

MINUTES OF DIRECTORS MEETING

LANE TRANSIT DISTRICT

REGULAR MEETING

Wednesday, December 18, 1996

Pursuant to notice given to *The Register-Guard* for publication on December 12, 1996, and distributed to persons on the mailing list of the District, the regular monthly meeting of the Board of Directors of the Lane Transit District was held on Wednesday, December 18, 1996, at 7:00 p.m. in the LTD Board Room at 3500 East 17th Avenue, Eugene.

Present: Kirk Bailey, Vice President
Rob Bennett
Patricia Hocken, President, presiding
Dave Kleger, Treasurer
Thomas Montgomery, Secretary
Mary Murphy
Roger Saydack
Phyllis Loobey, General Manager
Jo Sullivan, Recording Secretary

Absent:

CALL TO ORDER: The meeting was called to order at 7:00 p.m. by Board President Pat Hocken.

EMPLOYEE OF THE MONTH: Ms. Hocken introduced the January 1997 Employee of the Month, Bus Operator Ray Chapman. Mr. Chapman was hired on September 4, 1990, and had four years of Safe Driving and had achieved excellence in Correct Schedule Operation for more than six years. A customer nominated Mr. Chapman for this award to recognize him for excellence in service and job accomplishments and excellence in providing accessible bus service to customers with disabilities. The customer said that Mr. Chapman had handled a difficult situation very well: after being informed that three youth were bothering a customer with disabilities at the back of the bus, Mr. Chapman informed the youth that their behavior was not acceptable. The customer liked the way that Mr. Chapman handled the situation so that no one was in danger or embarrassed, including the person reporting the incident and the three youth. When asked what makes Mr. Chapman a good employee, Transit Operations Manager Patricia Hansen said that Mr. Chapman is a quiet, conservative person who seemed to really enjoy his job. The supervisors he works with find him to be dependable and easy to get along with, and they really appreciate his willingness to help them out by working over his shift when needed. She added that Mr. Chapman also was blessed with that quality is so important in any job working with people: a great sense of humor.

Ms. Hocken presented Mr. Chapman with his certificate and monetary award and thanked him for his hard work all year. Mr. Chapman thanked the Board, saying he appreciated the award.

AUDIENCE PARTICIPATION: Ms. Hocken asked for audience participation at this time. Mike Farthing said that he was an attorney representing George and Suzanne Cole, and introduced Al Couper, a land use consultant representing the Coles, who also was present. He stated that the Coles owned Site M, which was listed in the Branch Engineering report of July for a Park & Ride facility on West 11th Avenue, an agenda item for that evening. He first thanked LTD staff, saying that they had been extremely cooperative. He stated that he rode the bus for about four years, to downtown and occasionally out West 11th, so he was somewhat familiar with the routes out there.

Mr. Farthing stated that he would be directing his comments to agenda item V.,D., "West 11th Park & Ride." He said that staff were requesting that the Board authorize an environmental assessment, which was described in the Board's materials and contrasted with a Level I and Level II assessment. He said he was not sure how much that would cost, but in the September 18 Board meeting minutes, an environmental assessment was estimated at \$54,000; he was not sure if that was the same type of environmental assessment. He stated that the Coles strongly urged the Board to delay that authorization for several reasons, and that going ahead would force them to accelerate their opposition to the District's selection of this site, which was the Coles' position. He said that the Coles had owned the site since 1935, and that Coles Unfinished Furniture on West 11th was one of the few businesses that was here 30 years ago when he moved to Eugene. Mr. Farthing stated that it would disrupt four businesses: two that were owned by the Coles, Arby's restaurant, and a boat manufacturer. He stated that they thought there was a better way to look at the site selection process.

Mr. Farthing said that Mr. Couper had gotten from staff several inches of minutes, site selection reports, etc., which the District had been looking at since July of 1996 regarding this project. Branch Engineering's report identified three preferred sites: A (Jiggles/Jubilee), C (Bliss Steak Ranch), and E (Fred Meyer). The focus then changed, sometime between July and the October 14 site tour, when the Cole site, Site M, bubbled to the surface. He had looked at notes from October 14, and it appeared to him that the Board was looking at the Bliss site and looked across the street at Aqua Marine and thought that looked like a better place. He did not see the trail of logic leading from the three Branch report sites to Site M. Another factor that he did not understand, he said, was another item on the agenda, the Fred Meyer site. To him, that seemed to be the better site because it was where retail and theaters were, so that people might do other things before or after they rode the bus into town. It also had the sense of being bigger, and he had accidentally ridden a bus that went through Fred Meyer at one time and realized how convenient it was to get off at Fred Meyer and then get on another bus coming through there.

Mr. Farthing stated that he did not see any consideration of TransPlan in this issue. He said that TransPlan was into the third year of its update and was a massive project made more massive by Goal 12 and OAR 660, Division 12, which were the Goal 12 rules. He did not know what they said in any specific way, but stated that he would be reviewing them. He said he did not know whether they were applicable or not; he knew they were applicable in terms of TransPlan, but not whether they went down to specific projects. He

stated that he thought that the District had to comply with TransPlan and that LTD's facility had to have some relationship to TransPlan. He referred to the 1986 TransPlan transit map, which showed the Park & Ride facility at River Road, the downtown facility, a dot at Beltline and 11th, and dots at other generalized locations of minor transit stations. He did not know where Park & Ride fit into that because it did not seem to be mentioned in the 1986 plan, but he was sure that would be in the TransPlan Update, along with the bus rapid transit (BRT) program that the Board was considering.

Mr. Farthing said that Mr. Couper had noted in a document from the December 3 Joint Planning Commission discussion of the TransPlan Update that all three transit systems assumed the addition of a new Eugene transit station, which was now underway, and new Park & Ride facilities at 11th and Bertelsen and at 58th and Main. This meant that the original TransPlan showed 11th and Beltline, then 11th and Bertelsen, and finally Fred Meyer and the Coles' site. He thought that whatever the District did would have to have some relationship to the comprehensive plan for transportation and had to address that. He said that if the District was moving off this plan, he thought it would need some kind of amendment or modification of that plan. He stated that he would be looking at that during the next couple of weeks.

Mr. Farthing questioned who picked the initial properties; why was it Bertelsen to Garfield; and where the criteria came from. He said a statement had been made that Site N was removed because a restaurant had been started on the property, but the Coles, with four businesses on their site since 1935, had been considered; that did not make sense to him.

Mr. Farthing said he thought that the prison facility basically would put a new town out Highway 99. He noticed in the document he mentioned previously that there was a map showing possible corridors for BRT on West 11th, and Franklin Blvd., Willamette Street, but not Highway 99. Since Highway 99 was a five-lane, center-turn-lane highway, maybe it needed to be folded into the TransPlan and LTD's planning.

Mr. Farthing restated their position that they hoped the Board would delay its decision. He stated that the Coles were opposed to this site selection and did not want to move their businesses or sell their property. He said he would only make arguments that he believed were legally sound and grounded in facts, and that they would make sure that LTD complied with all laws, rules, regulations, and statutes that they believed were applicable, and, to the extent possible, would question the soundness of the site selection process. He stated that they would cooperate fully as legally required, and that he would almost guarantee that the process would be to LUBA at least one time, because he thought this was a land use process. Finally, he said, they would exercise the "four P's" of planning: they would be polite, professional, patient, and persistent.

ITEMS FOR ACTION AT THIS MEETING

MOTION **CONSENT CALENDAR:** Mr. Kleger moved the following resolution: "Resolved, that the Consent Calendar for December 18, 1996, is hereby approved as presented."
 VOTE Mr. Bailey seconded, and the resolution passed by unanimous vote (Bailey, Bennett, Hocken, Kleger, Montgomery, Murphy, and Saydack in favor; none opposed). Items on the

Consent Calendar were the minutes of the November 20, 1996, special Board meeting/work session and the minutes of the November 20, 1996, regular Board meeting.

PROPOSAL TO INCREASE RIDESOURCE FARE: Ms. Hocken noted that a number of people had spoken in favor of this increase at the last Board meeting.

Micki Kaplan, LTD transit planner, reviewed that staff were recommending an increase in the RideSource cash fare from \$.80 to \$1.00. Staff provided information and an analysis of RideSource fares at the October Board meeting, and provided additional information at the November 20 Board meeting. A formal public hearing was held at that meeting, and staff held an additional public meeting on December 5. The proposal received considerable support from RideSource users, although there was some opposition to the fare increase by customers who rely on RideSource for daily work trips. Ms. Loobey added that the Board held the first reading of the revised ordinance at its November meeting.

MOTION Mr. Saydack moved that Fifth Amended Ordinance No. 35 be read by title only.
VOTE Mr. Kleger seconded, and the motion carried unanimously (Bailey, Bennett, Hocken, Kleger, Montgomery, Murphy, and Saydack in favor; none opposed).

Ms. Hocken read the ordinance by title: "Fifth Amended Ordinance No. 35, An Ordinance Setting Fares for Use of District Services."

MOTION Mr. Bailey moved that the Board adopt the following resolution: "It is hereby resolved that the LTD Board of Directors approves an increase in the RideSource fare from \$.80 per one-way ride to \$1.00 per one-way ride effective February 1, 1997, and adopts Fifth Amended Ordinance No. 35, An Ordinance Setting Fares for Use of District Services."
VOTE Mr. Saydack seconded, and the ordinance was passed by unanimous vote (Bailey, Bennett, Hocken, Kleger, Montgomery, Murphy, and Saydack in favor; none opposed).

FEDERAL SECTION 3 AND SECTION 9 CAPITAL GRANT APPLICATION FOR NEW BUSES: Transit Planner Lisa Gardner stated that there had been a discussion on the fleet replacement plan at the November 20 Board meeting. The Section 3 grant application was for the implementation of the 1997 element of the fleet replacement plan. Staff were asking the Board to approve an application for \$2,786,000 in Section 3 and reprogrammed Section 9 funding to purchase 15 buses. She explained that the District applied for funding in 1996 for electric buses. When the technology was outdated, staff decided not to purchase those buses and reprogrammed the money to help purchase the 15 buses in the 1997 grant application. The application would require a 20 percent local match totaling \$696,000, which currently existed in the LTD capital fund.

Mr. Bennett asked what kind of buses the District would be buying. Ms. Hocken said that the specifications would be similar to those for the buses LTD presently owned. Assistant General Manager Mark Pangborn stated that the application process would take approximately three months, and that staff's intent was to purchase low-floor buses, for which there were two competitors in the market. He said that the District probably had about two or three months to write the specifications, by the end of February or March. A staff committee was reviewing specifications, and staff could return to the Board to let them know what the committee was recommending. Mr. Pangborn stated that the committee

knew that Mr. Bennett and the Board were interested in a new look, and he thought it was a good idea to come back to the Board to see if the staff recommendation was new enough.

Mr. Saydack asked if the District could spend money once the Board approved the grant application. Mr. Pangborn explained that the money had been appropriated for the District's use. Staff would start the order for the buses, but would not sign a contract for purchase of the buses until LTD received grant authorization from the federal government. Ms. Loobey added that that the Board later would be asked to authorize the general manager to sign the contract. At that time, the Board would know what buses were being ordered. Ms. Hocken noted that, depending upon the specifications and the price, the District could end up with fewer than 15 buses.

Mr. Saydack moved that the Board adopt the following resolution: "It is hereby resolved that the Board approve the attached 1997 Section 3 federal grant application for \$2,786,000 in Section 3 federal funds and reprogrammed Section 9 federal funds and authorize the General Manager to submit this application to the Federal Transit Administration for approval." The motion was seconded and carried by unanimous vote (Bailey, Bennett, Hocken, Kleger, Montgomery, Murphy, and Saydack in favor; none opposed).

Public Hearing on Capital Grant Application: It was later noted that the Board had not held a public hearing on the capital grant application. Ms. Hocken opened the public hearing on the District's federal Section 3 and Section 9 capital grant application for new buses. There was no testimony, and Ms. Hocken closed the public hearing.

MOTION

Board Action: Mr. Bailey then moved that the Board adopt the following resolution: "It is hereby resolved that the Board approve the attached 1997 Section 3 federal grant application for \$2,786,000 in Section 3 federal funds and reprogrammed Section 9 federal funds and authorize the General Manager to submit this application to the Federal Transit Administration for approval." The motion was seconded and carried by unanimous vote (Bailey, Bennett, Hocken, Kleger, Montgomery, Murphy, and Saydack in favor; none opposed).

VOTE

WEST 11TH PARK & RIDE: Ms. Hocken announced that part of this agenda item would be discussed in open session and part in executive session. The executive session would be combined with the executive session regarding the Fred Meyer Park & Ride site, scheduled later on the agenda. Mr. Bailey said that in the interest of full disclosure, he wanted to mention that he was a former law clerk at Gleaves Swearingen Larsen Potter Scott & Smith and worked with Mike Farthing in that capacity. He said he did not believe there was any conflict of interest; he just wanted to mention that relationship for the Board's information.

Planning & Development Manager Stefano Viggiano first reviewed the West 11th Park & Ride and how the process got where it currently was. He said that LTD's Park & Ride program had been identified as a priority through the strategic planning process with the Board. The reason for that was that it expanded the market for transit services to those who do not find it convenient to walk to bus stops to get to their destinations. One known factor about this market was that it became more important as a community grew. In larger cities, such as Portland, Park & Ride service was a major source of transit ridership, and

staff had noticed that as the local community had grown, Park & Ride service became more and more popular. As parking availability decreased and the cost increased, Park & Ride service became a better option. Park & Ride service was seen as a growing component of LTD ridership and service.

Mr. Viggiano stated that West 11th was a high priority for LTD because it was one of the community's major transportation corridors. In response to Mr. Farthing's earlier question about why not Highway 99, Mr. Viggiano said Highway 99 was listed in the District's year 2015 BRT plan as a BRT corridor, along with the other major transportation corridors. The brochure map listed only the corridors being considered for the first pilot corridor. In considering the east-west corridor from Main Street to West 11th, it made sense to start expanding the Park & Ride program in the areas where the pilot corridor was expected to be. Additionally, a West 11th Park & Ride would serve a fairly significant residential area on the south side of West 11th Avenue.

Mr. Viggiano next reviewed the site selection process to date. The District had received the site selection report completed by a consultant. As the first step in the site selection process, staff had considered the area between Garfield and Bertelsen for potential Park & Ride sites, especially those that were at least partially vacant, and identified at least 15 potential sites. The consultant's report recommended sites A and C, which were the Jiggles site and the Bliss Steak Ranch site. The next step was to tour the sites with the Board, at the Board's request. The tour resulted in a key change to the approach to the Park & Ride facility. Before, all the sites that had been considered in the engineering report included on-site bus travel. The option of not having the bus pull through the site changed the thinking about this facility. By not pulling the bus through the lot, less space would be required on the site. Mr. Viggiano showed the original site plan for site M, on which one-fourth or more of the site was needed for bus circulation. Removing this requirement meant that the District could look at smaller sites to accommodate the target parking. Once that suggestion was made, a south-side site facing West 11th was identified as preferable. Most of the traffic from the Park & Ride would be to the central area; that is, people would be caching the bus east-bound on 11th Avenue. Often, he said, travel time is most important in the morning, and if people could park their cars and have direct access to a bus that pulls right alongside the Park & Ride lot, going in the direction in which they would be traveling, they would be more apt to use the Park & Ride service than if they had to park and run across the street, especially if they were running a little late in the morning. Instead, they probably would have more time to cross the street in the afternoon, on their return trip.

During the site tour, the Board and staff viewed all 15 sites, stopping to look at several in more detail. Following the site tour, the Board directed staff to look at some different alternatives than originally had been considered. Staff had also obtained appraisal estimates to evaluate costs, and in November the Board directed staff to hire a consultant to conduct a Level I environmental site assessment on Site M, Option B (tax lots 100 and 200).

Mr. Kieger stated that the Board members felt strongly that the visibility from West 11th was important.

Mr. Viggiano stated that it was staff's intent to go back and revise the site selection report, accounting for the fact that the site being considered was different than the site

previously under consideration. The Board had suggested not including the Arby's restaurant portion of the site because the size need was reduced by not planning to pull the bus onto the site. He added that the Arby's lot was the most expensive part of the site.

Mr. Viggiano said that an Environmental Assessment (EA) would be conducted during the winter and probably would be completed in April. Staff would then return to the Board in May for final site selection and to approve an application for grant funds, after which staff would expect FTA approval of the environmental assessment and the grant in September. He explained that appraisals and an appraisal review were required by federal regulations, and that would take a couple of months. Following appraisal review approval by the Federal Transit Administration (FTA), the District would make a purchase offer to the property owner.

At that point, Mr. Viggiano said, staff believed that the District could obtain the authority to go on the site to conduct a Level 2 site assessment. Also, at that point, if not sooner, the District would need to make sure it had all its land use approvals.

Mr. Viggiano discussed the possible outcomes of an offer. First, the offer could be accepted, or there could be a negotiated settlement. Otherwise, if there were no negotiated settlement, there were some other options that could occur. One would be to go through whatever litigation might be required to purchase the property, and then follow the required steps for that process. Another option was for an early possession of the property, which would require placing money in an escrow account, taking possession, and then, if necessary, going through a trial to determine the value of the property. Mr. Viggiano stated that this was the least preferred option.

Ms. Kaplan introduced Tim Marshall, who had produced the Level 1 environmental site assessment. She defined an Environmental Assessment for the Board, explaining that the National Environmental Policy Act (NEPA) required an EA, not to be confused with a Level 1 or Level 2 environmental site assessment (ESA), which were not required by NEPA law. She explained that Level I and II environmental site assessments were tools to measure potential contaminants and find out the quantity and quality of those. Any lending institution most likely would recommend conducting a Level 1 and Level 2 ESA before purchasing property, so it was a good business practice. An EA documents whether a project would have an environmental or cultural impact, and required a public input process. The results of the EA would be used to guide the Board's decision on final site selection. The Environmental Assessment document would have to be approved by the Federal Transit Administration.

Ms. Kaplan said that a Level I ESA involved research on historical and current uses of the property. Typically, it was a paper search. The objective of a Level I ESA was to determine whether there was evidence or the potential of environmental hazards existing on the site. The outcome would be whether or not the consultant recommended going ahead with a Level II ESA, which would involve on-site drilling, water samples, etc.

A Level II ESA measures the type and extent of hazards, if any, and may include a cost estimate for cleaning up the site. For a Level II environmental site assessment, the District would have to have access to the site. Ms. Kaplan mentioned that Mr. Marshall had been denied access to conduct the Level I ESA, and gaining access for the Level II ESA could be an issue for LTD.

Ms. Kaplan then discussed the results of the Level I ESA, calling attention to the executive summary. She stated that historical use indicated possible contaminants, and that the recommendation from the Level I report was to conduct a Level II ESA to determine whether contamination existed and measure the type of contamination, if any. However, she said, a Level II ESA may not be able to occur until after a purchase offer is made. Staff concluded that the District should proceed with conducting an environmental assessment on lots 100 and 200, which did not include the Arby's portion, to determine feasibility of the site for a Park & Ride lot.

The Level I ESA showed 32 documented properties in the area of this site with underground storage tanks. It seemed unlikely that a completely uncontaminated site on West 11th could be found.

Ms. Kaplan told the Board that staff had reconsidered the sites identified in the site selection report. They reviewed air photos and examined the sites on a site-by-site basis. Essentially, there were two other south-side sites: (1) the Nachos site, which did not front on West 11th, so did not address the District's needs; and (2) another site farther west, which involved a possible wetlands issue and did not have a traffic signal, so did not come to the top when considering the selection criteria. Staff also considered whether there were other sites that had not been investigated, but did not believe that there were. Staff believed the West 11th Park & Ride facility to be a worthwhile project that would be a benefit to the community in such areas as air quality, reduction of vehicle miles traveled, and the possible elimination of the need for future parking garages downtown, at Sacred Heart, and at the University of Oregon. It would meet the District's goal of constructing a Park & Ride lot on the west 11th corridor, and would be an important component of the BRT system. Staff also saw this as the first in a series of property purchases if the District implemented the BRT project.

Ms. Kaplan closed by saying that staff believed the Cole site to be the best preliminary location.

Mr. Marshall introduced himself as an Oregon-registered professional geologist with Land and Water Environmental Services, Inc., a professional environmental consulting company working out of Eugene and Roseburg. He explained that a Level I ESA was performed usually with the transfer of ownership or the financing of properties, to determine whether there were recognized environmental conditions associated with hazardous substances or petroleum products on a site that would indicate an existing or past release, or threat of release, of these substances to the environment. The tests associated with a Level I ESA were the historical documentation, an evaluation of public documents for the site and surrounding areas, and a site recognizance type of inspection, which he was unable to do on this site.

Mr. Marshall summarized the Level I environmental site assessment report. Since he was unable to perform a site recognizance, he inspected the site from the street and across Amazon Creek. He stated that the property was U-shaped and consisted of almost two acres. The area was a primary commercial zone, with light industrial properties to the north of West 11th, the Amazon creek on the south, and residential development south of that. It was a level site, except for a slope on the south end into Amazon Creek. The north portion of the site that was visible to him was primarily covered with asphalt paving and buildings.

A fence blocked the rest of the view. The southern portion, most of tax lot 100, appeared to be largely covered by gravel, soil, small buildings, and various pieces of equipment. Tax lot 200 on 11th had a split-purpose building; it contained two businesses: Unique Boat Manufacturing at 2780 West 11th, in the westernmost part of the building, and Lanz Saw Shop at 2770 West 11th. Some small outbuildings also might be associated with these businesses or with the Cole construction company. Tax lot 100 included the Cole's Furniture building on the southeast portion of the site, which may include the original building from the 1900s. There was a large shop building, with the saw shop in an adjacent building and then the boat manufacturer.

Mr. Marshall said that the history indicated that the site use was, initially, primarily residential, starting around 1907, when a Maude Sweet moved there and lived there, from all appearances, until 1962. In 1951, a paint manufacturing facility was located at the 2780 address until 1961, when the paint manufacturing operation moved off the site. However, a paint store continued to be located at the 2780 location until 1972. Cole's Furniture refinishing and repair store may have moved onto the site before 1962, but in 1962 the Cole family inherited the property from Maude Sweet. In the early 1970s, they added a tire retread shop adjacent to the paint store, which later became the saw shop. The paint shop became an automotive repair facility beginning in the 1970s. The construction business appeared by 1968.

Mr. Marshall said that site recognition usually focused on indications of environmental conditions, such as stressed vegetation, stained soils, identified and unidentified containers of unknown substances, pits and mounds of soil, indications of tanks, such as pump islands or vertical vent pipes. Very little of the site could be observed from off-site, but there did appear to be a small concrete pad and some vertical pipes near the front of the 2770 building, and a vertical pipe adjacent to the large shop building behind 2770. The vertical pipes were considered to represent possible vent pipes for either decommissioned or existing underground storage tank (UST) systems. There was heavy equipment on the south side of the site, but no visual indication of an impact between there and the creek.

Mr. Marshall then discussed the records search. He stated that there were locations involving environmental impacts west, north, and east of the site. One of the site M addresses, 2780 West 11th, was one of the listed sites. There was a Department of Environmental Quality (DEQ) file that contained one piece of paper from a telephone conversation in 1989, which indicated that it was owned by someone other than the Coles. The document reported three underground storage tanks filled with water. It was not a heavily substantiated document, but it indicated that someone had reported seeing underground storage tanks on the property in 1989.

Mr. Marshall said that many of the locations in the area did not have significant contamination; some may have been cleaned up, some were still being cleaned up, and some showed no action. There was low-permeability soil with a high water table, which tended to keep contamination from migrating laterally, but also could exaggerate effects of local influences, such as utility trenches. Every property he looked at had a different flow direction for the water, so it was difficult to assess. City records indicated that three underground storage tanks were installed at the 2780 location in 1956-58, when the paint manufacturer was using the property. The City records also indicated that the tanks were removed in 1987, but there also was the report that they were seen in 1989. A portion of

the 2770 address was to have fireproof construction, so there could be asbestos-containing materials there.

Mr. Marshall said that he had found a County inspection record from the summer of 1996, which was related to zoning complaints against the Cole property. It did not identify any evidence of surface contamination. He did not know anything about the hazardous substances management practices during the operation of the furniture shop and the construction business. Underground storage tanks were considered to possibly be present and in unknown condition on tax lot 100. The threat of the site being impacted by migration from off-site contamination and associated liabilities was considered to be low. The conclusions were similar for tax lot 200. Underground storage tanks possibly were present there, also.

Based on this information, Mr. Marshall said he would have to recommend that a Level II assessment be performed to verify whether there was or was not any contamination present.

Mr. Montgomery asked about the chance of lead paint on the property. Mr. Marshall said there could be lead paint if waste pits were used, but they also might have used the creek to carry away the waste.

Ms. Murphy asked, since it was a current requirement that firms be on file if using hazardous materials, whether those firms had been researched. Mr. Marshall said that they were not registered as hazardous waste generators. He said he would suspect if there was contamination on the site, it probably was more associated with historical uses.

Ms. Murphy asked about the tile shop to the east, which appeared to have garage access to site M. She wondered if there was vehicular travel to that shop, and whether that could involve heavy equipment and diesel fuel. Mr. Marshall said that he did not know the answer to that question.

MOTION **Executive Session:** Mr. Bailey moved that the Board go into Executive Session pursuant to ORS 192.660(1)(h), to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed; ORS 192.660(1)(e), to conduct deliberations with persons designated by the governing body to negotiate real property transactions; and ORS 192.660(1)(f), to consider records that are exempt by law from public inspection pursuant to ORS 192.551(6), regarding information relating to the appraisal of real estate prior to its acquisition. The motion was seconded by

VOTE Mr. Saydack and carried by unanimous vote (Bailey, Bennett, Hocken, Kleger, Montgomery, Murphy, and Saydack in favor; none opposed). District Counsel Greg Skillman was present for this discussion with the Board, which began at 8:05 p.m.

MOTION **Return to Regular Session:** Upon motion by Mr. Bailey to return to regular session

VOTE and seconding by Mr. Kleger, the Board unanimously returned to regular session at 9:25 p.m.

MOTION Mr. Saydack moved that the Board adopt the following resolution: "It is hereby resolved that the LTD Board of Directors directs staff to obtain a proposal for a full

Environmental Assessment on Tax Lots 100 and 200, Map 17-04-35-42, also known as the Cole's Furniture and Saw Shop site." The motion was seconded by Mr. Bennett.

Mr. Kieger commented that the things the Board found important for a West 11th Park & Ride facility were: visibility from West 11th; comparative value; relative cost per space; loading buses when going in the direction the District wanted to go; and the reduced need to pay for traffic controls. He thought this was a very superior site to the others that were considered. He said that LTD needed a facility in that vicinity of the size being discussed, and he thought the District should go ahead with this process.

VOTE

There was no further discussion, and the resolution was passed by unanimous vote (Bailey, Bennett, Hocken, Kieger, Montgomery, Murphy, and Saydack in favor; none opposed).

Ms. Loobey stated for the record that she had received a call from Gabriel Cole, who wanted to share some personal sentiments with the Board. He had stated that he wanted the Board to understand that neither he nor any other member of the family was jockeying for any position with regard to the property, and they honestly wanted to keep the property in family hands.

1997 LEGISLATIVE ISSUES: Ms. Loobey stated that the Board talked about a lot of issues with the Lane County delegation the previous fall. She had described some of those in the agenda item summary on this topic. Some of those issues had fallen to the wayside because of the failure of Ballot Measure 32. Changes to the purposes section of ORS 267 were still an option. District counsel had prepared a draft bill, which had been distributed with the agenda materials. Subsequent to that, Mr. Saydack had expressed some concern about the ambiguity of the language that had been prepared. Attorney Greg Skillman was present to discuss the language to see if he could find a way to achieve the Board's objective and take care of Mr. Saydack's concerns, as well.

Mr. Skillman paraphrased versions 1 and 2 of the draft bill, which he distributed at the meeting. Version 1 was similar to the draft in the agenda packet, but some typographical errors had been corrected. On page 2, language had been inserted to say, "and developing facilities necessary or desirable for the operation of the mass transit system." That language also had been inserted in all places where it fit in the statute, and it picked up what already was in existence in subparagraph 4 on page 3. Subparagraph 4 said that LTD had the ability to build, construct, purchase, improve, operate, and maintain all improvements, facilities, or equipment necessary or desirable for the mass transit system. Subparagraph 2 was key because it gave LTD the right to acquire by condemnation real properties for the purposes of providing or operating a mass transit system in the District, and language had been added to say "and developing facilities necessary or desirable for the operations of the mass transit system." The language was non-controversial; all it was doing was unifying LTD's existing powers.

Mr. Skillman stated that Mr. Saydack's question had been about ambiguous language that did not directly say what the District wanted to do. Mr. Skillman presented version 2 as being much more direct, with two additional amendments. The first was to the definitions section of ORS 267, adding "and other public or ancillary commercial facilities that facilitate the operations of the system." He said that this language was chosen because it paralleled

a court case dealing with the authority of a port district to acquire, lease, and use properties and resell them after condemning and acquiring them, for commercial purposes, as long as those commercial purposes were beneficial to the port district. The court found the language "ancillary to the project" acceptable, as long as the port was not acquiring property by condemnation and then becoming a real estate developer; it had to be related to the public purpose when condemning the property.

Mr. Skillman did not believe that there would be any problem in making the argument that this language would allow LTD to condemn for a public purpose that was related to a mass transit district and use some of the property acquired in condemnation for leasing to private entities or contracting to allow people on the property that LTD acquired by condemnation to engage in business that LTD thinks would benefit the mass transit system (to encourage people to use the system because there is a shoe store or a place where they can buy a loaf of bread, etc.).

Ms. Hocken asked a question about whether using the word "lease" meant that LTD would be a lessee or lessor, or both. She said that LTD's concern was being able to act as a lessor. Mr. Skillman said that section 7, as it was, was separate from the condemnation power in paragraph 2. Section 7 allowed LTD to do the things in paragraph 2 with property that it had condemned. The key power was in section 2, acquiring by condemnation and then developing the properties for ancillary commercial facilities.

Mr. Saydack thought the legislature might be confused about the lessee/lessor issue as well, and what the District was proposing. LTD wanted to be able to lease space to others for commercial purposes, without making the legislature worried that the District was trying to condemn and use space for commercial purposes. Ms. Hocken affirmed that the District's intent was not to go into competition with other businesses.

Mr. Bailey said there also could be a time when LTD would lease space and subcontract it out to businesses. Mr. Saydack said that the District wanted to be clear that it was not going to operate the commercial facility--just rent to someone who would.

Ms. Hocken said that if the language meant that LTD could be either a tenant or a landlord, or both, it was fine. Mr. Saydack thought that it could be read either way.

Mr. Kleger mentioned the concern about the competition issues, and wondered if that was the reason for including the work "ancillary." Mr. Skillman said that it was; otherwise, it would just say "commercial." It would not be LTD's primary function, but would be in a support role to the primary purpose.

Mr. Saydack stated that Ms. Loobey could build the legislative history. Mr. Skillman agreed that testimony could be made that LTD did not want to sell coffee directly, but was interested in leasing to someone who could, even if the property were acquired by condemnation, because it would enhance the transit system.

Mr. Kleger added that it would be important to be able to lease to others office space that the District might not need to use for a number of years, until it was needed, as well.

Mr. Bailey mentioned the terms in section 1, sub 3, of version 2, which listed "stations, lots, malls, or skyways," and asked if the language should include "facilities" to reference

facility as used in earlier language. Mr. Skillman agreed that "or other facilities" should be added to that list in that section.

Ms. Hocken asked if the Board members agreed that they wanted the more specific language in Version 2 rather than the more general language of Version 1, and whether they were agreed that they wanted to go forward with this draft bill as part of the legislative agenda. The Board members were in agreement on both counts.

Ms. Loobey mentioned that sometimes things arose during the legislative session that caused problems for LTD. For instance, the District had just begun to review and understand the changes to the public safety standards and training having to deal with private security guards. A change in ORS 181 was believed by counsel to have an impact on the District, because LTD's field supervisors performed some of those functions, and the change would cause interference in the way LTD conducted its business. Ms. Loobey said that an easy way to take care of this would be to draft an amendment under the applicability section of ORS 181 that would exempt transit districts. This change could be worked through the Oregon Transit Association (OTA). Ms. Loobey recalled that the intent of the change was to upgrade the quality of the training and quality of the persons being hired for private security purposes.

Mr. Saydack asked if Tri-Met had transit police. Ms. Loobey replied that it did not, but had fare inspectors who might also come under this language. Mr. Pangborn added that the background checks and licensing charges for security guards were substantial.

Mr. Kleger commented that the field supervisors enforced LTD's ordinance about the conduct in facilities and on the buses. Ms. Loobey added that they also handled property issues, interacted with passengers, secured accident scenes, performed investigations, and protected property, and some of those functions were things that private security guards were expected to do.

Mr. Pangborn said that these changes would be effective in January 1997 and staff intended to be in compliance with them. He thought the changes had come through the special legislative session.

Mr. Saydack wondered if this would interfere with LTD's business practices in a way that was unacceptable, because part of the intent was to protect the employer, as well. Ms. Loobey stated that the system and field supervisors came up through the ranks, so would have been employees for a number of years, although it could never be guaranteed that an employee would not become strange, or disgruntled. Transit Operations Manager Patricia Hansen added that anyone hired by the District underwent a criminal background check at the time of hire, as a standard hiring practice.

Ms. Loobey said that there was some time yet, and staff would come back to the Board to discuss how to handle the legislative process when the District had no control over what might come up independent of its own legislative program. She stated that signal preemption was being taken care of by the Oregon Department of Transportation (ODOT) in a revision to SB 150.

Ms. Loobey mentioned the Governor's Oregon Transportation Initiative (OTI). She said that Governor Kitzhaber intended to seek a utility tax for the purpose of funding elderly

and handicapped transportation in the state, but it was too early to tell what the outcome would be. She said there was some sense that the legislature would be tied up with trying to understand Ballot Measure 47 for most of the session, but there was no way to know for sure if that would be true. The question came down to how to manage the legislative agenda for purposes of communicating with the Board in a timely fashion. She said that she trusted the instincts of Roger Martin of the OTA and Dick Feeney of Tri-Met about when Board help was needed on issues.

Ms. Loobey asked the Board members to think about the legislative process and discuss it in January. She suggested that a committee could be formed and meet on an as-needed basis; the Board could meet as a committee of the whole; or Ms. Loobey could report back to the Board on legislative and District actions at Board meetings.

ADJOURNMENT: There was a brief discussion of the format and content of the following day's meeting with representatives of the local-area delegation. There was no other business, and the meeting was unanimously adjourned at 10:07 p.m.


Board Secretary

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