



CITY OF
PORTLAND, OREGON

OFFICIAL
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **8TH DAY OF MAY, 2002** AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales, Saltzman and Sten, 5.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Ben Walters, Senior Deputy City Attorney; and Officer Michael Frome, Sergeant at Arms.

On a Y-5 roll call, the Consent Agenda was adopted.

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| <p>448 TIME CERTAIN: 9:30 AM – Amend Title 33, Planning and Zoning, and Title 32, Signs and Related Regulations, to clarify and improve readability without changing policy or intent of the original regulations (Ordinance introduced by Commissioner Hales; amend Titles 33 and 32)</p> | <p>Disposition: PASSED TO SECOND READING MAY 15, 2002 AT 9:30 AM</p> |
| <p>449 TIME CERTAIN: 10:15 AM – Accept the Housing and Community Development Commission Fifth Annual Housing Evaluation Report July 1, 2000 – June 30, 2001, and implement its recommendations to further City housing goals (Previous Agenda 408; Resolution introduced by Commissioner Sten) (Y-5)</p> | <p>36066</p> |
| <p>CONSENT AGENDA – NO DISCUSSION</p> | |
| <p>450 Accept bid of S2 Contractors, Inc. for water mains at Terwilliger Mains, Phase 2, for the Bureau of Water Works for \$572,873 (Purchasing Report - Bid No. 101371) (Y-5)</p> | <p>ACCEPTED PREPARE CONTRACT</p> |
| <p>451 Vacate a portion of SE 98th Avenue north of SE Bush Street, under certain conditions (Ordinance by Order of Council; VAC-10000)</p> | <p>PASSED TO SECOND READING MAY 15, 2002 AT 9:30 AM</p> |
| <p>Mayor Vera Katz</p> | |
| <p>452 Confirm appointment of Veronica Dujon, Nancy Bond, Rosemarie Cordello, Patrick Driscoll, John Echlin, John Haines, Thor Hinckley, Allen Lee, Paulette Rossi and Bob Wise to the Portland-Multnomah Sustainable Development Commission (Report) (Y-5)</p> | <p>CONFIRMED</p> |

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| <p>453 Accept contract with JVC Contractors, Inc. for CityKids Child Development Center project as complete, authorize the final payment and release retainage (Report; Contract No. 32960) (Y-5)</p> | <p>ACCEPTED</p> |
| <p>*454 Allow the sale of surplus real property at 4465 NW Yeon (Ordinance) (Y-5)</p> | <p>176445</p> |
| <p>*455 Allow the sale of surplus real property at 4747 SW Hamilton Street (Ordinance) (Y-5)</p> | <p>176446</p> |
| <p>*456 Authorize transfer of \$13,283 from the General Fund, Special Appropriation for Downtown Services, to Pioneer Courthouse Square of Portland Incorporated to fund additional security personnel at the Pioneer Courthouse Square Information Center for the remainder of FY 2001-2002 (Ordinance) (Y-5)</p> | <p>176447</p> |
| <p>Commissioner Jim Francesconi</p> | |
| <p>*457 Authorize loan of hazardous materials response equipment to Tualatin Valley Fire and Rescue, a Rural Fire Protection District (Ordinance) (Y-5)</p> | <p>176448</p> |
| <p>*458 Extinguish pedestrian easement leading to Brentwood Park from SE Duke (Ordinance) (Y-5)</p> | <p>176449</p> |
| <p>*459 Request and accept tax-foreclosed properties from Multnomah County for park and recreation, riparian and flood management purposes (Ordinance) (Y-5)</p> | <p>176450</p> |
| <p>*460 Authorize a loan of \$30,000 to the Pacific Railroad Preservation Association to repair and maintain Engine 700 (Ordinance) (Y-5)</p> | <p>176451</p> |
| <p>Commissioner Charlie Hales</p> | |
| <p>*461 Authorize Intergovernmental Agreement with Oregon Health & Science University to provide bicycle facilities and bicycle programs (Ordinance) (Y-5)</p> | <p>176452</p> |
| <p>*462 Authorize an agreement with Markgraf and Associates for \$40,000 to provide public involvement services in support of outreach activities for the South Corridor Transportation Alternatives Study (Ordinance) (Y-5)</p> | <p>176453</p> |
| <p>Commissioner Dan Saltzman</p> | |

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| <p>*463 Amend the Intergovernmental Agreement with East Multnomah Soil and Water Conservation District to extend the termination date and add to the scope of work (Ordinance; amend Contract No. 34033) (Y-5)</p> | <p align="center">176454</p> |
| <p>*464 Amend contract with Garry Struthers Associates, Inc. for design of the Lents Crossing Inverted Siphon, Project No. 6965 (Ordinance; amend Contract No. 33331) (Y-5)</p> | <p align="center">176455</p> |
| <p>465 Consent to the transfer of Irvington Sanitary Collectors, Inc. residential solid waste and recycling collection franchise to Alberta Sanitary Service, Inc. (Ordinance)</p> | <p align="center">PASSED TO SECOND READING MAY 15, 2002 AT 9:30 AM</p> |
| <p>466 Consent to the transfer of Hohnstein Garbage & Recycling, Inc. residential solid waste and recycling collection franchise to Portland Disposal and Recycling Service, Inc. (Ordinance)</p> | <p align="center">PASSED TO SECOND READING MAY 15, 2002 AT 9:30 AM</p> |
| <p align="center">Commissioner Erik Sten</p> | |
| <p>*467 Amend Intergovernmental Agreement with the Regional Water Providers Consortium to extend the expiration date to June 30, 2005 (Ordinance; amend Contract No. 50880) (Y-5)</p> | <p align="center">176456</p> |
| <p align="center">City Auditor Gary Blackmer</p> | |
| <p>*468 Assess property for system development charge contracts and private plumbing loan contracts (Ordinance; Z0738, K0046, T0062, K0047, T0061, P0060) (Y-5)</p> | <p align="center">176457</p> |
| <p align="center">REGULAR AGENDA</p> | |
| <p align="center">Mayor Vera Katz</p> | |
| <p>*469 Accept a \$200,000 grant from the U.S. Department of Justice, Office of Community Oriented Policing Services for The Value Based Initiative Project (Ordinance) (Y-5)</p> | <p align="center">176459</p> |
| <p align="center">Commissioner Jim Francesconi</p> | |
| <p>470 Adopt revision to Basic Emergency Services Plan as required by Title 15 of the City Code (Resolution) (Y-5)</p> | <p align="center">36067</p> |

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Commissioner Charlie Hales

471 Assess benefited property for the costs to construct ornamental lighting in the
SW Capitol Highway Lighting Local Improvement District (Second
Reading Agenda 446; C9973)

(Y-5)

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At 10:46 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 8TH DAY OF MAY, 2002 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales, Saltzman and Sten, 5.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Kathryn Beaumont, Senior Deputy City Attorney; and Officer Peter Hurley, Sergeant at Arms.

Commissioner Saltzman arrived at 2:01 p.m.

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| <p>472 TIME CERTAIN: 2:00 PM – Appeal of Pleasant Valley Neighborhood Association against Hearings Officer’s decision to approve the application of Grant Massier, applicant, and David and Delisa Hull, property owner, for an environmental violation review at 13937 SE Eastridge Street (Hearing; LUR 01-00408 EV)</p> <p>Motion to adopt the staff recommendation and uphold the Hearings Officer: Moved by Commissioner Hales and seconded by Commissioner Sten.</p> <p>The second and the motion were rescinded.</p> | <p>Disposition:</p> <p>CONTINUED TO MAY 15, 2002 AT 10:15 TIME CERTAIN</p> |
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At 2:45 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland

By Karla Moore-Love
Clerk of the Council

For discussion of agenda items, please consult the following Closed Caption Transcript.

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Closed Caption Transcript of Portland City Council Meeting

This transcript was produced through the closed captioning process for the televised City Council broadcast.

Key: ***** means unidentified speaker.

MAY 8, 2002 9:30 AM

Katz: Good morning every one. The Council will come to order. Karla please call the roll.

Francesconi: Here **Hales:**Here **Saltzman:** Here **Sten:** Here

Katz: Present. All right. Consent agenda items, anybody want to remove an item? None? Roll call on consent agenda.

Francesconi: Aye **Hales:** Aye **Saltzman:** Aye **Sten:** Aye

Katz: Mayor votes aye. 448

Item 448.

Katz: This is our favorite topic, I want everybody to know.

*****: We'll try to keep it exciting and brief.

Douglas Hardy, Office of Planning and Development Review: Mayor Katz and Council members. My name is Douglas Hardy with the office of planning and development review. Sitting with me this morning is Kermit Robinson, also with opdr. And we're here today to discuss our annual code maintenance item that the office of planning and development review does. What is code maintenance 2002? Basically this years packet as you see in exhibit A includes about 85 amendments to Title 33, the portland zoning code. And approximately 15 amendments to title 32 that is the city's sign code. These amendments are limited to clarifying and simplifying existing language within the code for the benefit basically of the public that uses the code as well as for staff that implements the code. The source of the amendments that are in the documents come from a broad range of sources as you see. From the public, development review staff, policy review staff who use the code on a day to day basis as well as other city service bureaus involved in the land use review process. Amendments are not made to create new land use policy. What we are held to is keeping with the original legislative intent of whatever legislation we are modifying. How are the issues that are included in code maintenance 2002 selected? We had an advisory team of planners that came from opdr as well as the bureau of planning and we collaborated on priority issues to include. Amendments fall into 4 categories in terms of criteria for selecting them. Amendments had to be consistent with blueprint 2000 that calls for providing a seamless predictable delivery of development services. Secondly, the amendments are required to improve the clarity and usability of the code. Third, the amendment addresses ongoing problems with administering the code. Amendments in this category may also result in some cases in minor modification of policy. However it was felt that the extent of the policy modification was minimal while the benefits of daily use were high. And lastly, the amendments had to be consistent with the policies of the city's comprehensive plan. In terms of public involvement, as you see here we contacted a variety of interested organizations at various stages in the process. We held an open house to allow the public to review the proposed reports, exhibit a, and to have them ask questions of opdr staff. The open house is a 3 hr night meeting. Nobody showed up at the open house. Lastly in terms of public involvement, we did provide copies of the proposed report and recommendations to all the neighborhood coalition offices citywide and to the public on request. In terms of the types of amendments that are included in Code maintenance, they fall into 3 categories. The first are technical, addressing typographical errors or ensuring consistency with other Code. The second

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category are clarifications, to clarify existing text to facilitate daily use of the code. Most of the amendments do fall into this category and address ambiguities in existing language. The third category of amendments are what we conservatively call minor policy amendments. These address some of the ongoing problems with administering the two titles. We felt these require immediate attention due to their importance, or due to the frequency they arise. On a weekly basis if not more. They next 4 or 5 slides highlight some of the more significant amendments in the packet. The first 3 are for Title 33 Planning and Zoning amendments. First is involving expanding non-conforming household living uses in industrial zones. The code currently today other than houseboats classifies a household use as prohibited in the industrial zones. So if you are an existing household use that has been there for years in the industrial zone you're considered non-conforming. And in order to expand a non-conforming household use in this circumstance of any size you are required to go through a non-conforming use review. This is a \$4100 review that is required again for any size increase, whether you're adding a rooftop dormer or bumping out for a bathroom, it needs to go through this review. And the approval criteria we look at considers hours of operation, noise, dust, fumes, odors that type of thing. Obviously these criteria are more appropriate if you are expanding a commercial or industrial use possibly in a residential zone. Those criteria are not applicable when applied to a residential use in an industrial zone. We have recommended to allow living uses to expand up to 500 sq ft. And that would be a cumulative 500 sq ft from the date that the use became non-conforming. We would continue not to allow any increase in the number of dwelling units on that site. In doing a survey of existing household living uses in industrial zones 500 sq ft add-on equates roughly to a 25% increase in the floor area of a typical house in the industrial zone. The second amendment is bonus heights for housing in the central city plan district. A bonus height of 75' may be allowed if it's used to accommodate housing. This bonus height is approved through a design review and address several approval criteria. One of the approval criteria is to demonstrate that the increased height is found to be necessary for the development of the maximum amount of floor area devoted to housing. Basically as that approval criteria reads you could not provide any non-household living use in that building. So if you had ground floor retail or interior parking within that building you would not qualify for the 75' height bonus. It's not likely that this was ever the intent of the approval criteria for a variety of reasons. Many of the plan district guidelines and development standards promote or require ground floor retail to activate the street level. Moreover the amendments that were adopted through the 1991 code rewrite in the zoning code were intended to simplify the use of the bonus regulations and in some cases allow them by right. This came up at the end of 2001 through the design commission. It was the first time this particular bonus had been used. And the design commission concluded for this part of their hearing that the intent of that criterion was not to be prescriptive in terms of the amounts of uses allowed through this bonus, but rather to better ensure with the height bonus the development would continue to equal or better meet the intent of those design criteria. So what we have recommended through the amendment is to remove that criterion that the bonus height must be found necessary for the development of maximum amount of floor area use for housing. And instead replace that with a criterion that relates to design review requirements and literally the new approval criterion would be that the development must better meet the applicable design guidelines. This again brings it back to the intent issue. The next item for Title 33 planning and zoning is the low income fee waivers. Current low income persons may qualify for waiver of land use review fees. However, what is not clear currently in the zoning code is that low income persons may only request waivers for land use reviews on their site and where their primary residence is located. What the amendment does is clarify how low income persons may request a waiver of fees for land use reviews on the site of their primary residence. The amendment also clarifies that they have to own that primary residence in whole or part. This is intended to prevent abuse of the low income fee waiver provision. We

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have had circumstances with multi-dwelling developments where the owner of the building has selected a tenant in the building to apply for the waiver. In that case, the tenant, obviously, had nothing to do directly with the particular land use review. We've had some other abuses of the system. If you read through the prologue of low income fee waivers it's relatively clear that it was intended for households, looking at what the household income is. The amendment also does reflect the long standing practice that opdr has used in granting low income fee waivers and in fact bureau of planning prior to that. The next slide relates to Title 32 and the sign code and Kermit will address that item.

Kermit Robinson, Office of Planning and Development Review: Good morning Commissioners.

I'm very happy, this being the first time we've brought sign amendments back to you since we revised the code a little better than a year ago. We feel that the code has been working fairly well. That doesn't mean that comments to your offices has stopped, but we're sort of moving ahead with the administration and the code is working fairly well. What we have brought forth are 15 or 16 amendments that in our minds are truly code maintenance. We're not opening up any real significant policy issues. We're trying to stay away from policy issues altogether. The one code change I'd like to focus your attention on relates to how we started regulating changing image sign features with this code. The council gave us the direction that allowed 20 sq ft of changing image per site. As we were moving to that compromise through the process we didn't balance it well with another section of the code which says that if a sign has two faces or is defined as backed with sign features on 2 sides that we count only 1 side of those when figuring out how much sign area is there. These two seem to be in conflict and we felt that we needed to clarify that the 20 sq. ft. maximum limit for changing image features applied across the site regardless of whether it is two-sided or not. We count two sides when dealing with changing image features. We felt that was Council direction. The other changes that address minor things but also give us some clarity in the portable signs where you don't have traditional entrances to a building. It's more of a commercial parking feature or various businesses that you only walk up to where there is no public entrance, only a public window. So we could allow those businesses the same benefits of allowing the portable signs. That's all we have. If there are questions at this time, we'll be glad to address them.

Saltzman: I guess I don't understand the last part about the portable the sign provisions.

Robinson: The provisions as written right now say you can have one portable sign for each public entrance to your building. However a commercial parking lot or commercial parking garage doesn't have traditional pedestrian entrances. It's more gauged to the vehicle entrances so we've added a section that says it's one per vehicle entrance and no more than 4 per site. If you've got a walk up business or some of our kind of food vendors around the downtown or the coffee carts around downtown there isn't a public entrance, so we propose to allow one portable sign for each of their businesses.

Katz: Further questions?

Francesconi: Can you say a word, not about this, but about next steps in code maintenance? What's the next project?

Hardy: I guess there's probably two responses to that or many. One is that we have begun preliminary review of possible amendments to include in the next code maintenance packet. These are issues that have been proposed to us by the public and service bureaus. With the next packet we're trying to reduce some regulations in the code that are unnecessary or there is little benefit to the broader public, the development community. The intent is to streamline some of the existing regulations in Title 33 and possibly to include some of the other titles. There are some key development standards that you will find in three or four different city codes. Landscaping is one of those that in some cases there may be some conflict between those different standards. If nothing else it is confusing for the user looking through different city codes. The attempt is through the

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next code maintenance packet is to begin to streamline more the regulations, as opposed to clarifying existing ones. There is an agreement between bureau of planning and office of planning and development review in terms of how far we go with the Code maintenance packet. Code maintenance was always intended to address more minor policies and clarifying language within Title 33. So there is that line in code maintenance that we cannot cross. It's probably fair to say that we wouldn't be allowed to delete an existing policy in code and replace it with a brand new policy.

Robinson: Let me address with respect to signs and bringing something more meaty, we're not out there searching for more meaty issues. We know they are out there. Until we have different understandings from court decisions etc., we recommend that we do not open up those meatier issues. Secondly, Douglas alluded to other work we're doing. We have been working on reviewing our effectiveness and enforcement of our code especially things that are environmental and site related. We have briefed members of your staff on progress so far and among the thorniest issues has been the quite extensive landscaping and tree standards that are contained in various code, such as 33, Title 17 re stormwater, Title 10 the erosion control, Title 20 the forestry provisions. Some of the revisions don't work well together and we're starting to hear more and more from the development community that they are very difficult to get the number of trees, the number of landscaping in the portions of the site are left. We are also looking at our ability to have enough staff or the right staff to enforce those to an extent we get what the City policies are to keep the environment the way we want it. We're looking at that very closely and will be working very closely with the other bureaus to streamline those regulations to make it easier for the developers to comply with.

Francesconi: That's helpful. I'm still a little confused about whose doing what now. With your testimony I have the sense that maybe Planning needed to take the lead because it was beyond code maintenance.

Robinson: Margaret Mahoney and Gil Kelly are still talking about how to proceed with these issues. We're asking Planning for opdr to take the lead on working on consolidating landscaping and these issues even though it's more substantial than the traditional code maintenance.

Francesconi: What's your time frame? Are you two talking about the same thing? or is there a separate effort beyond landscaping and urban forestry?

Robinson: There's a separate effort.

Hardy: I think there are two.

Francesconi: What are the issues more precisely?

Hardy: Reducing the number. There are some environmental issues rather than requiring them to go through an environmental review that could possibly we can create development standards within the code that would negate the need for a type I, II or III land use review. There are some reviews—excavation, fill and hazardous substance reviews that have been in the zoning code, yet we as planners certainly don't have expertise in those areas. There are other city codes that more adequately address those concerns and have staff that have more expertise. Those reviews would be eliminated and addressed through other existing code.

Francesconi: I suspect you'll have more than zero people showing up at those hearings.

Hardy: We're hoping so. They are more meaty than what has occurred in the past code maintenance. We will not be eliminating policy, but addressing it through another city title.

Hales: Let me elaborate on this. It's an important question not just for future work but for the Council as well. I'd categorize this work into three issue areas. One is glitches, the other is administration multiple codes. The third is the level of review question. Douglas' work is focused on the glitches. Classic case, not addressed in this process. We found out that our mixed use zone said that 50% of the building had to be housing. The trouble is in a 2 story building, the second

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floor is never as big as the 1st floor because the staircase has to come through a hole in the floor. So no 2-story building has 50% of the floor area on the second floor unless it has a lot of bay windows. So it was a dumb little glitch. You couldn't build a 2 story mixed use building under our cm code because the second floor was 98% the size of the 1st floor. But we fixed that glitch, we hooked it on to a train that was passing by. We were doing a Belmont zoning study and we hooked on to that study a change in the mixed use zoning regulations for the whole city. We said that's nuts, we should have an opportunity every now and then to fix these kind of glitches. And that created the effort. Then, mea culpa, the City Council created a whole bunch of new regulations in the last 15 years, starting with E zones which preceded you and me. Prior to E zones we had a Bureau of Buildings who had building inspectors going out under the State code and a little bit of our zoning code. E zones made building inspectors into environmental inspectors and that was not a good fit at first and still remains difficult. Then on top of that we've added erosion controls, stormwater standards and other environmental stuff. So we have administration of multiple codes problem which is where Kermit is concentrating. We also, woven into these have a level of review question. What stuff has to be a land use decision vs. a technical decision. We tend to err on the side of making things a land use decision, which makes the administration problem worse. And there's one coming up which I'll highlight as an example of this. For understandable reasons, the Planning Bureau is proposing that the street plan for the North Macadam District go into the zoning code. Seems reasonable enough but that means that downstream, every time somebody wants to move a street slightly, they'll have to issue a notice and go through the whole process. Be vulnerable to appeals and everything else. Whereas now that's a technical question into a land use decision. We give people more opportunity to participate which is a good thing, but we also create nightmares of administration. And we tend to drift through across that threshold without realizing how much trouble we're creating downstream. And then the five of us say, why is the permit process so slow? And Kermit, could you fix that?! The answer's no. We've met the enemy and they is us. We have to decide when we create multiple codes that somebody has the authority or task of sorting it out. Which is what he's doing now. And I recommend that we not make land use decisions unless we absolutely have to, because then it creates the whole machinery of processing what used to be a technical decision as a land use decision. We're always going to find glitches. This multiple codes problem comes in waves and right now we're at the top of one of those waves because we've adopted a bunch of new codes over the last 10 years and the level of review question is something for the Council to watch.

Francesconi: That's helpful. I appreciate it. My last question, the timing. When do you expect to bring these two different processes to us?

Robinson: On the cleanup of our enforcement and trying to streamline regulations related to landscaping we're looking at bringing things to Council late this summer and possibly this Fall. It will probably be in 2 pieces where we do a lot of the improvement to our tools. But in terms of streamlining the landscaping/tree area we need to have a fairly comprehensive public process and that will take a little longer.

Hardy: For the code maintenance items, 6-9 months.

Katz: Anyone sign up to testify?

Joseph Cotter: My name is Joseph Cotter, I live at 31810 SE Wildcat Mountain Dr., Eagle Creek 97022. The reason I came today is I was informed that the sign code maintenance was coming up today before City council. As far as the sign code goes, my point of view is that code maintenance is part of the problem and the sign code is fundamentally flawed and needs to be altered in such a way so it does work for things such as public art. Right now, when it comes to streamlining, you can't put up a traditional mural in the City of Portland. The fee that you have to pay for an adjustment which is the process you have to go through to ask for a mural of 200 sq feet is \$1200 or

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more. For a community mural, that's just too much. We have an example of a mural on Foster Rd. which is being funded by the City, essentially through SE Uplift and I think rac funds are involved.

And yet there is a \$1365 adjustment fee just to apply to have this mural finished. I was at the neighborhood association meeting last night and they are really upset about the fact that they have to see a mural partially completed because of a funding problem at this point. There are other problems as well. I've written letters to all of you and I understand there is litigation going on in Salem that's supposed to answer some of these questions. However the questions are not being asked by the City. We're trying to raise these issues but I don't see how it's going to come to resolution. As far as maintenance goes, I think there is some fundamental problems within the code itself that need to be addressed. It looks like there was a lot of effort put into maintenance, I'd like to see a similar effort put into solving some of the serious problems. I'm out there and want to help in any way that I can. Keeping this issue alive doesn't seem to be helping, it seems to be aggravating people. But it's not going to go away. We're trying to get it in front of a judge if that's what you need. However, there are certain obstacles there. Instead of taking the city to court, we want to go through the land use process. I don't think the land use process for a mural is appropriate, but that's what we're left with. But \$1365 for the adjustment fee is a real problem for us because we don't have a lot of money.

Hales: Maybe a quick response. We're frustrated as you are. It's our understanding, and we'll wait to see what other court decisions tell us. But the fundamental problem is not the city sign code, but the Oregon constitution. In fact some people in the news media, present company excepted, continue to get this wrong too. Our understanding is the City of Portland, or any other city or county in the state of Oregon, according to state law cannot distinguish between art on the side of a building and painting of an automobile with a logo on the side of a building. Period. They are both either regulated or unregulated. But we cannot say as a city, although you can say as a person exercising common sense, and I can too. But we as a city cannot exercise common sense. We have to say that is a sign if it is an image on the side of a building. Whether it is a bird or a bmw. That's the box that we're in. Until the courts or the voters get us out of that box.

Cotter: Actually, I've studied the transcript thoroughly as to what the judge actually said and what the court cases are and that's not exactly what they said.

Hales: That's what our city attorney tells us.

Cotter: Believe me, I understand exactly what the city attorney

Katz: I'm going to give you a second to tell us what you think the city attorney

Cotter: OK, what it says is that you cannot distinguish between commercial speech and other forms of speech through the content of the sign, mural, or whatever it happens to be. What the court said is that you have to regulate both, regulate neither, or come up with some other constitutional solution. What we're saying is that there is a constitutional solution that doesn't pay any attention to content period. And I've put that in a amicus brief which I've filed with the court of appeals which I have given to the office of planning and development review. What we say is essentially this: commercial signs, wall signs, billboards, doesn't matter what they are. They put them up there to earn revenue. It's a contract. There's some kind of agreement between parties that this image on the wall is going to produce income for somebody. You put a mural up on the wall, there's no income being generated for anybody. You can distinguish by the contract. I could paint "things go better with fizzy soda" and it would be a mural. Because I'm not getting any income from that image as a mural. But if you put a Rembrandt on the side of a building and somebody was paying you for that, it would be a sign. There is no content evaluation whatsoever. You're free to put up whatever image you want anywhere. That's a distinguishing characteristic that exists. The trouble is the court of appeals does not have to entertain our amicus brief. We're not a

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principal in the case. That's why we're working so hard to get involved in the land use process and get it in front of somebody to convince city council that there is another way out.

Hales: I hope you're right. In fact I'll volunteer to ask Jeff Rodgers to look at that idea because there's nobody in this building who doesn't want to do what you've suggested. You may have a better mousetrap here. I love your idea and I hope it works.

Katz: We'll check it out. That's why I wanted to give you an opportunity to share it. What's the name of the street you live on?

Cotter: I do a lot of painting in Portland.

Katz: Anyone else want to testify? Alright, it moves to second. Commissioner Hales will speak to our City Attorney and test Mr. Cotter's idea out.

Francesconi: I'm wondering, is there a way we can get a report from Margaret Mahoney and Gil Kelley as to precisely where we're at on this? On the future of code. Reading between the lines there may be some lack of agreement as to who is doing what between these two bureaus. I didn't push that, maybe that's not true. It would be nice to get a joint status report on the next efforts with timelines as to who is doing what.

Katz: OK. And both Commissioner Hales and I will be doing that as well. We may want to be thinking about looking at some new ideas. Let's take 471

Item 471.

Katz: Roll call.

Francesconi: Aye. **Hales:** Nice work, Aye. **Saltzman:** Aye. **Sten:** Aye

Katz: Mayor votes aye. We'll take a pause. There's a difference between a pause and recess. You don't leave, they just walked in. Let's read item 449

Item 449.

Sten: Each year hcdc, the housing and community development commission as a subgroup called the housing evaluation group that takes a long and very thorough look at how we're doing on both implementing our housing policies in terms of the goals and the units and also the qualitative approach. Are we doing what we said we would do? We had a good discussion at the portland development commission because of course as the implementor of our housing policy pdc is really is the one responsible for taking the policy (and there are others) and hopefully makes them into reality. The good news is we hit many of our targets, are looking at why we didn't hit some of our targets. We hit the unit targets, but in some cases we're not quite able to reach all of the different income categories. Generally it was a good report and we have recommendations about further evaluation in the years ahead. And really over the last few years our whole housing system has been working to improve performance and become more efficient because we have put a lot of money into these issues. We still have a long long way to go and I think a careful evaluation each year is a big part of making sure we stay on track. I want to invite Catie Such and Bill Van Vliet to give us a quick report on what they found this year in the housing evaluation.

Catie Such, 111 SW 5th: Thank you very much for your time this morning. I understand that you have been briefed on the report itself, so I won't spend a great deal of time discussing that just wanted to highlight a couple of things. I'll try not to make this sound like too much of a roll call. I would like to acknowledge the members of the committee including the co-chairs of hcdc, Bill Van Vliet and Paul Daigle, Mike Andrews, Kathy Briggs, Rene Jacob, Margaret Nelson, Rosaria Roberts, Margaret van Vliet, Steve Walsh, Will White. I'd also like to recognize Janice Freighter who sat in this seat for the last several years. Also pdc and bhcd staff generally, and specifically Toni Barnes, Barbara Brennan, Margaret Bats, Andy Welch, Todd Kelley, Mavin Winston. Martha McClenan and particularly Beth Kaye of bhcd. I would also like to thank city council for their ongoing efforts with respect to housing, particularly the allocation to HIP which has funded record levels of housing in the city documented in the upcoming city housing audit. And the specific allocation of anti-

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displacement funds in this last reporting year. As to the report itself, I'd like to highlight this year that in response to prior hay recommendations the city has in place investment strategies in all tax increment financing districts. Having such strategies written down and based partially on housing inventories for each district is very helpful in measuring progress toward our housing goals. For that we applaud pdc. With respect to other areas of the report related to tax increment financing I note that –difficulty in receiving useful information, that those difficulties are echoed in the to be released city housing audit. The audit notes specific difficulty in project accounting and fiscal information systems. Just as an aside, what has become clear to us over the past few years with the housing evaluation group is that pdc's information systems are really not set up to produce production information. That's been a problem for us and difficult for pdc as well. Particularly troubling that the commission can't compile complete financial data on an individual project basis, including administrative costs. To that end this year heg will with staff help continue to work toward tracking those administrative costs specifically. Also concerned with basic accounting, just really the basics. Tracking the money they collected and money owed. We also want to track program income, as this appears to be one of the most flexible sources of money. We'd also like to note the commission was very helpful this year in providing information about special needs housing which we expect will become even more of an issue in the months to come. This is an area of keen interest to hcdc particularly as the special needs category and the zero to 30% income category have significant overlap. Just as a note, we continue to be concerned about spending in this lowest income category. 0-30% housing is enormously difficult to build. It's very expensive for 2 reasons. It's difficult to attract private capital, very hard to leverage city funds. And 0-30% housing to be effective typically requires service or operating support as well. It just increases the cost. It's very hard to build. But at the same time it's important to ensure that city spending happens in all income categories in all neighborhoods. Looking ahead to next year, we hope to build on the housing audit. Hope to receive better data from the commission this year. We will continue to track production related to city council directives in income categories also hope to begin to analyze in a meaningful way pdc's collection and use of program income, spending in specific areas such as special housing and continue our work with respect to spending tax increment financing.

Bill VanVliet, Co Chair HCDC: I'm bill vanvliet, one of the co chairs of hcdc. I just want to start again by acknowledging hard work of the housing evaluation group. They've done a lot of good work and hcdc's benefited greatly from that work. Particularly Catie who has led the charge in putting in the lion's share of the work in putting together this report. I also want to reiterate catie's appreciation of the pdc staff who invest an enormous amount of time both in our regular monthly meetings and the data collection. We ask for a lot and they are very helpful in getting us what we need and also the hay in hcdc staff. Kay has been instrumental in getting this report drafted for us. The hay report has become a valuable tool for hcdc in its review and analysis of city housing policy. It has also become a major source of information regarding affordable housing production within the community. Some of the specific outcomes over the past few years include receiving better and better reporting information from pdc. Clearly we acknowledge room to grow there, but it has gotten better over time. We have accomplished the development of housing implementation strategies for urban renewal district. We have obtained close tracking of specific types of housing such as special needs within 0-30% income group. And the report has helped target spending priorities. Over the years this report has been used to focus the City's housing priorities, documented production achievements and flagged areas for further attention such as the need to improve reporting capabilities noted in this year's report. That issue again will be echoed further in the city housing audit to be released soon. We hope you find the report useful, support the resolution so we can continue our work. Thank you.

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Katz: Questions? Anybody want to testify? If not, roll call.

Francesconi: Of the many citizen commissions, you do a tremendous amount of work and I just want to thank you. Your report is very helpful at pointing out where we're going. The issue of date collection from pdc. We need to help you watch that issue. Maybe the bigger role we need to play here and I know Commissioner Sten and the Mayor are talking about this. How do we get more revenue into the system. It can't be just from general fund going into the housing investment fund. That strategy is not going to work in terms of dramatically increasing production to allow more spending in 0-30%. That needs to be a major focus for us. The second is how we coordinate the various housing efforts in a more focused way. I look forward to working with you in these areas. Aye.

Hales: I think this report is very useful because it's significant quantitative information and we need that. The strongest impression I have of the whole housing effort in the last few years is that we have such a high level of cooperation between the activist community, many of which are represented on the commission, the city agencies, the housing authority and the for profit and non-profit developers. And that community of agreement we have about the housing agenda is something that we ought to track and measure, albeit not with numerical means, over time. That's a huge asset and the collaboration that's been built is very important and valuable. And as often is the case with Portland, not found in other cities. My commendations to you Commissioner Sten, Mayor and former Commissioner Gretchen Kaufory in particular for creating the policy leadership here on the Council that did that and people on the Commission and the community in the non profit and for profit development worlds have contributed to that as well. Aye.

Saltzman: I really want to thank you for your candor and implicit in all your testimonies, particularly yours Catie some severe persistence in getting information and getting questions answered. It's quite startling to me to actually hear that pdc is not able to track administration costs and is not able to account for program income. That's disturbing to say the least. So I feel confident with the pdc staff and the housing evaluation group working together and the housing audit coming together that we're going to get better cost accounting in house and in place. Aye.

Sten: I want to thank you again, it's more fun to just do policy, but more important to do the evaluation and see how the policies are working out. I think what you'll see in this is that we do have a good accountable system, but we don't have all of the information that we need. Particularly as we get more and more years into I think a very impressive private and public agenda to try and get more affordable housing and solve some of these long term problems, the overall asset management, working to make sure the loans are paid back, that we know where the program income is coming in is all the real challenge. I think we are on the right track. As we've made some policy changes, but as this Council knows making sure it's accountable and in constant improvement mode and we're really explicit about places where we can improve and that more importantly working collaboratively to fix those things. There's not a defensiveness from pdc on these issues. There is an issue of trying to fix the problems we have and the overall in the work to achieve the housing goals is going almost as well as it can given the shortage of funds. I feel good about the approach and think if we can, as we did last year, implement some of the suggestions you made this year we can continue each year to get a little bit better. Good work and thanks to Mayor Katz for her work on these issues. Aye.

Katz: Thank you. As all of you were talking, I was thinking about how we operate here as a government and the fact that we can overcome some disabilities that we have. One of them was as I have the bureau of portland development commission and Commissioner Sten has the housing interests, the bureau of housing and housing and community development but you have 2 different bureaus doing the same thing with slightly different focus, maybe not, how we can work together. The decision to give first Commissioner Kaufory and then Commissioner Sten the ability to manage

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that part of the section of the portfolio, though I was very nervous at the beginning. I'm absolutely convinced it was the best decision we all made and the fact that there is very good communication and none of the finger pointing has helped the process and pdc and your commission to get the things done. I promise we will continue to improve though I may disagree with you on some elements of what you want to do and that's healthy discussion. Aye. Alright, we're on the regular agenda, item 469.

Item 469.

Katz: When I first saw this, I said hmmm, what is this? So I figured you would be saying the same thing. It's not even if there is matching funds or not, we wanted to know what actually is going to be done so that's why we've invited Lt. Elmore and Nancy McPherson here.

Nancy McPherson, Director of Services, Police Bureau: I'm Nancy McPherson, director of services from police.

Lt. Dorothy Elmore, Chief's Adjutant, Portland Police: I'm Lt. Dorothy Elmore, chief, adjutant, portland police.

McPherson: Several years ago the department funded a project in Boston called the Boston gun project. As a result of that project, they were able to engage police and faith communities and local agencies working together to deal with issues related to juveniles in Boston. They had major success there, which was evaluated by Harvard University. Dept of Justice looked at what happened with that project and said, we would like to fund some additional initiatives that involve faith communities, police and other interested parties in dealing with local issues. Last fall I got a call from department of justice and they said we're going to be awarding about 15 of these grants would you be interested in applying for one. There are no matching funds required here. We said absolutely. We put together a brainstorming team and came up with some ideas to develop a proposal that was subsequently accepted by department of justice. Initially we were to receive \$150,000 and they called and asked if we would like an additional \$50,000. Of course said we would. This project has a couple of important components. One, by September, we are going to be required by dpsst, which is the department of public safety standards and training the accrediting agency for police here in Oregon to have all instructors who teach any type of police training to be certified by the state. This means they have to go through an instructor development course that is certified by dpsst. This grant allows us to develop an instructor development training program with a strong social justice component so that we have a chance to influence about 250 people in the organization who teach in one capacity or another for the police bureau. That is a significant component of this and also provides resources for us to do this in partnership with dpsst. The second component of the grant is it allows us to work on furthering community partnerships. Part of what we're doing is taking a part of the project that was developed at mit called the dialogue project and has been brought into portland state university by two adjunct professors, Roger and Val Pease. We create dialogue circles in the community with faith based organizations. The ecumenical ministries of Oregon is going to be working with us on this. Our primary partner will be the national conference for community and justice. They will be funded as part of this grant to hire a coordinator to create these circles of communication in which people can talk about their differences. This evolved more tightly after September 11th. We had differences being expressed and we wanted to create an opportunity for people to get together to learn about each other's differences. The two components, instruction and community, give the police officers the opportunity to be exposed to—the component we think is most important is respect for the dignity of every human being. We are going to be looking for a partner to continue the funding once the one year project is completed, to sustain this in our city.

Katz: Thank you Nancy. Questions?

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Saltzman: I was just curious about the dialogue circles. It sounds similar to the dynamic differences training that the metropolitan human rights center offers. I'm wondering before you go out and hire someone, talk to metropolitan human rights center staff and see if there's some synergy there.

McPherson: Absolutely. In fact they are on our list as stake holders.

Francesconi: How much is going into the training and how much into the dialogue?

McPherson: The majority of the dialogue will be volunteer. We're going to identify 20 faith based organizations representing all religious groups to participate. It's probably going to be about half and half for the training and for the project staff that will coordinate the project circles. We have a completed budget that we presented to cops.

Francesconi: Are the faith based groups involved in the training?

McPherson: They will be involved in the training. We're going to ask for 40 people from the community groups to participate in the training. We'll have cops and community members being trained together.

Francesconi: Is it emo you will be working with?

McPherson: That's the initial organization we contacted about working with us.

Francesconi: Have you contacted any others yet?

McPherson: No. We just got the award. Our steering committee is meeting today. One of the issues is to identify additional stakeholders.

Francesconi: Is the faith community on your steering committee?

McPherson: Ecumenical Ministries will be on our steering committee.

Francesconi: The albina ministerial alliance may be a candidate. They're connected. The other person you may contact is Hector Lopez. He's a minister whose part of emo, also the chair of our independent police review. He's very well connected and he would be a logical person because he understands the police world and the faith world. Anyway, thank you.

Katz: Further questions? Anybody --

Francesconi: One more thing, you said social justice. We don't they are word here too often, that was actually a nice word. What did you mean by that?

McPherson: What I mean is that we were often asked to do cultural competency training for police officers. It's a hard sell. His we are moving toward teaching train that go helps people demonstrate respect for the dignity of every human being. And so when I talk about social justice, it's what is the police's roll in a democratic society and how we need to understand how we fit into this and what our roles and responsibilities are, so social justice has a narrow component in policing, but a very important one, and one that we often overlook.

Francesconi: Thank you.

Katz: Anybody else want to testify? Before we a vote, where are you all from? It's very nice to have you here. Welcome. Have a nice day in the city. All right. Roll call.

Francesconi: Well, I mean, the more important issue is how do we engage our partners in the faith community? And we have had some attempts that haven't been as successful as we would like, so I think we need to kind of evaluate past attempts, not repeat some of the mistakes but keep working on this, and I think this is an opportunity, and I think the broader question of the police's role in social justice, which may be broader than what you said, is another good effort for to us watch so, I appreciate your efforts, aye.

Hales: Aye.

Saltzman: Sounds great. I just wanted to take this opportunity to commend the lieutenant for her professional, very professional performance last night in presenting the medal of valor awards.
Aye.

Sten: Aye.

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Katz: You know, nancy started this by saying the words that we, we weren't going to repeat in Portland, the boston project because we took the boston project, at least the gun project, and made it the Portland community project, but we didn't have this component of it. We had some others that may or may not have worked as well, so I am very excited after I understood what nancy was talking about, very excited to see this because the social justice component is certainly for our officers, or for our entire community, is really a critical component for, for training. There are a lot of holes in the training of our public safety offices, both police and firefighters, and we need to begin plugging them. This is one big plug that I hope we can continue. I have some ideas about the next source of funding.

*****: Great.

Katz: Okay. Aye. All right. 470.

Item 470.

Katz: Okay. Come on up, chief.

Francesconi: Let me just say a couple things, if that's all right, mayor. Just for the council, there's actually nothing new here because we were doing emergency preparedness before september 11, there is more of a sense of urgency, and a sense to make sure our acts are coordinated so, there's kind of three main areas here. One is we have simplified the system by which the county and the city governments work together, and I would add the hospitals. The second is, we further defined the roles of outside agencies with clearer definition of roles. And the third is, we streamlined the plan to make sure that there's a more focused response by the city agencies and officials. So we have the chief and the fire bureau is an important part. We have other partners, the fire bureau is in charge and the fire chief is in charge. And so maybe you can direct us on this plan, and I think he may want to say a word or two about operation red rose and what we learned from that yesterday. Chief wilson.

Ed Wilson, Chief, Portland Fire and Rescue: Thank you, commissioner. Mayor Katz and members of the council, ed wilson, fire chief for Portland fire and rescue. As the commissioner stated, this is really just an annual update of our basic emergency plan that we bring to you every year. We look at it, make revisions where necessary and appropriate. This year, as the commissioner said, we streamlined it. It now outlines only the response actions for the city bureaus. The preparedness planning and mitigation have been moved to specific plans. The city uses an all-hazards approach so, this allows us to focus on essential support function, such as transportations, communication, medical, law enforcement, and these are found in separate documents within the plan. So, really, we've, we are dealing with the county, with gresham over this last year, again, we are simplifying t we used to have the city, county divide into an east and west side. We no longer have that. We are working even tighter, closer together so we meet regularly, monthly with the county and representatives from east county to coordinate our efforts. Now, the city bureau, of course, but our regional partners so, again, there aren't signature changes. Just more of a simplification of the plan for this year. With respect to, you know, timeliness, operation red rose. We conducted a drill yesterday, a very successful drill that had been in the planning works for some two years, and it tested our metropolitan medical response service plan. There were approximately 18 hospitals, over 2000 participants, both responders, volunteers from the cities, from the schools, from our, again, local partners. 58 agencies were represented. We will have a more detailed review for you of how the drill went but what I can tell from you first blush and in getting the reports back from those that participated, is that it was very successful. I am sure that we are going to learn some areas that we can improve upon but this was a much more successful bill in drills that we have had in the past, and I guess we are, we are, what I am bringing is that we are building upon our successes and learning from our, from the areas that need to be improved upon, so yesterday was a very good drill. We will report out more in detail on the 29th

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when we were before you, to give you an update on the emergency preparedness council update, too. So, with that, do you have any questions regarding --

Katz: I have a question. I just noticed this, page 14, this is the essential response functions under police, you have evacuation, rescue perimeter and traffic control. You have that "x" between the third and the eighth hour. What happens earlier?

Wilson: I am sorry, I am sorry, can you --

Katz: Page 1. You have essential response functions. Who's going to be responsible for what? And under the police section, you have maintain order starts from the 1st ten minutes. I assume the "m" is minutes. But, for evacuation and rescue parameter and traffic control, that responsibility appears just as the "x" to occur between the third and the eighth hour.

Wilson: This is an assumption I am going to make here, and I will follow up and get back to you, but I believe it's the amount of resources you have available from its inception. Some of this will require callback of personnel before we can do an expanded, so initially, you know, the resources that they have onscene 24 hours a day, they would be able to do "x" and then call back additional resources as the incident either expands or is prolonged. But, again, police and fire resources are going to be spent rather quickly in any major emergency, and he will we will agree on mutual aid agreements, but I will make sure that those are correct.

Katz: I didn't mean to put you on the spot but I noticed there was a blank area and you all -- you do it together.

Wilson: We do.

Katz: All right. Further questions? Anybody else want to testify? Roll call.

Francesconi: Well, just two quick comments on yesterday. What I heard was from, from -- that the police and fire work together so terrifically yesterday, and the co-location between police and fire really helped, according to police and fire that I spoke with, and much better than the table-top exercise. The other is, I had a brief conversation with the deputy director of the fbi, and she was comparing this response, this coordinated response from the other cities that she had been in, and she was so pleased, she feels a lot safer in Portland, and if she feels safer in Portland, I feel safer in Portland. So thanks for all your work. Aye.

Hales: Aye.

Saltzman: This looks great. This is much clearer as to roles and responsibilities, and really appreciate you cleaning this up, commissioner Francesconi and chief wilson. And i, too, was impressed with the drill yesterday, but I think that we need to get a more thorough evaluation and I look forward to that on the 29th. Aye.

Sten: Aye. Good move, chief, and commissioner Francesconi, obviously, it's important, and way to go. Aye.

Katz: I, too, thank you. I'd like an opportunity, also, to discuss, you know, the debriefing and hear from everybody else that was there, so we can make it better next time. Aye.

Francesconi: Actually, we need to -- the briefing that the mayor needs to happen before the council session --

Katz: Okay. Everybody, we stand adjourned until 2:00.

At 10:46 a.m., Council recessed.

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2:00 pm

Katz: Karla, please call the roll.

Francesconi: Here. **Hales:** Here. **Sten:** Here.

Katz: Present. All right, item 472.

Kathryn Beaumont, Sr. Deputy Attorney: Good afternoon. Before we begin the hearing, there are several announcements I need to make so, please bear with me. First, the kind of hearing that we will be having today, this is an on the record hearing -- it seems the people participating -- This is an on-the-record hearing. This means that you have to have testimony that you choose to put into the record. You can only talk about the issues, testimony, or other evidence presented at the hearing before the hearings's officer. You can't bring up anything new. This hearing is designed to only decide if the hearings officer made the correct decision based on the evidence present to him. If you start to talk about new issues or try to present in evidence today, you may be interrupt and had reminded you must limit your testimony to the record. In terms of the order of testimony, we will begin with a staff report by stacey winger for approximately 10 minutes, following the staff report, the city council will hear from interested persons in the following order. The appellant will go first and will have ten minutes to present the appellant's case. Following the appellant person's to support the appeal will go next. Each person will have three minutes to speak to the council. The applicant will then have 15 minutes to address the city council and rebut the appellant's presentation. After the applicant, or principal opponent, whichever, will have 15 minutes to address the city council and rebut the appellant's presentation. After the applicant or principal opponent the council will hear from any other persons who oppose the appeal again with the time limit of three minutes each. Finally, the appellant will have five minutes to rebut the presentation. The council may then close the hearing, deliberate, and take a vote on the appeal. If the vote is a tentative one the council will set a future date for the adoption of findings and a vote on the appeal. If the council takes a final vote today that will conclude the matter before the council. Finally, again, as to some hearing guidelines. Again, this is an on-the-record hearing. This means you must limit your remarks to arguments based on the record filed by the hearings officer. In presenting your argument it's permissible to refer to evidence that was previously submitted to the hearings officer. It's not permissible to submit new evidence today that was not submitted to the hearings officer. Staff and I will be listening carefully toll your argument and if it strays from the evidence or issues presented at the initial hearing, we may interrupt and remind you, you must limit your argument to evidence and issues in the record. If your argument includes new evidence or issues the council will not consider it and it will be rejected in the city council's final decision. If you believe someone who addressed city council today improperly presented new evidence or presented a legal argument that relies on evidence that is not in the record, you may object to that argument. Finally, under state law, only issues that were raised before the hearings officer may be raised in this appeal to city council. If you believe another person raised issues today that were not raised before the hearings officer, you may object to council's consideration of that issue. That concludes my opening.

Katz: Okay. Let me ask the following question -- declaration of conflicts of interest by any member? Ex parte contacts by council members? Anybody to want challenge our silence? On these issues? [laughter]

Katz: All right. Go ahead.

Stacy Wenger, Office of Planning and Development Review: My name is stacey wenger, and i'm the opdr staff person who reviewed the environmental violation which was cited at lot 65 of the star-point pud, and I will summarize for you the outcome of the violation review, the hearings officer's decision, and the highlights of this appeal. The violation concern only lot 65 of star point,

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and on this single family residential lot the applicant cleared native shrubs and ground covers, no trees, within an area covered about 600 square feet and within the environmental conservation overlay zone. The reason this is a violation is because several prior land use reviews for the star point pud either limited the disturbance area on lot 65 to areas closer to the street and/or required site development permits before commencing any of that clearing work, and the clearing work that was done on lot 65 violated these old conditions of approval. In order to remedy the violation, the applicant proposed originally to plant native grasses and three douglas fur trees in the 800 square foot disturbed area through the review process, staff ended up recommending additional plantings within a 15-foot wide sewer easement that crosses the back of lot 65. The approval criteria that we have to review the violation against are found in section 33.430.250 g entitled "correction to say violations." and to summarize the thrust of these approval criteria, it's important to remember that the first criterion states the remediation or the plantings in this case should occur within the same area as the violation, and staff interprets that to be on the same site as the violation if sufficient room exists on that site to accommodate both the mitigation and the signature improvement of resources, which I will get to. The second criterion requires that there's no permanent loss of environmental resources or functional values. This is interpreted to mean that whatever it is in violation gets removed and that that area be put back to its predisturbance condition. The third criterion calls for signature improvement of one, and I have added in parentheses, other functional value on the site, and the way staff has interpreted this criterion is that in addition to putting this area back to the way it should have been, you also have to improve some other functional value on the site and there's been discussion that this is sort of the punitive part of the violation review. And the last criterion is that the remediation insures minimal loss of resource, during and after remediation. This simply means that the remediation will occur in a timely manner so we often put time constraints or bonding or something and that the remediation plannings are monitored to make sure they survive in the future. The zoning on the site is r-10-c. The residential 10,000 part was modified through the pud, so we have a smaller lot than that. The entire site is covered with the environmental conservation overlay zone, and it is within the johnson creek planned district, the south subdistrict. You can see here lot 65, highlighted in yellow, along southeast, eastridge street. There's an air photo of the vicinity. We are off of southeast clatsop street near the intersection with southeast 141st street. And lot 65 is within the subdivision area, again, on southeast, eastridge street. And we can zoom in a little here. Again, we are, now here we are at the intersection of southeast 104th -- 141st and southeast, eastridge, with lot 65, highlighted here, the redline estimates the formerly approved limits of disturbance, and this highlighted yellow square shows approximately where the 600 square foot violation area was on the site. This is the site plan submitted by the applicant, you can see southeast, eastridge street on your right, and the house that is actually existing on the lot now -- the dark black line crossing the site indicates what was formerly approved as the limits of disturbance, and again, highlighted in yellow here the area that was cleared and for your information, this blue area is the 15-foot sewer easement that is kind of the focus of this appeal.

Francesconi: Why do they clear it? What did they want to do?

Wenger: I bet the applicant will answer that more thoroughly. My information would be that number one, they had to put in the connection to the sewer main that was approved in the easement from the house, some of that was probably a portion of the reason, and also, probably a misunderstanding of where the limits of disturbance were. Sometimes that information is cumbersome to come by. When you are dealing with people, three or four people removed from the applicant who took the original land use review for the pud through its process. Also of interest on the site plan, you will notice the little circles above the yellow area. Those are three trees that were

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supposed to be preserved on the site, and that were. And this will give you an, on-the-ground view of the house that's there now.

Katz: Doesn't pass our design code, does it?

*****: Must have been before that.

*****: Was this built before our design code?

Wenger: I do not have that information, but I can get it for you if it's an issue.

Beaumont: They may be in more of a violation than trees > I think if the star point pud was approved before the design cut went into effect, it is grandfathered in.

*****: I am sure it was.

Wenger: Okay. And as we walk around the back of the house, this is the -- this yellow line indicates the previously-approved limits of disturbance. You can see the one tree behind the fence there, that was one of the two larger fur trees to be preserved and then the small tree next to it, as we face directly to the rear of the property-line, this line is approximately the approved limits of disturbance and this proximates the area that was cleared without the permit, and this blue line shows you roughly where the 15-foot wide sewer easement in question is. Here we are standing at the rear property line looking up at the house, and at the other fur tree that was preserved and the area that the violation concerned is this yellow square. And this, this was the original remediation plan approved in the hearing officer's decision. And again, you can see the, the rear portion of the house in the plan view and then as you look up to, towards the top of the page, the three trees to be preserved, and then the little symbols for all the plantings. This yellow highlighted area again is the area that was disturbed during the violation, and by planting this area, it meets the criteria that call for remediation in the same area and no loss of resource. Those are the g-2-1-a criteria. And then the green highlighted area is what staff recommended be planted to address the signature improvement of at least one functional value on the site. And this, this is the focus of the appeal. Another quick look at where we are talking about on the site, as we stand on the east side of the site, kind of looking northwest towards the cleared area and here's that 15-foot easement and a little closer view of the 15-foot easement, and you can see clearly, there are no plants there. And this is standing in the easement last week, looking to the east, again, note the lack of plants, and to the west it's harder to tell here, but there were no plants in that easement. The appeal, pleasant valley neighborhood appealed the hearings officer's decision because the criterion for signature enhancement of at least one functional value was not met because these plantings had been required in a prior land use review, and staff has found that pleasant valley is correct in this finding. So, staff has come up with a revised recommendation. Keep the plantings in the area that was disturbed. Have the applicant plant the plantings that were required in the previous lur to bring it up, to bring it into approval with that previous environmental review decision, and lastly, as you might recall from the previous photos, the area underneath those trees to be preserved lacked any under-story -- there were some sparse ground covers but there was no shrub layer, and staff has asserted through analysis of historical air photos that this area was covered with a shrubby layer of vegetation but not a dense forested layer as is found further back behind the property. So, it is staff's opinion that planting this area with shrubs and ground covers would meet the criterion for the signature improvement of that functional value.

Saltzman: Could you go back to one of the photos, of the trees.

Wenger: That shows -- there is the trees, right there. So you see, there's some grasses in there. There's not much. And was that your question?

Saltzman: Yeah.

Wenger: Okay. Should I continue?

*****: Sure.

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Wenger: I think I have actually reached the point where I summarize my recommendation. Let's see, here we are here. So, the staff does recommend to uphold the hearing's officer's decision with two conditions of approval. The first being to plant the sewer easement across the back of lot 65 as required in the decision for lur 97-00496-en and as shown on exhibit a-2. The second condition would be to plant an additional 900 square feet under the two existing furs on the site with native shrubs and ground covers in conformance with staff modified exhibit c-4, and this is what exhibit c-4 will look like a few vine maples or indian plums, which is a shrub, and 30 ground cover or low shrubs in this area. And the whole area would be seeded with a native seed mix, and this would meet the approval criterion that's being appealed, and it would also meet the requirement that all the remediation occur in the same area as the violation. That concludes my presentation. If you have any questions, I would be happy to answer them.

Katz: Okay, questions.

Francesconi: So what's the fight about now?

Wenger: The fight about now?

Katz: Why don't we hear --.

Wenger: I think you will have to hear it from the appellants.

Francesconi: Summarize the issue for us.

Wenger: Well, the issue to my understanding is that you can't require them to do their signature improvement of one functional value in an area that was already required to be planted in this old lur, and I am actually in agreement with the appellant on that issue and that's why i've -- so I am not sure that there is still a fight about lot 65.

Katz: There may not be a fight. Let's hear from the appellant. Principal appellant.

Linda Bauer, Pleasant Valley Neighborhood Association: Linda bauer, pleasant valley neighborhood association.

Katz: Linda, we are going to have to find a new name for you --

Katz: Like the watchdog or something --

Bauer: Oh, thank you so much. There are other names floating around but let's not use those. [laughter] I am in absolutely total agreement with stef. Absolutely total agreement, and so I am not going to go over that. The reason for this mixup in the first place was not getting the plantings on the sewer easement done when they were required by the conditions of approval. And that turns out to be a problem because no subdivision in our entire neighborhood has ever planted a sewer easement, even though all of them have been required to be planted. We would like the city council to look at maybe a seamless way of handling this, since bes takes out -- since the developer goes to bes and gets a permit to do the sewer and then they tear up the ground and they put in the pipe and they fill in the hole and then bes signs off. We would like to see that instead of signing off after the hole is filled in, that they sign off after the mitigation is done. Right now, the developer has to close up the hole and go back downtown. Get another permit from opdr, go back out to the site, and do the mitigation. And they just, for some reason, have never, ever done that. So, if bes waited to sign off on the permit until after the mitigation was done, then it would be a seamless process and the work would get done and everything would be fine. So, if the city council could ask opdr and bes staff to look at the problem and come back to you with some suggestion, it would be really very helpful to us.

Katz: We will ask some questions afterwards. Questions of linda? All right. Anybody else want to testify on behalf of the appellant? All right. Principal opponent of this appeal. Come on up.

Grant Massier, Applicant: My name is grant massier, I am the one in the violation, I guess, on that property.

Katz: Weren't you here before a couple of months ago?

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Massier: No, not me. [laughter] First time actually, I wasn't in disagreement until this appeal came around, and then which she just testified to that in no subdivision has any of these sewer easements been planted and they come in, they do their sewers as correct, and then they put their pipes in, and they don't replant anything, so we go in and we dig our for how long out and we're being held responsible for something that they never, ever finished, so it's costing us tens of thousands of dollars to fix a problem that, that we're not responsible for the problem. If they would have come back and planted their plants in there, there would have been plants in there, we wouldn't in that zone but it's just all bare in that area. We roped off the trees as we stated in our last meeting, and that's what was preserved the stuff that was left there. The big developers come in, develop their land and leave. Us as home builds come in, make minimal on our houses and we have got to fix the problems now, as she said, nobody has ever planted them but now we are going to have to start planting them because the city is letting the developers get off and being passed down to us, which isn't fair. We get fined, well, cost me \$12,000 already on something that we need, we didn't have a clue that was supposed to be there, and that's my problem, what I am having right now with this, is we are fixing stuff that the developers did, we didn't do the developments. That's all I have to say.

Katz: Thank you.

Saltzman: I appreciate your points but when you say we didn't have a clue, wouldn't you look at all the covenants, restrictions on that piece of property before you developed it?

Massier: What's that now?

Saltzman: I mean, wouldn't you -- as a prudent developer, builder look at --

Massier: Just a house builder, correct.

Saltzman: Wouldn't you look at the property, the plat, sewer easements, conservation zone, all that stuff? Wouldn't you, wouldn't it be prudent to do all that before you say, we didn't know about it, I guess.

Massier: No. It was on the plans, showed on those circles to save those trees. If there was other plants in that area, yeah, that might have struck a cord, well, we shouldn't be knocking those down but there was nothing there ever planted, and as you can see in the pictures, on both sides of the lot there is no plants in there, so they were never ever planted in there, so you really are not in violation if they weren't there. Who is in violation was the developer because he's the one that tore them all out. He tore them out to put the sewer line in, and then he tore them out when he came up in that other small zone that was violated to put the stubble to hook up to the sewers for the houses. He just doesn't come in and cut a path, with the big equipment, everything -- everything is dirt on all sides and it was already cleared out.

Saltzman: So he did the other 600 square foot.

Massier: Yes. We went in there and did it, too, but the plants were never in there to be torn out because that's where he stubbed his stubbouts in for the sewer lines.

Katz: This is probably a question of the staff, but maybe you know, mr. Massier. Is there a time limit for the plantings? Is there a schedule for plantings? Is that one of the problems?

Wenger: I was afraid someone was going to ask this question. The way the old --

Katz: Identify yourself for the record.

Wenger: For the record, the old land use land review was written so that there was a definite schedule for the plantings in the open space tract but this area falls across easements on private lots and that, there was no schedule defined for those plantings. That is a real problem.

Katz: So we have one problem and then we have another one, and I don't understand that. We will go back and talk about the timing of the, of the sign-off.

Massier: I don't mind if he comes in and plants them right now.

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Hales: Well, yeah. It sounds to me like we have a very legitimate administrative problem here, which in this case, is highlighted, which we ought to go and deal with. But what we don't want, we don't want -- I don't believe we want to solve that administrative problem by having lot -- having developers plant the sewer easements before the builders come dig them up to put the laterals in. That's the, the e-zone equivalent of paving a street and then cutting holes in it to put pipes in it. So, I think we want, if the problem to be solved is the developers have conditions of approval on the subdivision plats or pud plats to plant sewer easements, they ought to be bonded or otherwise required to do that after you guys get done redigging up the place to put the sewer laterals in because we are going to kill all those plans when you go in and dig the trench that you have to dig to get down to the sewer on any downhill lot, right?

Massier: Right.

Hales: This is a situation that's going to occur on virtually any lot that slopes downhill from the street because the sewer is going to be at the back of the lot and odds are in the southeast hills or the southwest hills, the back of that will be e-zoned or otherwise have some environmental value, and therefore, you know, the situation is going to happen over and over again.

Katz: So what you are saying is, that the developer has to come back after the construction of the house to do the plantings?

Hales: Right. You can't plant it -- you can plant it before he or any other builder comes along and puts in their lateral but they are going to dig up the plants that the developer was required to put in.

Francesconi: But if I get this right, it's not normally required. It was required this time because of a penalty because he didn't do what he was supposed to do the other time. The question is, who pays the penalty, you or do you go back to the developer. Do I have my facts right? Isn't that the issue?

Hales: Well, that's the issue here --

Francesconi: That's the issue with this person, but don't -- on the issue -- don't you have a contract with the developer? I assume you do.

Massier: No. No. We just bought the lot.

Francesconi: When you purchased the lot, there was a contract, I assume.

Massier: No. We just bought it from a real estate company.

Francesconi: I am showing my ignorance in the process of how you actually do things. Generally, there would be a contract and there would be a clause in the contract -- maybe not for your kind of business, for other businesses. And there would be a clause in the contract that says the person would be remains responsible for a situation like this and you could collect from the developer, but you don't have that -- in your business that's not standard procedure?

Massier: No.

Katz: So commissioner, I think commissioner Hales is right in the timing of it, that's probably the reason there is no time line because they wouldn't know when to come in, it all depends on how long it would take to you complete the house. So, we have an enforcement issue, if you can't sign off until after the house is built.

Francesconi: What we are, I think, if I am understanding the -- the whole idea is, we are trying to make sure this doesn't happen again. The way you make sure it doesn't happen again is there has to be a penalty so you don't just do what you did the first time, you have to do more.

Massier: Somebody has to do more.

Francesconi: But now we have a situation, if the practice is, that somebody else pays the penalty, as opposed to the developer, how does that work as an incentive to keep it from happening? That's the question that I am asking staff.

Wenger: Yeah. That doesn't encourage the developer to do what he needs to do.

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Francesconi: The whole point here is to have a penalty, it may not be the only point. The other could be to improve the environment but the main point with the penalty is what I said.

Wenger: The way we write these conditions now, there's, there's a, across the board, always some kind of, either a calendar date or a date that's triggered by a permit for the plantings to be installed for mitigation for environmental review, and so this situation wouldn't occur the way we write reviews these days. As far as fixing star point, I am at somewhat of a loss. Because of that gap.

Hales: Okay so, we have already solved the underlying problem for future subdivisions.

Wenger: That's correct.

Francesconi: We have? This is going to happen again?

Hales: It doesn't sound like it.

Wenger: We think our conditions -- if our conditions are enforced, the problem is solved, let me put it that way.

Hales: So there still may be enforcement issues.

*******:** I have one more --

Katz: One more comment and then we are really out of --

Massier: One more comment for mr. Saltzman, when he asked, do you do your research on that, when I put my plans in to do this, my plans showed that my sewerline was drawn right to where the connection was, and if -- you couldn't hook up at that point, they should have said, hey, that's an e-zone. There's plants that should be there. You can't dig in there, but they obviously knew that that's where you had to dig. That's where it had to go because that's where the developer put that, that line in. There's just no other way around that to put it in that area, and that's why it was already disturbed because he had already had it there and they, I don't know if they knew that or, but that's where it was on the plans and that's where it was.

Katz: Did you want to say anything? Identify yourself for the record.

Michael Jarrod: My name is michael jarod, just a brother-in-law. [laughter]

Jarrod: But, I am associated with some of the work that he does. If you go back in the pictures, if you notice underneath the trees, it was just barely even grass, so when he went through with that sewer, he knew that he would have to replant something there, you know. I want to make that clear. You knew that, but the fact is that sewer line, we are talking about an area of ground only about as big as this little section here. It's really small so you can't cut a sewer line without disturbing the whole thing. So, when he was going to replant that was native or what was there, he really, honestly thought it would be broadcasting some grass seed because if you look at the pictures right next to it underneath the trees, it's just little spriggs of grass that tall. There's not much there at all. So that's really how this whole thing came about there was no way to hook up to it without disturbing it.

Francesconi: A couple more questions. How much is this going to cost to do this?

Jarrod: Right now it's at about \$15,000, with the -- this whole process plus the landscaper to put a bunch of plants in there. We are looking at a piece of ground that's this big to landscape for \$15,000, is really a steep, steep dollar.

Hales: And why is it costing that?

Jarrod: Because the appeal process up to this point in time is about \$10,000.

Massier: 12,000 fine so far because they say that we disturbed all those plants but now we find out those plants were never ever planted in there, so it's something we never tore out because it was never there to tear out and that's why, you know, the developer never planted them, why are we in violation of being fined for all this for the small guy always gets it, it seems like.

Francesconi: I don't know enough -- for staff, is there anything that this developer could -- should have done to discover this sooner? They have said no. But from your standpoint, is there something that they did wrong here?

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Wenger: From our standpoint, it seems like the problem was the sequence of permitting. What we were told was that the clearing in that 600 square foot area was done prior to them receiving the site development permits and through the site development permit process, it would have been made clear where the limits of their disturbance for construction on the, on the lot was.

Katz: Okay. Let's continue -- did you have anything else you wanted to add, sir? You had about three minutes, okay. Did you want to rebut?

Francesconi: I want to ask Linda a question.

Katz: Okay. Linda. Thank you, gentlemen.

Francesconi: I am still not sure I have my facts on what really happened right so, some people need to clarify this for me, but your main point here is you want to stop this from happening again, right?

Bauer: Right.

Francesconi: And the way you want to stop this from happening is by having a heavier fine, right?

Bauer: No.

Francesconi: You want them to do more than just what's originally required? In order to discourage behavior?

Bauer: When I want this not to happen again, it means I want the sewers not to be, not planted any more, and in order to do that, I need a bureau to see that the, that the mitigation, which is already required, be done, and if they have to go back, come back downtown and get a permit from opdr to go back out to the site and do that, if that's your solution, that's fine with me, but I think it would be easier if bes just didn't sign off until they finished the mitigation. Because it's a bes permit. And bes is already, has already followed it through three stages, one more stage probably wouldn't hurt, but I am looking at it from the outside, not from the inside, and there may be glitches that I don't know that could happen to bes, so --

Saltzman: But you are talking about the developer plan it go after it has been master planned, not when a subsequent home builder comes along, are you?

*****: Well --

Saltzman: You are saying that bes could hold off on a permit for years until a particular property is actually built on? And issued a final permit?

Bauer: The sewer lateral comes to, to their property. They don't have to disturb the whole sewer easement in order to hook up to that lateral. So, bes could sign off on the mitigation for the sewer easement --

Katz: And then have to come back --

*****: And then the developer would go in and just disturb his little area and fix it when he, when he wants to.

Francesconi: So you are not so focused on who pays, as long as it gets done. You don't care if it's the home builder or developer?

Bauer: I agree with the, with the home builder. It's not terribly fair, but that's kind of the situation that we're in, and, you know, it really happens a lot.

Francesconi: Well, I need some help from staff or from --

Katz: All right, just a minute. Let's bring staff up here. Is there a staff here from bes? 8 come on up then. Commissioner Francesconi.

Francesconi: I need help on how we fix it because it doesn't seem fair to put the home builder in the situation, although I see the point. Is there any other options that we have here?

Wenger: Well, I am considering what our normal environmental reviews for installing sewer maintenance look like, and, and when there was environmental review required for the installation of a sewer main, I would like to talk with a bes permit person because I am not familiar with their

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permit process to find out if it's possible that in order to meet the environmental review criteria for mitigating those impacts, if we somehow craft a condition for them holding off on, on finaling their permit until the mitigation plantings within the sewer easement are completed. But, I would really want to talk with --

Hales: Let's investigate that.

Francesconi: Kathryn, you are actually nodding your head that that might be a possibility, do you think, Kathryn?

Katz: The question is, and I don't know either what they are looking for and the timing of it, so --

Wenger: The only -- I think that that might be a fix to future situations, such as this. But, it does just raise the technicality of, okay, then what about these lateral connections down the line. There's an uncertainty as to when those are going to occur and so there would have to be some kind of accommodation for that. But our development standards for the private connections to that now existing sewer main would require replanting this theoretical ten-foot wide swath that was cleared for the lateral connection so, if everything worked as our code directs it to work, that would fix the problem. So, they could go ahead and plant right after they install the sewer main and then later, five years down the line when someone wants to hook up, if they could meet our standards, then they would replant that area.

Francesconi: It might have a better chance of fixing the problem than just fighting this person to do it, so I think that that may actually accomplish both purposes in a fairer way.

Hales: Could you recount for us how the fines and costs got to the point that they are at now?

Wenger: I don't have a fee schedule, but our environmental violation land use review fees include about \$1,000 preapplication fee and then about a 7 or \$8,000 environmental review application fee for the violation so, we are up to \$8 or \$9,000 now. Where the other money went to, I would have to ask the applicant, I imagine just consultant fees for, for working with staff.

Francesconi: He's been punished already.

Katz: But somebody has got to do this, though. Somebody has got to mitigate.

Francesconi: Right.

*****: And then the cost of the plantings, themselves, will probably be involved in that.

Hales: Well, that's outside of the case. So if we, if we adopt the staff recommendation today, does that sort of stop the clock on the, assuming that mr. Messier goes and complies with the planting requirements, that stops the clock on the costs of this review?

Wenger: I don't think that -- I don't know if he's being fined by our code compliance section at this point. I'd have to ask him that, if that's what you mean. I am not sure what you mean.

Hales: Well, I am just concerned about the cost here. This 600 square feet. He didn't do most of the disturbance. The disturbance was preconditioned of the development of the lots. You know. There's a fairness problem here. In terms of the scale of -- maybe technically he violated the code, but he didn't know, he didn't own most of the problem and he ends up owning all of the solution and the cost of the process is huge so, I am just trying to figure out how to -- what options we have for mitigating that cost impact.

Wenger: So is your question, is he still being fined for violation?

Hales: Right.

Wenger: We have someone from code compliance I could ask here.

Katz: Come on up and answer that question, please.

Francesconi: I don't want to short circuit it but can you do some work and come up with a different solution for us?

Katz: We have to find the solution to this problem and then we have to find a solution to the process. The plantings have to be planted. And unfortunately -- but you don't want to punish this gentleman for the ills of somebody else, although he is going to have to do the planting so I think

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that that's the question that commissioner Hales is asking in terms of the code compliance and the fines.

Francesconi: But how much are the plants? I thought they were quite a bit.

Katz: Could you answer commissioner Hales' question?

Paul Scarlet, Supervisor, Code Compliance Office of Planning and Development Review: Paul scarlet, supervisor for code compliance section of opdr. We have received inquiry about this violation from linda, but we do not have -- we are not assessing penalties at this point. Enforcement monthly penalties in the violation case.

Katz: Do you want to make a motion?

Hales: Well, I guess I will move to adopt the staff recommendation, which is to uphold the hearings officer, and at least bring this case to a close.

Katz: Okay, and I assume with that motion comes the, the request to find a solution for us that works for the future anywhere else.

Wenger: Staff will work with bes on that.

Katz: Do I hear a second? Do I hear a second?

Sten: Second.

Katz: Thank you, roll call --

Francesconi: Well, wait, let me ask a question first before -- how much of the \$15,000 would be saved if he didn't have to do the planting? See, where I am at is I don't mind him doing it if the fine actually influences the developer, but if he has to do it and it doesn't improve the developer and there may be another solution to take care of this, and the real problem is taking care of the sewer easement it doesn't seem fair to me.

Wenger: So the real problem is we need the developer to replant the sewer easement but the developer is gone.

Francesconi: Yeah, but I need to know down the road --

Wenger: So you need an estimate for --

Francesconi: How much is it going to cost if this motion passes?

Wenger: He said \$12,000.

Francesconi: 12,000 more on top of what he's got already? Or is it a lot less?

Massier: Like 3,000 more, going to bring us up to \$15,000 total in everything that's, you know, with doing this deal and the money we spent out on something that wasn't our to say begin with, really.

Francesconi: So \$3,000. Do we have any sources of revenue that can help this so we can get this planted and help this guy do this?

Wenger: I cannot respond to that question. I would have to ask my supervisor. I really don't know how our revenue is allotted.

Hales: It wouldn't be opdr revenue anyway.

Hales: The only other thing that I can think of to do is set it over for a week and see if we can come up with some other creative solution than this.

Francesconi: I guess that's my request.

Hales: It everybody doesn't have an objection to this, that's what I am thinking.

Katz: You want to --

Hales: There's got to be something better than this.

Sten: That's fine but the bulk of the money was spent appealing he could have accepted the mitigation plan. We are not going to refund somebody for appeal costs and consultant costs, so unless somebody is planning to come up with the 3,000 or tell somebody else to plant it, there's no option, basically.

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Hales: Well I want to see an accounting of the costs on a piece of paper at some point, and you are right, and we are not going to be able to refund his legal fees or whatever else he spent money on. I am sorry that that's happened, but, you know, I don't want to stop the bleeding -- I want to stop the bleeding if there is an opportunity to have the developer cover any of the cost of this, I don't know if that opportunity exists at all, if they are completely out of the picture. If they have sold every last lot and they are out of town. I guess -- see if there is any other options because this is -- I can -- I have this sense, and I think all five of us do, this is just unjust, you know. Nobody -- there's no villain of the piece in the room but it's unjust, the result is unjust --

Saltzman: One thing I can offer to look into, although I hesitate to say something, I could be told I am dead wrong, we have a watershed revegetation program within bes. Maybe there is some way, although I have a hunk that benefiting private property will be the big stumbling block there but I can certainly find out if there's a possibility there.

Hales: Let's find out.

Katz: Let us look and find out exactly what the costs were and for what. Commissioner Sten could be very right that most of the costs may have been on the appeal and that was a decision that was made that didn't need to be made, so we have no clue as to what all those dollars were spent for. So come back, see, see if you can also solve the process issue by next week, or within two weeks.

Hales: Or give us recommendations for what, what it will require to solve it I realize that you are not in a position to solve the administrative problem, but I will work with you and margaret and the rest of the staff --

Katz: I think that we will be back in the same place we were next week but we will at least give everybody at least another week. The second and the motion have been rescinded, all right.

Moore: Next week is the 6:00 p.m. session.

Katz: What do we have?

Moore: It's a 6:00 p.m. session.

Hales: We have a morning session, though.

Katz: Do it in the morning session. Okay. All right. Fine, everybody, then we will come back to this item with at least an accounting of financial accounting of the use of the money and then a possible other solution. We stand adjourned.

At 2:45 p.m., Council adjourned.