like 50 or 70 percent two weeks before we put it
18 out to bid. I mean, it's -- it was really -- the -- the
19 costs that you encounter, the unusual conditions that you
20 have to deal with, the unanticipated issues, particularly
21 reconstructing underneath the pier, are -- those are
22 daunting problems. I'm familiar with some of this,
23 obviously, from what I do for work, and I have really
24 found this to be one of the most trying and stressful and
25 difficult project proposals to get my arms around in the

1 time I've been on the Council, and I've been on the
2 Council for ten years. I've been sitting in this chair
3 for I don't know how many, five, anyway. And I found, as
4 -- as any bad lawyer would, that the only thing I could
5 really do is write down what I think, and so I've done
6 that. And I showed it to my wife. She was horrified at
7 how long it was. And then I added five more pages to it.
8 And so, unfortunately, I only made 30 copies. That was
9 kind of the extent of the contribution from my firm that I
10 was able to generate in the 20 minutes I had to photocopy
11 it. But I'm going to just summarize what -- what I think.
12 I'm going to -- I'm going to have to leave here by 6:30,
13 and then I'll leave it to my -- my colleagues to -- to --
14 to speak their peace, and we'll be done.

15 I -- I questioned whether we should make a
16 recommendation at all. The reason for that is this goes
17 to the Council. There will be more changes, I expect,
18 either from the applicants or in the world around us, and
19 so at some point, we have to make a decision, but there's
20 no necessity that -- that we get to that point before the
21 time that the Council takes its vote, which will probably
22 be in August. And I'll say for you, for anyone that's
23 interested, the Council will likely have two or three
24 workshops during July and possibly early August. At the
25 end of that process, there will certainly be at least one

1 public hearing. What else might be involved, I'm happy to
2 say, will be Nick Mavadonis' problem now. And so that --
3 and I know he's already been speaking with the -- the City
4 Manager about how he's going to structure the -- the
5 undertaking from here. The -- but in the end, I thought
6 it was probably not intellectually honest for me to -- to
7 -- to pretend that I don't have a recommendation or -- or
8 a preference at this point because I actually do, although
9 it -- I will say that with this caveat. I believe either
10 one of these proposers could execute a plan, which would
11 be in the very best interests of the people of Portland.
12 I believe both applications could benefit from some
13 changes, and that's why I have 22 pages of discussion
14 about what to do next. I think, on balance, that the --
15 that the Ocean Properties proposal, because it is so
16 closely tied to the marine economy, that's -- that's
17 really a strong factor for me, and that -- that really
18 drives the process in their favor from my point of view.
19 The -- there are a variety of issues with both of the
20 proposals. Frankly, I think that the Ocean Properties
21 team, if they're selected by the -- by the Council, will
22 need to immerse themselves in kind of the local lore of
23 architectural beauty and compliance and -- and -- and
24 undertaking, and that's -- I think that in the community
25 there are people of goodwill in that profession who would

1 be glad, maybe even eager, to -- to participate in that,
2 and -- and I would certainly strongly recommend that.

3 I will say that the Ocean Properties -- the Olympia
4 Companies proposal exhibits their knowledge of how that
5 works in Portland. There's no question that they -- they
6 proposed something which was -- which was very attractive
7 and almost as importantly, it was -- I almost always want
8 to just clap and say yes whenever Winton Scott makes a
9 presentation because, you know, it is always the case,
10 that these are the highest quality presentations, and he
11 puts his clients' proposals in the best light. So that's
12 -- that -- that is a factor that I would identify for --
13 for this proceeding.

14 The other thing I would say is that both parties have
15 said that they're going to, as part of compliance with our
16 50 percent rule, they're going to have office space for
17 the tugboats' managers; they're going to have storage
18 space for Casco Bay Island Transit; they're going to have
19 office space for that same entity; they're going to have
20 quarters for the Portland Fire Department, you know, the
21 island service team. Those meet the technical requirement
22 for being accessory uses for water-dependent uses, so they
23 meet the 50 percent rule as a legal matter, as far as I
24 can tell. But the spirit -- the spirit of that rule is
25 much different than that. The spirit of that rule is

1 based on kind of a mathematical adaptation of the hundred
2 percent rule, which exists in the rest of the central
3 waterfront that says that first-floor buildings are
4 reserved for water-dependent uses. And so I hope
5 whichever company goes forward will take it as a serious
6 responsibility and opportunity to think about how the
7 facility's opportunity at the state pier can be used to
8 leverage the development of small businesses in the water-
9 dependent -- that are water dependent. One of the
10 attributes of one of the proposals is that the -- is that
11 the -- there are water-dependent investments that are
12 going to be made in businesses that are going to be
13 operated, and -- and you'll see, if you can stand the pain
14 of what I've written, I consider that to be -- and -- and
15 assuring that that has substance and staying power to be a
16 critical element of -- of any future discussion with that
17 company, is to make sure that that -- that comes to pass
18 and is real.

19 I'll have to admit I'm very concerned about the
20 eastern edge berth operations. I understand why people
21 want to promote public access along that edge, but that's
22 supposed to be a secure area, and you're introducing
23 unavoidable conflict, and it's of a greater or lesser
24 degree, but when you -- when you begin to try to use that
25 in multiple ways, you're introducing possible use

1 conflict. You're also introducing additional expense and
2 other issues that, at least in other parts of the
3 waterfront, we also assumed would be resolved in the end
4 to the detriment of water-dependent uses. So that's --
5 that's another reservation I have.

6 I -- I felt that with the changes that were made
7 along the way, the financial undertakings before we get to
8 an actual negotiation status with anyone were -- were
9 equivalent. It seemed to me like there was going to be
10 more taxable in value -- taxable value installed by -- by
11 the party I'm recommending, and that the rent was a little
12 more, but I think the accounting of all of that and how
13 the expenses fall out is -- is still to be fine tuned.
14 But -- but in general, I thought they were about the same.
15 I am suggesting that as part of any 75- or 100-year deal,
16 that there be some economic checkpoints along the way to
17 make sure that it remains a fair deal and a good business
18 transaction for both parties involved, and I'm talking
19 about out 30 years, out 50 years, out 70 years, whatever.

20 So that's -- that's the general tenor of my thinking.
21 I, again, would say I think both companies have really put
22 themselves out there very significantly and very well, and
23 these are -- these choices are -- are excellent choices.
24 I am a little intimidated by some of the -- the legal
25 issues that -- that the parties know -- know about. I

1 think they present some significant roadblocks, and there
2 are some details about each of the proposals that -- that
3 I've discussed here. For instance, I don't think it's --
4 I don't think a commercial re-development of Compass Park
5 is appropriate. I think the -- I think the -- the other
6 proposal, which is more of a kind of a park development
7 proposal needs some steroids in order to -- to really be a
8 signature statement of what Portland is on its waterfront,
9 and -- and it seems to me like whichever company gets
10 involved in this, the -- the Compass Park area could be a
11 place for wonderful public access and -- and some of the
12 signature architecture that maybe will distinguish
13 Portland from other vistas in the years to come.

14 So I'm going to shut up. That's my -- unless
15 somebody wants to make a formal motion, I -- I think that
16 maybe it's better just to discuss this, and -- and leave
17 the recommendations where they stand from each Councilor,
18 whatever they are. Like I say, I think the main event
19 really is going to be the City Council's action on this,
20 and I will leave my stack of -- of what I've been writing
21 for anyone who wants to look at it. And if -- if we run
22 out of copies and somebody sends me an email, I can email
23 it to them, too. So that's what I have to say. Who's
24 next?

25

1 COUNCILOR DONOGHUE: I'll save my speech for the full
2 Council.

3 CHAIR: Councilor Duson?

4 COUNCILOR DUSON: Thank you. I think that my charge,
5 as a member of the -- this subcommittee of the full
6 Council, has been to review the documents in much more
7 detail than most of the public is likely to have the time
8 or patience to do; to listen carefully to the input from
9 professional staff, the public, the applicants, my fellow
10 committee members, and this I've done for a number of
11 weeks; and then make a decision and a recommendation to
12 full Council, based on my review of the details, and I am
13 prepared to make a recommendation.

14 Staff, after -- my understanding of the next step in
15 the process, is that our staff is going to have the
16 interestingly challenging job of summarizing all that
17 we've done so far in workshop to the members of Council
18 who have not spent time on these applications, so that
19 they can start -- we can all start from a baseline, and
20 then move forward for the Council to make its own decision
21 as to which applicant it wishes to go forward with. This
22 is -- this has been a unique process because it's a unique
23 parcel in a unique location that has a unique impact on,
24 not only Portland's economy, but the entire state's
25 economy. It's not an easy decision, and it's a decision

1 that will -- that will be -- will stand and be scrutinized
2 for quite some time into the future. But I think I'm
3 supposed to make a choice. I -- I don't think I'm doing -
4 - I think I'm derelict in my duty if I put these two
5 applicants through this lengthy process and then don't
6 even make a recommendation.

7 My criteria: In looking at the minimum requirements
8 from the RFP, I think that each applicant has met the
9 minimum requirements, reasonably met the minimum
10 requirements. And the thing that stood out most for me
11 was looking at how the projects maximized water-dependent
12 uses. I think there's a reason why that's the first in
13 the list of minimum requirements, or at least for me,
14 there's a reason why that's first on the list. I have
15 looked at how the two proposals will contribute to the
16 longtime -- long-term viability of the working waterfront.
17 I have admitted several times my own prejudice regarding a
18 hotel on this pier. Hotels can go elsewhere, and
19 restaurants can go elsewhere, but this deepwater berth
20 can't. Even with that prejudice in mind, my pragmatic
21 side is quite aware that a certain number -- a certain
22 level of commercial retail is necessary to support the
23 balance of water-dependent uses. So I can -- I admit my
24 prejudice, but I can move away from that because I
25 understand that in order for us to get the kind of

1 investment we want in re-developing the pier, we need to
2 permit a pretty high level of commercial retail use.

3 Let me see, make sure I've made all my points. Oh,
4 one other issue that was very important to me was the
5 extent to which the proposals were complementary and
6 integrated with the -- integrated well with the Ocean
7 Gateway project that the city and state have invested so
8 much resources into.

9 It is -- I will be recommending to Council, either by
10 vote of this committee, or if we do not take a vote, I
11 will recommend to Council on my own, that Ocean Properties
12 should be the applicant with which the Council should go
13 forward with negotiations. They have maximized the water-
14 dependent use; they've maximized the diversity of water-
15 dependent use; and they have maximized the creation of
16 jobs, of water-dependent employment, and those are the
17 most important issues here. This is an economic
18 development project. In the course of doing that, they've
19 also preserved open space; they've not developed the open
20 space at the end of the pier, which from my read of the
21 RFP, and I was engaged here with this committee when the
22 RFP was developed, it was not our intent to see that park
23 developed.

24 And that is all I would ramble about here. That's
25 kind of where I am. That's what I would intend to relate

1 to my fellow Council members. I don't know, Mr. Chair, if
2 you want to have a motion, or just have us go forward to
3 the Council with our own recommendations.

4 CHAIR: You can make a motion, if you'd like.

5 COUNCILOR DUSON: I would move that this committee
6 recommend to the Council that it go forward with
7 negotiations with the Ocean Properties group.

8 CHAIR: Second? I seconded that, and call for any
9 further discussion.

10 COUNCILOR DONOGHUE: Can I draw for an amendment?

11 CHAIR: Sure.

12 COUNCILOR DONOGHUE: That the recommendation to
13 recommend Ocean Properties to the full Council include a
14 citizens' referendum to ratify our recommendation to work
15 with Ocean Properties, if indeed, the recommendation of
16 the full Council is to work with Ocean Properties.

17 CHAIR: Is there a second to that proposed amendment?
18 So that -- that fails, although I would be -- I would be
19 glad to have a full discussion of -- of why -- what --
20 what that adds to the process, and -- and, you know, I'd
21 be glad -- I think the Council may be interested in that,
22 as well. So it would be -- maybe we can take that up in
23 the fullness of time here. Any further discussion?
24 Seeing none --

25

1 COUNCILOR DUSON: Well, I -- I'm not sure if I'm in
2 order to comment on an amendment that didn't get a second,
3 so I'll leave it be.

4 CHAIR: All those in favor of the pending motion?
5 Opposed? So it carries 2-to-1.

6 All right. That -- that actually concludes our
7 business for -- for tonight. I want to -- I want to again
8 say to both of the applicants, we very much appreciate
9 your participation. For anyone who imagines that this
10 might be the end of the story tonight, even after the
11 Council -- if the Council ratifies our recommendation, or
12 if it chooses another path, all that does at that point is
13 -- is kind of close -- close a window on one process and
14 open the window on another for about 60 days. It is not
15 only not unprecedented, it is reasonably common that we
16 are unable to reach an agreement with the first
17 negotiating party, and we end up asking the second
18 negotiating party to come forward. And so those of you
19 who had plans drafted and checked, don't throw them out.
20 Okay?

21 COUNCILOR DUSON: I might also add, Mr. Chair, that
22 it's not unusual, and indeed, common lately for the full
23 Council not to ratify the recommendation of this
24 committee.

25

1 CHAIR: That's been known to happen. So, thank you
2 all. Good night.

3 (The hearing concluded at 5:58 p.m.)
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C E R T I F I C A T E

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I, Jeannette E. Beyler, a Notary Public in and for the State of Maine, hereby certify that the within-named deponent was sworn to testify the truth, the whole truth, and nothing but the truth, in the aforementioned cause of action.

I further certify that this deposition was electronically recorded by me and later reduced to print through transcription, and the foregoing is a full and true record of the testimony given by the deponent.

I further certify that I am a disinterested person in the event or outcome of the above-mentioned cause of action.

Any changes in form or substance which the witness has made has been entered upon the record by me.

IN WITNESS WHEREOF I subscribe my hand and affix my seal this xxth day of July 2007. Dated at Portland, Maine.

Notary Public

My Commission Expires
November 19, 2010