

1                                   BEFORE THE LAND USE BOARD OF APPEALS

2                                   OF THE STATE OF OREGON

3  
4 HOLLADAY INVESTORS, LTD.,           )  
5 HAROLD J. BYRNE, and EASTON        )  
6 CROSS,                                )  
7                                        )  
8                    Petitioners,        )  
9                                        )

10            vs.                        )

LUBA Nos. 91-057, 91-058,  
91-059, 91-060 and 91-061

11  
12 CITY OF PORTLAND                    )  
13                                        )  
14                    Respondent,        )  
15                                        )

FINAL OPINION  
AND ORDER

16            and                        )

17                                        )  
18 PORTLAND DEVELOPMENT COMMISSION,   )  
19                                        )  
20                    Intervenor-Respondent.    )

21  
22  
23            Appeal from City of Portland.

24  
25            Gregory J. Howe, Portland, filed a petition for review  
26 and argued on behalf of Holladay Investors, Ltd. and Harold  
27 J. Byrne. With him on the brief was Pfister & Tripp, P.C.

28  
29            Easton Cross, Portland, filed a petition for review and  
30 argued on his own behalf.

31  
32            Kathryn Beaumont Imperati, Portland, and Jeannette M.  
33 Launer, Portland, filed a response brief on behalf of  
34 respondent and intervenor-respondent. Jeannette M. Launer  
35 argued on behalf of respondent and intervenor-respondent.

36  
37            HOLSTUN, Referee; KELLINGTON, Chief Referee; SHERTON,  
38 Referee, participated in the decision.

39  
40                                   AFFIRMED                                   09/25/91

41  
42            You are entitled to judicial review of this Order.  
43 Judicial review is governed by the provisions of ORS  
44 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal two city ordinances. Ordinance  
4 164088 adopts the First Amendment to the Oregon Convention  
5 Center Urban Renewal Plan (hereafter the First Amendment).  
6 Ordinance 164089 adopts the Second Amendment to the Oregon  
7 Convention Center Urban Renewal Plan (hereafter the Second  
8 Amendment).

9 **MOTION TO INTERVENE**

10 The Portland Development Commission moves to intervene  
11 in this matter on the side of respondent. There is no  
12 objection to the motion, and it is allowed.

13 **FACTS**

14 The Portland Development Commission (PDC) is the city's  
15 urban renewal agency. Under relevant statutory and city  
16 charter and code provisions, urban renewal plans and  
17 amendments such as those challenged in this proceeding are  
18 adopted by PDC, then forwarded to the city planning  
19 commission for review.<sup>1</sup> The planning commission adopts  
20 findings and makes recommendations concerning adoption and  
21 significant amendment of urban renewal plans to the city  
22 council. The city council then adopts or rejects the

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<sup>1</sup>ORS 457.085(2)(h) requires that an urban renewal plan identify the kinds of amendments that are so substantial that they require the same notice, hearing and approval procedures required for adoption of the original plan. The First and Second Amendments were treated below as substantial amendments.

1 proposed urban renewal plan or amendment.

2 In Holladay Investors, Ltd. v. City of Portland, 18 Or  
3 LUBA 271 (1989), aff'd 100 Or App 551, rev den 310 Or 121  
4 (1990) (Holladay Investors I), we remanded the city's  
5 decision adopting the original Oregon Convention Center  
6 Urban Renewal Plan (hereafter the Original Plan).<sup>2</sup> The  
7 First Amendment was adopted in response to our decision  
8 remanding the decision approving the Original Plan, and it  
9 adopts certain changes to Sections 600 and 1000 of the  
10 Original Plan concerning procedures governing PDC  
11 acquisition of real property within the Oregon Convention  
12 Center Urban Renewal Area. The Second Amendment authorizes  
13 PDC to acquire a four block site located across N.E.  
14 Holladay Street from the Oregon Convention Center for  
15 construction of a large headquarters hotel. The four block  
16 site is owned by petitioners Holladay Investors, Ltd. and  
17 Byrne. Petitioners wish to build a smaller hotel on the  
18 subject property.

19 **FIRST ASSIGNMENT OF ERROR (CROSS)**

20 "The Portland City Council (PCC) erred when each  
21 member of the PCC declared that the hearing was to  
22 [be] conducted in a quasi-judicial manner and that  
23 their decisions would be based solely on the  
24 testimony presented at the hearings."

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<sup>2</sup>The parties agree the local record in this prior appeal should be considered part of the record in this appeal. We cite the record supporting the Original Plan as Record I and the record submitted in support of the challenged decisions as Record II.

1 **SECOND ASSIGNMENT OF ERROR (CROSS)**

2 "Members of the PCC had substantial ex parte  
3 contact which was not revealed nor was equal  
4 access allowed to petitioners."

5 Although it is not entirely clear from petitioner  
6 Cross's arguments under the first two assignments of error,  
7 he apparently is claiming several city councillors erred by  
8 basing their decision on ex parte contacts and other  
9 evidence that is not in the record and that they were biased  
10 in favor of the Second Amendment.

11 Petitioner Cross acknowledges that the record shows the  
12 Mayor and three city councillors generally disclosed that  
13 they had received briefings from PDC staff during 1988.  
14 Petitioner Cross cites statements that he believes show the  
15 Mayor and other city councillors were politically committed  
16 to construction of a headquarters hotel and aware that a  
17 public subsidy would be required before the Original Plan  
18 was adopted and before the challenged Second Amendment was  
19 initiated.

20 We find no merit in petitioner Cross's first two  
21 assignments of error. ORS 227.180 provides in relevant  
22 part:

23 \* \* \* \* \*

24 "(3) No decision or action of a planning  
25 commission or city governing body shall be  
26 invalid due to ex parte contact or bias  
27 resulting from ex parte contact with a member  
28 of the decision-making body, if the member of  
29 the decision-making body receiving the  
30 contact:

1           "(a) Places on the record the substance of  
2           any written or oral ex parte  
3           communications concerning the decision  
4           or action; and

5           "(b) Has a public announcement of the content  
6           of the communication and of the parties'  
7           right to rebut the substance of the  
8           communication made at the first hearing  
9           following the communication where action  
10          will be considered or taken on the  
11          subject to which the communication  
12          related.

13          "(4) A communication between city staff and the \*  
14          \* \* governing body shall not be considered an  
15          ex parte contact for the purposes of  
16          subsection (3) of this section.

17          "\* \* \* \* \*."

18          It appears that all or nearly all of the "contacts" with the  
19          Mayor and city councillors to which petitioner objects were  
20          contacts with PDC, PDC staff and city planning staff. Under  
21          ORS 227.180(3) and (4), quoted supra, such contacts with  
22          city staff are by definition not ex parte contacts. Dickas  
23          v. City of Beaverton, 16 Or LUBA 574, 581, aff'd 92 Or App  
24          168 (1988). Furthermore, the contacts occurred long before  
25          the subject applications were submitted and were disclosed  
26          at the beginning of the April 17, 1991 public hearing. To  
27          the extent the disclosures may not have been sufficiently  
28          detailed or complete to comply literally with ORS  
29          227.180(3), they were clearly detailed enough to put  
30          petitioner on notice that the city council had received  
31          prior detailed briefings concerning the proposed Original  
32          Plan. In addition, although the mayor invited questions

1 concerning those prior briefings, petitioner Cross did not  
2 pursue the matter before the city council. In these  
3 circumstances, petitioner's allegations concerning ex parte  
4 contacts provide no basis for reversal or remand. See  
5 Walker v. City of Beaverton, 18 Or LUBA 712, 728-29 (1990).

6 We similarly conclude petitioner Cross's suggestion  
7 that the city council was biased in this matter is without  
8 merit. In addition to comments expressing support for the  
9 headquarters hotel concept which petitioner Cross attributes  
10 to certain city councillors, petitioner Cross appears to  
11 assign great weight to the fact that PDC is appointed by and  
12 serves at the city council's pleasure. Petitioner Cross  
13 suggests that the record shows the application was  
14 essentially developed by PDC and its staff at the city  
15 council's direction. Petitioner Cross reasons the city  
16 council's relationship with PDC and the application  
17 demonstrates the city council was biased in favor of the  
18 application.

19 While the requirement that local governments carrying  
20 out public land development projects grant land use  
21 approvals to themselves presents inherent appearance of bias  
22 problems, such appearance problems, in and of themselves,  
23 present no basis for reversal or remand. Waite v. Marion  
24 County, 16 Or LUBA 353, 357-58 (1987); Gordon v. Clackamas  
25 County, 10 Or LUBA 240, 245 (1984); see 1000 Friends of  
26 Oregon v. Wasco County Court, 304 Or 76, 742 P2d 39 (1987).

1 The cited statements show only that the city council was  
2 aware that a headquarters hotel, probably requiring a public  
3 subsidy, likely would be proposed at some point and that  
4 some of the city councillors viewed such a concept  
5 favorably. We see nothing in the record more than the kinds  
6 of briefings a prudent local planning agency would conduct  
7 prior to submitting a proposal for approval of a public  
8 project in order to assure the proposal would not include or  
9 omit features that would cause the proposal to be rejected  
10 out of hand by the city council. We see nothing in the  
11 record to suggest the city council had already decided to  
12 subsidize a headquarters hotel, as petitioner Cross  
13 suggests.<sup>3</sup>

14 These assignments of error are denied.

15 **THIRD ASSIGNMENT OF ERROR (CROSS)**

16 "The PCC [erred] when it relied heavily on the  
17 conclusions reached by the Portland Oregon  
18 Visitors Association [Oregon Convention Center  
19 Lost Business Report] and second and third party  
20 descriptions of the conclusions and not the report  
21 itself."

22 In adopting the amendments challenged in this appeal,  
23 the city council relied in part on the Oregon Convention  
24 Center Lost Business Report prepared by the Portland Oregon  
25 Visitors Association. Under his third assignment of error,

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<sup>3</sup>As explained infra, the city council's decision to approve an urban renewal plan authorizing a subsidized headquarters hotel was made when the city council legislatively approved the Original Plan. That decision is not before us in this challenge to the First and Second Amendments.

1 petitioner Cross appears to argue that the Oregon Convention  
2 Center Lost Business Report does not support certain verbal  
3 statements made by the Mayor and several city councillors  
4 during the course of the public hearing in this matter.

5 Even if petitioner Cross were correct in this  
6 contention, this Board reviews the final decision and  
7 supporting findings, not statements made by various members  
8 of the decision making body during the local proceedings.  
9 Gruber v. Lincoln County, 16 Or LUBA 456, 460 (1988); Cook  
10 v. City of Eugene, 15 Or LUBA 344, 355 (1987); Oatfield  
11 Ridge Residents Rights v. Clackamas Co., 14 Or LUBA 766,  
12 768-69 (1986); S & J Builders v. City of Tigard, 14 Or LUBA  
13 708, 712 (1986); McCullough v. City of Baker, 14 Or LUBA  
14 198, 200 (1986); Citadel Corporation v. Tillamook County, 9  
15 Or LUBA 61, 67 (1983).

16 To the extent petitioner Cross is alleging the Oregon  
17 Convention Center Lost Business Report is not substantial  
18 evidence in support of the challenged decision, petitioner  
19 offers little argument in support of that contention. To  
20 the contrary, petitioner concedes the record shows that a  
21 significant number of conventions go elsewhere because  
22 Portland does not have a large convention center  
23 headquarters hotel. Respondent and intervenor-respondent  
24 cite additional evidence in the record to the same effect.

25 This assignment of error is denied.



1 **FIRST ASSIGNMENT OF ERROR (HOLLADAY/BYRNE)**

2 "Ordinance 164088 and the First Amendment to the  
3 Urban Renewal Plan violate ORS 457.085(3)(a)  
4 because they fail accurately to describe the  
5 physical, social and economic conditions in the  
6 urban renewal area of the plan."

7 As noted above, the First Amendment was adopted in  
8 response to our decision in Holladay Investors I, and it  
9 adopts certain changes to Sections 600 and 1000 of the  
10 Original Plan concerning procedures governing PDC  
11 acquisition of real property within the Oregon Convention  
12 Center Urban Renewal Area. As a substantial amendment to  
13 the Original Plan, the First Amendment must comply with the  
14 requirement of ORS 457.085(3)(a) that the urban renewal plan  
15 amendment be accompanied by a report which includes the  
16 following:

17 "A description of physical, social, and economic  
18 conditions in the urban renewal areas of the plan  
19 and the expected impact, including the fiscal  
20 impact, of the plan in light of added services or  
21 increased population[.]"

22 In adopting the First Amendment, the city relied on the  
23 sections of the Original Report adopted to satisfy ORS  
24 457.085(3)(a) when the Original Plan was adopted on May 18,  
25 1989. Petitioners Holladay Investors, Ltd. and Harold J.  
26 Byrne (hereafter petitioners) contend there have been  
27 significant changes in the physical, social, and economic  
28 conditions within the urban renewal district since May 18,

1 1989.<sup>4</sup> Petitioners argue that in view of those changes the  
2 description of physical, social and economic conditions  
3 adopted in 1989 is no longer accurate and the city may not  
4 rely on that description to satisfy the requirement of ORS  
5 457.085(3)(a) in adopting the First Amendment.

6 According to petitioners, new development within the  
7 district since 1989 renders the land use findings contained  
8 in the Original Report inaccurate. Petitioners contend the  
9 following sections of the Original Report are no longer  
10 valid:

11 "Section 101 - Land Use Findings. \* \* \*

12 "Section 103 - Age and Condition of Buildings. \* \*

13 \*

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<sup>4</sup>Petitioners identify the following new construction and building  
renovations and expansions.

"\$180 million renovation and expansion of the Lloyd Center to  
be completed by mid-1991. \* \* \*;

"The State of Oregon's Portland Office Building (\$28 million)  
[with] completion due fall of 1991;

"The \$4 million Travelodge and \$3 million Execulodge  
renovations;

"An \$8 million investment in Oregon Square;

"The new Kaiser Dental Clinic; and

"New retail establishments such [as] Aussie Connection, Kitchen  
Kaboodle, Metropolis, Counterfeit Plants, McMenamins \* \* \*, and  
Motor Moka." Petition for Review 8-9.

Petitioners also identify a number of other planned projects which  
petitioners contend will be constructed within or near the urban renewal  
district. In addition, petitioners point out a new city zoning code was  
adopted after the Original Report was adopted.

1 "Section 104 - True Cash Value of Property. \* \* \*  
2 "Section 106 - Police Bureau Activity. \* \* \*  
3 "Section [107] - Fire Bureau Activity. \* \* \*  
4 "Section [108] - Demographics of the Area."  
5 Petition for Review 9-10.

6 The city responds that some of the changes identified  
7 by petitioners were either recognized in the Original  
8 Report,<sup>5</sup> or are irrelevant.<sup>6</sup> The city also contends the  
9 relevant changes identified by petitioners which were not  
10 recognized in the Original Report are not sufficient to  
11 require a change in the Original Report.

12 The city contends, and petitioners do not dispute, that  
13 the only examples of new development identified by  
14 petitioner which change the land use categories specified in  
15 Section 101 of the Original Report are the Kaiser Dental  
16 Clinic and the State Office Building. The construction of  
17 the dental clinic means .92 acres of the 62.20 acres listed

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<sup>5</sup>The city points out that the expansion of Lloyd Center was recognized in the Original Report. Record I 38A, 41.

<sup>6</sup>The city contends ORS 457.085(3)(a) requires a description of the existing physical, social, and economic conditions in the urban renewal area, not planned developments. Therefore, the city argues it committed no error by failing to consider development that is merely planned by private parties, and which may or may not ever be constructed, in adopting the First Amendment or its supporting report.

Similarly, the city contends the adoption of a new zoning code does not in and of itself, make any changes in the actual use of property within the urban renewal district. Further, the city points out the predominant zone applied in the district did not change, and the small number of parcels that were rezoned were rezoned in a way that allows development similar to the development allowed under prior zoning.

1 in the Original Report as "Public" should now be listed as  
2 "Quasi-public." The new State Office Building site listed  
3 in the Original Report as "Open (vacant)" should be  
4 classified as "Public" upon completion. The city contends  
5 "[t]he total acreage on which the land use has arguably  
6 changed [since 1989] represents less than 0.5% of the total  
7 acreage of the [urban renewal] district." Respondents'  
8 Brief 16.

9 With regard to the renovations and remodeling  
10 identified by petitioners, the city points out that of the  
11 403 buildings identified in Section 103 of the Original  
12 Report, petitioners cite only four examples of buildings  
13 that have been renovated. The Original Report identified  
14 buildings within the urban renewal area as falling within  
15 one of three categories:

16 "Condition 'A' New or well maintained older  
17 buildings.

18 "Condition 'B' Buildings needing substantial  
19 rehabilitation and improved  
20 maintenance. \* \* \*

21 "Condition 'C' Dilapidated buildings which appear  
22 to be beyond being economically  
23 rehabilitated." Record I 39.

24 The city contends that although the cited renovations could  
25 have had an effect on the category in which the affected  
26 buildings were placed in the Original Report, such is not

1 necessarily the case.<sup>7</sup> For example if a "Condition A"  
2 building is renovated it presumably would remain a  
3 "Condition A" building following renovation, and no change  
4 in the Original Report would be required.

5 Petitioners contend there was an increase of \$30  
6 million in assessed value in the district between 1989 and  
7 1991. Petitioners argue this increase renders the  
8 improvement to value of land ratios in Section 104 of the  
9 Original Report "grossly inaccurate." The city disputes  
10 petitioners' contention, pointing out that even if the \$30  
11 million figure suggested by petitioners is accurate, it  
12 represents only 7.4% of the total base value in 1989.<sup>8</sup> The  
13 city contends such a change is not sufficient to render the  
14 Original Report inadequate to support the First Amendment.

15 Finally, the city points out petitioners' suggestions  
16 that the changes in the urban renewal district since 1989  
17 may have effects on police and fire department activity and  
18 demand for housing are simply suggestions, and there is  
19 nothing in the record to support contentions that police and  
20 fire bureau activity within the district has changed since  
21 1989 or that residential units have changed.

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<sup>7</sup>The Original Report gives the total number of and percentage of buildings falling within each condition category, but does not identify the designated condition of particular buildings.

<sup>8</sup>The Original Report determined, based on fiscal year 1988-89 records, that the true cash value of land and improvements within the urban renewal district to be \$406,786,340.

1           We conclude that changes in land use categories  
2 affecting only .5% of the total acreage in the urban renewal  
3 district, the cited building renovations and the possible  
4 increase of \$30 million in assessed valuation since 1989 are  
5 insufficient to render the description of physical, social  
6 and economic conditions in the urban renewal area contained  
7 in the Original Report inadequate to support the challenged  
8 amendment. With regard to planned or possible private  
9 development within the urban renewal area, we believe the  
10 city could consider such development in describing the urban  
11 renewal area's "physical, social and economic conditions" in  
12 accordance with ORS 457.085(3)(a). However, we agree with  
13 the city that ORS 457.085(3)(a) does not require that it  
14 describe and consider private development that may or may  
15 not occur. We also agree with the city that the adoption of  
16 an amended zoning code has negligible impacts on the urban  
17 renewal area, and did not require that the description of  
18 the urban renewal area required by ORS 457.085(3)(a) be  
19 amended.<sup>9</sup>

20           Although it might have been preferable for the city to  
21 fully update the data and findings in the Original Report  
22 when it adopted its First Amendment in response to our  
23 remand in Holladay Investors I, the Original Report was only

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<sup>9</sup>Similarly, we agree with the city that petitioners' suggestions that changes in the urban renewal district might affect police and fire department activity were insufficient to require that the description of the urban renewal area be changed.

1 two years old and we fail to see how the comparatively minor  
2 changes identified by petitioners render the Original Report  
3 inadequate to comply with ORS 457.085(3)(a).

4 Petitioners' first assignment of error is denied.

5 **SECOND ASSIGNMENT OF ERROR (HOLLADAY/BYRNE)**

6 "Ordinance 164089 and the Second Amendment to the  
7 Urban Renewal Plan violate ORS 457.095(6) because  
8 the adoption and carrying out of the urban renewal  
9 plan is not economically sound and feasible."

10 **THIRD ASSIGNMENT OF ERROR (HOLLADAY/BYRNE)**

11 "Ordinance 164089 and the Second Amendment to the  
12 Urban Renewal Plan violate ORS 457.085(3)(g)  
13 because they fail to provide a financial analysis  
14 to determine that the Plan is economically sound  
15 and feasible."

16 Petitioners wish to build an approximately 400 unit  
17 headquarters hotel (hereafter small headquarters hotel) on  
18 their property. As explained below, the city wishes to have  
19 a larger headquarters hotel of 600 to 800 units (hereafter  
20 large headquarters hotel) on petitioners' property. In  
21 adopting the First and Second Amendments, the city amended  
22 the Original Plan to allow PDC to purchase petitioners'  
23 property and to pursue plans to construct the large  
24 headquarters hotel on petitioners' property.

25 There is substantial evidence in the record that the  
26 small headquarters hotel could be built without a public  
27 subsidy. There is also substantial evidence in the record  
28 that with a public subsidy a private developer would  
29 construct the larger, more specialized hotel desired by the

1 city.<sup>10</sup> In the proceedings leading to adoption of the  
2 Second Amendment, there were expressions of hope that the  
3 large headquarters hotel could be built without a public  
4 subsidy. However, we agree with petitioners that there is  
5 not substantial evidence in the record to support a  
6 conclusion that the large headquarters hotel can be built  
7 without a public subsidy.<sup>11</sup> Simply stated, petitioners'  
8 argument under their second and third assignments of error  
9 is that the city was required, in amending the Original Plan  
10 to allow PDC to acquire their property for the large  
11 headquarters hotel, to demonstrate and find that the large  
12 headquarters hotel is financially feasible. Petitioners  
13 contend the city made a determination not to provide a  
14 public subsidy for the large headquarters hotel and that the  
15 record shows the large headquarters hotel is not financially  
16 feasible without a public subsidy.<sup>12</sup>

17 An understanding of the statutory provisions governing  
18 adoption and amendment of urban renewal plans as well as  
19 relevant provisions of the Original Plan is necessary before

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<sup>10</sup>Record II 650-73, 1183-1237. Petitioners concede the large headquarters hotel would be financially feasible with a public subsidy, but dispute the size of the public subsidy required.

<sup>11</sup>It is not necessary for us to determine whether the evidence in the record supports the city's determination in the Original Report that a public subsidy of approximately \$20 million will be required, or whether petitioners are correct that a much larger subsidy will be required.

<sup>12</sup>Petitioners also contend the city failed to demonstrate that acquisition of their property is financially feasible.



1 considering the parties' arguments under these assignments  
2 of error.

3 **A. The Urban Renewal Statutes**

4 ORS 457.085 sets forth the requirements for an urban  
5 renewal plan and the report that must accompany it. That  
6 statute provides in relevant part:

7 \* \* \* \* \*

8 "(2) An urban renewal plan proposed by an urban  
9 renewal agency shall:

10 "(a) Describe each urban renewal project to  
11 be undertaken;

12 "(b) Provide an outline for the development,  
13 redevelopment, improvements, land  
14 acquisition, demolition and removal of  
15 structures, clearance, rehabilitation or  
16 conservation of the urban renewal areas  
17 of the plan;

18 \* \* \* \* \*

19 "(g) Indicate which real property may be  
20 acquired and the anticipated disposition  
21 of said real property, whether by  
22 retention, resale, lease or other legal  
23 use, together with an estimated time  
24 schedule for such acquisition and  
25 disposition; and

26 "(h) Describe what type of possible future  
27 amendments to the plan are so  
28 substantial as to require the same  
29 notice, hearing and approval procedure  
30 required of the original plan under ORS  
31 457.095 as provided in ORS 457.220.

32 "(3) An urban renewal plan shall be accompanied by  
33 a report which shall contain:

34 \* \* \* \* \*

1           "(c) The relationship between each project to  
2           be undertaken under the plan and the  
3           existing conditions in the urban renewal  
4           area;

5           "(d) The estimated total cost of each project  
6           to be undertaken under the plan \* \* \*;

7           "(e) The anticipated completion date for each  
8           project;

9           "\* \* \* \* \*

10          "(g) A financial analysis of the plan with  
11          sufficient information to determine  
12          feasibility;

13          "\* \* \* \* \*." (Emphases added.)

14          The urban renewal plan and accompanying report are  
15          reviewed by the planning commission and are forwarded to the  
16          governing body of the municipality for approval, as provided  
17          by ORS 457.095. ORS 457.085(4). ORS 457.095 requires that  
18          the governing body adopt the plan and report by ordinance.

19          "\* \* \* The Ordinance shall include determinations  
20          and findings by the governing body that:

21          "\* \* \* \* \*

22          "(2) The rehabilitation and redevelopment is  
23          necessary to protect the public health,  
24          safety or welfare of the municipality;

25          "(3) The urban renewal plan \* \* \* provides an  
26          outline for accomplishing the urban renewal  
27          projects [and] the urban renewal plan  
28          purposes;

29          "\* \* \* \* \*

30          "(5) If acquisition of real property is provided  
31          for, that it is necessary;

32          "(6) Adoption and carrying out of the urban

1 renewal plan is economically sound and  
2 feasible; and

3 "(7) The municipality shall assume and complete  
4 any activities prescribed it by the urban  
5 renewal plan." (Emphases added.) ORS  
6 457.095.

7 **B. The Original Urban Renewal Plan**

8 The Original Plan was adopted on May 18, 1989.  
9 Sections 600 through 605 of the Original Plan identify the  
10 activities to be undertaken. Section 601(A) of the Original  
11 Plan identifies certain kinds of public improvements that  
12 are to be undertaken. A headquarters hotel is not  
13 specifically identified in Section 600 through 605 as an  
14 activity to be conducted under the Original Plan. However,  
15 Section 601(B) ("Redevelopment Through New Construction")  
16 provides, in part, that private investment in underutilized  
17 property is intended "to achieve the objectives of this  
18 Plan."<sup>13</sup> (Emphasis added.)

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<sup>13</sup>Section 601(B) also provides as follows:

" \* \* \* \* \*

"2. Method. Redevelopment through new construction may be achieved in two ways:

"a) By property owners, with or without financial assistance by [PDC];

"b) By acquisition, lease, or disposition of property by [PDC] for resale to others for redevelopment.

"3. Redevelopment Financing. [PDC], with funds available to it, is authorized to promulgate rules and guidelines, establish financial assistance programs and provide below-market rate interest and market rate interest loans

1 Goal 1 of the Original Plan is to "[m]aximize the  
2 regional job potential of the Oregon Convention Center.  
3 Objective 1.1 under Goal 1 is to "[r]ecruit at least one  
4 headquarters hotel in the immediate vicinity of the [Oregon  
5 Convention Center] to capitalize on the convention center's  
6 capacity."

7 Section 500 of the original Oregon Convention Center  
8 Urban Renewal Report (the Original Report) adopted in  
9 support of the Original Plan is entitled:

10 "THE ESTIMATED TOTAL COST OF EACH PROJECT AND THE  
11 SOURCES OF MONEY TO PAY SUCH COSTS, AND THE  
12 ANTICIPATED COMPLETION DATE FOR EACH PROJECT OR  
13 ACTIVITY." Record I 49.

14 Section 501 provides in relevant part:

15 "Headquarters Hotel: As one of the highest  
16 priority projects authorized by the Urban Renewal  
17 Plan, this 600 - 800 room highly specialized  
18 facility to be located near the Oregon Convention  
19 Center is estimated to cost \$80 million,  
20 principally from private investment.  
21 Approximately \$20 million of tax increment funded  
22 public investment will be necessary to bring this  
23 project, a generator of considerable economic  
24 impact, to fruition." Id.

25 The Original Report also includes a table of proposed short-  
26 term projects with estimated costs. The large headquarters  
27 hotel is listed in Table 8A as a short term project to be  
28 funded with \$20 million of tax increment funded public

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and provide such other forms of financial assistance to  
property owners as it may deem appropriate in order to  
achieve the objectives of this Plan."

1 investment and \$80 million of private investment. Record I  
2 63.

3 In sum, the above provisions of the Original Plan and  
4 Report, when read together, make it clear that a 600 to 800  
5 unit headquarters hotel was an authorized "project" as that  
6 term is used in the above quoted provisions of ORS 457.085.  
7 In Ordinance 161925, dated May 18, 1989, the city council  
8 found it would "assume and complete any activities  
9 prescribed to it by the [Original] Plan," as required by ORS  
10 457.095(7). The Original Plan and Report adopted by  
11 Ordinance 161925 did not, however, designate a particular  
12 property to be acquired for development of a headquarters  
13 hotel.

14 Among the arguments we rejected in the appeal  
15 challenging adoption of the Original Plan, were arguments  
16 that (1) the Original Report failed to provide the project  
17 costs, completion dates and financial analysis required by  
18 ORS 457.085(3)(d), (e) and (g), and (2) the city failed to  
19 adopt findings in support of Ordinance 161925 showing that  
20 the "adoption and carrying out of the urban renewal plan is  
21 economically sound and feasible," as required by ORS  
22 457.095(6). Holladay Investors I, 18 Or LUBA at 293-297.

23 **C. The Challenged Plan Amendments**

24 Section 602(D) of the Original Plan specifically lists  
25 a number of uses for which land could be acquired by PDC  
26 without first amending the urban renewal plan. Acquisition

1 of land for a headquarters hotel was not a purpose  
2 specifically listed in Section 602(D). Under Section 602(C)  
3 of the Original Plan, before land could be purchased for  
4 uses not specifically identified in Section 602(D), the  
5 urban renewal plan had to be amended as provided in Section  
6 1002.<sup>14</sup> The First Amendment adopted certain changes in  
7 Section 602 in response to our decision in Holladay I but  
8 did not change the requirement that the urban renewal plan  
9 be amended to authorize acquisition of land for a  
10 headquarters hotel.

11 The Second Amendment amends Section 602(C) to  
12 specifically provide that petitioners' property may be  
13 acquired for a "Headquarters Hotel Site." Record II 13.  
14 The central dispute between the parties is the nature of the  
15 city's obligations under ORS 457.085(3)(g) and 457.095(6),  
16 quoted supra, in adopting the challenged amendments to the  
17 plan to specifically allow purchase of petitioners' property  
18 for a headquarters hotel. Petitioners contend that under  
19 those statutory provisions the city was required to include  
20 in its urban renewal report a financial analysis showing the

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<sup>14</sup>Section 1002 of the Original Plan provides, in relevant part:

"Substantial changes or amendments shall include, but are not limited to \* \* \* acquisitions of real property not specifically authorized by this Plan \* \* \*. Such substantial changes, if any, shall be approved by the City Council in the same manner as the Council's approval of the original plan and in compliance with the provisions of ORS 457.095 and 457.220." Record I 27.

1 large headquarters hotel is feasible and to adopt findings  
2 in support of the ordinance adopting the Second Amendment  
3 which demonstrate that it is "economically sound and  
4 feasible" to construct the large headquarters hotel  
5 envisaged in the urban renewal plan, as amended. The city  
6 takes the position that it was only required to include in  
7 the urban renewal report supporting the Second Amendment a  
8 financial analysis sufficient to show the feasibility of  
9 acquiring the proposed site and to adopt findings in support  
10 of the ordinance adopting the Second Amendment which  
11 demonstrate that it is economically sound and feasible to  
12 purchase the proposed site.

13 As we read the Original Plan, it determined that a 600  
14 to 800 unit headquarters hotel, estimated to cost \$80  
15 million and to require a public subsidy of approximately \$20  
16 million, was financially feasible. In Holladay Investors I,  
17 this Board rejected challenges to the adequacy of the  
18 Original Report to comply with ORS 457.085(3)(g) and to the  
19 adequacy of the finding and determination of economic  
20 feasibility required by ORS 457.095(6). As noted above, the  
21 Original Report made it clear that a headquarters hotel with  
22 600 to 800 units would require a public subsidy of  
23 approximately \$20 million, and that available tax increment  
24 financing made it feasible to provide such a subsidy. We  
25 next consider the significance of an amendment to the  
26 Original Report adopted by the city in conjunction with the

1 First and Second Amendments.

2 **D. The Amended Report**

3 The city did not simply amend the Original Plan to  
4 provide that petitioners' property may be acquired for a  
5 large headquarters hotel. At the April 24, 1991 city  
6 council meeting at which the city adopted the First and  
7 Second Amendments, the city council also adopted the  
8 following amendment (brackets indicate deletions, bold type  
9 indicates additions) to Section 501 of the Original Report,  
10 quoted supra:

11 "Headquarters Hotel: As one of the highest  
12 priority projects authorized by the Urban Renewal  
13 Plan, this 600 - 800 room highly specialized  
14 facility to be located near the Oregon Convention  
15 Center is estimated to cost \$80 million[,  
16 principally from private investment.  
17 Approximately \$20 million of tax increment funded  
18 public investment will be necessary to bring this  
19 project, a generator of considerable economic  
20 impact, to fruition]. **A market study completed in  
21 1987 indicated the potential for public  
22 investment.**

23 "[PDC] will promote and market private development  
24 of a headquarters hotel without reference to  
25 public financing prior to officially offering the  
26 property. [PDC] will review the terms of the  
27 Request for Proposal with the Council prior to its  
28 completion. No public investment of tax increment  
29 funds, if any, will be made in the hotel building  
30 until this process is completed." Record II 128.

31 Although the question is not clearly presented in  
32 petitioners' second and third assignments of error, we  
33 believe the dispositive issue under these assignments of  
34 error is the legal effect of the above amendment to the



1 Original Report. As we discussed above, the large  
2 headquarters hotel project was identified in the Original  
3 Plan and Report, was found to be financially feasible and  
4 was estimated to cost a total of \$80 million. The required  
5 financial feasibility analysis and findings assumed that a  
6 public subsidy of approximately \$20 million would be and  
7 could be provided.

8 If the nature of the headquarters hotel project was  
9 changed by the above described amendment to the Original  
10 Report so that the large headquarters hotel project is now  
11 authorized under the amended plan only as a privately  
12 financed project, the city must find, and the record must  
13 support a finding, that a privately financed large  
14 headquarters hotel is financially feasible.<sup>15</sup> The city  
15 council adopted no such finding, and even it had, the record  
16 in this appeal would not support such a finding.

17 However, the above amendment to the report can also be  
18 read simply to direct the PDC to explore a wholly privately  
19 financed project before the property is officially offered  
20 for redevelopment. In other words, the city council did not  
21 by amending the Original Report change the nature of the  
22 headquarters hotel to a project which is not expected to

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<sup>15</sup>We recognize that the amendment changes the Original Report, not the Original Plan. However, as we have already explained, the Original Plan read by itself does not clearly identify the nature of the headquarters hotel project. The nature of the headquarters hotel project included in the Original Plan can only be identified by reading the Original Plan with the Original Report.

1 require a public subsidy, it simply directed PDC to explore  
2 the feasibility of a wholly privately financed project  
3 before actually offering the property.<sup>16</sup> Viewed in this  
4 way, the large headquarters hotel project as provided in the  
5 Original Plan has not been changed at this point. Only the  
6 process that may lead to its ultimate construction has been  
7 changed. That process may lead the city council to take  
8 action in the future to abandon the publicly subsidized  
9 large headquarters hotel identified in the Original Plan and  
10 Report, but the amendment to the Original Report adopted in  
11 conjunction with the First and Second Amendment does not yet  
12 do so.

13 Although either of the above interpretations of the  
14 city council's action is possible, we believe the latter  
15 interpretation more accurately expresses the city's intent.  
16 We believe that had the city council intended the former  
17 interpretation it would have done so more clearly and likely  
18 would have amended the Original Plan to that effect as well.  
19 Additional support that the latter interpretation was  
20 intended is presented in Table 8A of the Original Report,

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<sup>16</sup>In addition, the amendment makes it clear that the council is to review the ultimate request for proposals before "its completion," i.e. before it is made final and issued. Presumably, following such a review, if the subsidy is determined to be too high or the city council has changed its mind concerning the advisability of constructing a large headquarters hotel which requires a public subsidy, the city council could direct that an appropriate amendment to the urban renewal plan be prepared for consideration in order to delete the large headquarters hotel as an authorized project or to reduce the size of the headquarters hotel to one that can be financed without a public subsidy.

1 which, as we explained earlier, specifies that a public  
2 subsidy of approximately 20 million dollars will be required  
3 to construct the large headquarters hotel. Table 8A was not  
4 amended when the city adopted the First and Second  
5 Amendments or the above described amendment to the Original  
6 Report.

7 In adopting the ordinance required by ORS 457.095, the  
8 city is required to find and determine that "[t]he  
9 municipality shall assume and complete any activities  
10 prescribed it by the urban renewal plan." ORS 457.095(7).  
11 The city adopted such a finding when it adopted the Original  
12 Plan and when it adopted the First and Second Amendments on  
13 April 24, 1991. We are unable to agree with petitioners  
14 that the city, by adopting the above described amendment to  
15 Section 501 of the Original Report, abandoned the commitment  
16 made in the Original Plan and Report to construct a large  
17 headquarters hotel which likely will require a public  
18 subsidy. Rather, we believe the city council simply  
19 required that it continue to be involved in the development  
20 of the headquarters hotel proposal so that it may, if it  
21 wishes, take action in the future to modify or eliminate the  
22 large headquarters hotel project.

23 Because the Original Plan and Report found the large  
24 headquarters hotel to be financially feasible and the city  
25 has not yet amended the Original Plan or Report to require  
26 that the headquarters hotel be financed solely by private

1 funds, we conclude the city was not required, in adopting  
2 the Second Amendment, to demonstrate and find the large  
3 headquarters hotel is financially feasible without a public  
4 subsidy. The city was only required to demonstrate and find  
5 that the purchase of the subject property is financially  
6 feasible.

7 **E. Evidentiary Support**

8 Petitioners challenge the evidentiary support for the  
9 city's findings that acquisition of petitioners' property is  
10 financially feasible.<sup>17</sup> Petitioners contend there is  
11 significant legal uncertainty concerning PDC's authority to  
12 levy taxes outside the limit imposed by Ballot Measure 5,  
13 adopted by the voters in 1990.<sup>18</sup> Petitioners contend that  
14 if PDC is not able to rely on property tax revenue levied  
15 outside Ballot Measure 5 limits, it will be forced to  
16 compete with other property tax funded services and projects  
17 under the limit imposed by Ballot Measure 5 and may not be  
18 able to issue and retire the bonds necessary to provide  
19 funds to purchase the subject property.

20 The short answer to petitioners' arguments is that the

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<sup>17</sup>The report accompanying the Second Amendment estimates that \$2.2 million in tax increment financing will be available annually beginning in the 1991-92 fiscal year to finance the estimated \$814,477 annual debt service necessary to finance the property purchase.

<sup>18</sup>Ballot Measure 5 imposes a constitutional limit on the property tax rate per \$1,000 of assessed value. The limit is phased in over a period of years and will be \$15 per \$1,000 of assessed value beginning with fiscal year 1995-96.

1 legal uncertainty petitioners identify was recognized by the  
2 city. Both PDC's legal counsel and the Oregon Attorney  
3 General rendered opinions that property taxes outside the  
4 limits imposed by Ballot Measure 5 may be collected by PDC  
5 to retire urban renewal bonds issued by PDC. Record II 137-  
6 39, 168-75. Although the ultimate resolution of those legal  
7 issues must await the conclusion of litigation and any  
8 appeals, we believe it is reasonable for the city to rely on  
9 such legal advice, and that its finding that the purchase of  
10 the subject property is financially feasible is supported by  
11 substantial evidence in the record.

12       Petitioners' second and third assignments of error are  
13 denied.

14       The city's decision is affirmed.