



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **8TH DAY OF JUNE, 2005** AT 9:30 A.M.

THE MEETING WAS HELD AT: The Portland Building-Auditorium, 1120 SW 5<sup>th</sup> Ave.

THOSE PRESENT WERE: Mayor Potter, Presiding; Commissioners Adams, Leonard, Saltzman and Sten, 5.

Mayor Potter left at 12:29 p.m. and Commissioner Leonard served at President of the Council.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Harry Auerbach, Chief Deputy City Attorney; and Officer Curtis Chinn, Sergeant at Arms.

	<b>Disposition:</b>
<b>COMMUNICATIONS</b>	
<b>578</b> Request of Larry Tuttle to address Council regarding the failure of counties to properly assess property taxes (Communication)	<b>PLACED ON FILE</b>
<b>579</b> Request of Charles E. Long to address Council regarding a church of diversity and inclusiveness (Communication)	<b>PLACED ON FILE</b>
<b>580</b> Request of Paul Phillips to address Council regarding xray reading and growth rings (Communication)	<b>PLACED ON FILE</b>
<b>581</b> Request of Richard L. Koenig to address Council to respond to allegations (Communication)	<b>PLACED ON FILE</b>
<b>582</b> Request of Teresa E.A. Teater to address Council regarding bicycle registration fees as funds (Communication)	<b>PLACED ON FILE</b>
<b>TIME CERTAINS</b>	

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<p><b>583</b>    <b>TIME CERTAIN: 9:30 AM</b> – Urban Agricultural Inventory of vacant City owned lands that may be appropriate for Community Gardens or other agricultural uses (Report introduced by Commissioner Saltzman)</p> <p><b>Motion to accept the report, direct the Food Policy Council in conjunction with the Parks Bureau and the Office of Sustainable Development to set up a process to review these proposals and to report to the Commissioner in Charge and City Council within eight months:</b> Moved by Commissioner Saltzman and seconded by Leonard.</p> <p>(Y-5)</p>	<p><b>ACCEPTED</b></p>
<p><b>584</b>    <b>TIME CERTAIN: 10:00 AM</b> – Accept the 2004 progress report on the Portland/Multnomah Local Action Plan on Global Warming (Report introduced by Mayor Potter)</p> <p><b>Motion to accept the local action plan on global warming:</b> Moved by Commissioner Sten and seconded by Commissioner Adams.</p> <p>(Y-5)</p>	<p><b>ACCEPTED</b></p>
<p><b>585</b>    <b>TIME CERTAIN: 10:15 AM</b> – Make a binding commitment to reduce greenhouse gas emissions from City of Portland facilities and operations by becoming a member of the Chicago Climate Exchange (Ordinance introduced by Mayor Potter)</p>	<p><b>PASSED TO SECOND READING JUNE 15, 2005 AT 9:30 AM</b></p>
<p><b>CONSENT AGENDA – NO DISCUSSION</b></p> <p><b>586</b>    Statement of cash and investments April 07, 2005 through May 04, 2005 (Report; Treasurer)</p> <p>(Y-5)</p>	<p><b>PLACED ON FILE</b></p>
<p><b>587</b>    Accept bid of James W. Fowler Company for the Sullivan Pump Station Capital Repairs for \$3,198,910 (Purchasing Report - Bid No. 103986)</p> <p>(Y-5)</p>	<p><b>ACCEPTED PREPARE CONTRACT</b></p>
<p><b>Mayor Tom Potter</b></p> <p><b>Bureau of Environmental Services</b></p> <p><b>588</b>    Authorize contract with North Creek Analytical, Inc. for laboratory services at \$750,000 (Ordinance)</p>	<p><b>PASSED TO SECOND READING JUNE 15, 2005 AT 9:30 AM</b></p>
<p><b>Office of Management and Finance – Bureau of General Services</b></p> <p><b>*589</b>    Authorize contract with Architectural Resources Group and provide for payment for the Union Station Transportation Enhancement project (Ordinance)</p> <p>(Y-5)</p>	<p><b>179304</b></p>

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<b>Office of Management and Finance – Human Resources</b>	
<p><b>*590</b> Create two new Nonrepresented classifications for Portland Parks and Recreation and establish compensation rates for the classifications (Ordinance)</p> <p>(Y-5)</p>	<b>179305</b>
<b>Portland Development Commission</b>	
<p><b>591</b> Authorize the City to serve as fiscal agent for the Portland Development Commission for a U.S. Department of Housing and Urban Development Economic Development Initiative grant in the amount of \$397,640 for affordable housing in the South Waterfront Central District of the North Macadam Urban Renewal Area (Ordinance)</p>	<p><b>PASSED TO SECOND READING JUNE 15, 2005 AT 9:30 AM</b></p>
<p><b>592</b> Authorize the City to serve as fiscal agent to the Portland Development Commission for a U.S. Department of Housing and Urban Development Economic Development Initiative grant in the amount of \$795,280 for South Waterfront Project infrastructure in the North Macadam Urban Renewal Area (Ordinance)</p>	<p><b>PASSED TO SECOND READING JUNE 15, 2005 AT 9:30 AM</b></p>
<b>Water Bureau</b>	
<p><b>593</b> Accept contract with Tapani Underground for the installation of Tomahawk Island Dr. Mains Package as complete and make final payment (Report; Contract No. 35055)</p> <p>(Y-5)</p>	<b>ACCEPTED</b>
<p><b>594</b> Authorize a contract and provide for payment for construction of road repairs and safety improvements to portions of U.S. Forest Service Road S-10 (Ordinance)</p>	<p><b>PASSED TO SECOND READING JUNE 15, 2005 AT 9:30 AM</b></p>
<b>SECOND READING</b>	
<p><b>595</b> Authorize contract with Marsh USA Inc. to provide services for Phase III of the Owner Controlled Insurance Program and provide for payment (Second Reading Agenda 549)</p> <p>(Y-5)</p>	<b>179306</b>
<p><b>596</b> Amend Intergovernmental Agreement with the Oregon Department of Transportation for the North Lombard St. Overcrossing to extend the expiration date from December 31, 2005 to November 30, 2008 (Second Reading Agenda 556; amend Contract No. 50827)</p> <p>(Y-5)</p>	<b>179307</b>
<p><b>597</b> Authorize contract and provide for payment for the Macadam Avenue OR 43 Improvements Project (Second Reading Agenda 558)</p> <p>(Y-5)</p>	<b>179308</b>
<p><b>598</b> Authorize issuance of a Request for Proposals to lease and operate McCall's restaurant facility in Tom McCall Waterfront Park (Second Reading Agenda 560)</p> <p>(Y-5)</p>	<b>179309</b>

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<b>599</b>	Authorize an agreement with Groundwater Solutions, Inc. to provide miscellaneous groundwater technical services at a cost not to exceed \$692,000 (Second Reading Agenda 562)  (Y-5)	<b>179310</b>
<b>600</b>	Authorize a contract with Camp Dresser and McKee Inc. for the Water Distribution System Master Plan Project (Second Reading Agenda 563)  (Y-5)	<b>179311</b>
<b>REGULAR AGENDA</b>  <b>Mayor Tom Potter</b>  <b>Office of Management and Finance – Bureau of Purchases</b>		
<b>601</b>	Authorize contracts with Wilkins Trucking Company, Inc., Glacier Northwest, Inc., Mt. Hood Rock Products, and Fazio Bros. Sand Co., Inc. for annual price agreements for aggregate products (Ordinance)	<b>PASSED TO SECOND READING JUNE 15, 2005 AT 9:30 AM</b>
<b>Office of Management and Finance – Human Resources</b>		
<b>*602</b>	Authorize the use of Health Fund excess reserves to pay the FY 2005-2006 Cap Gap amounts that exceed the City contributions plus applicable employee premium shares for the costs of CityCore and Kaiser NW medical plans (Ordinance)  (Y-4)	<b>179312</b>
<b>Office of Neighborhood Involvement</b>		
<b>603</b>	Authorize location, source and criteria for use of one time Neighborhood Association Insurance Defense Reserve to cover cost of attorney fees and initial court costs for neighborhood association officers and directors (Ordinance)  <b>Motion to amend Section B to state funds in this reserve shall be held in the Insurance and Claims Operating Fund:</b> Moved by Commissioner Sten and seconded by Commissioner Adams and gavelled down by Commissioner Leonard after hearing no objections.	<b>PASSED TO SECOND READING AS AMENDED JUNE 15, 2005 AT 9:30 AM</b>
<b>Planning Bureau</b>		
<b>*604</b>	Amend the Intergovernmental Agreement with Multnomah County Transferring Land Use Planning Responsibilities from the County to the City (Ordinance)  (Y-4)	<b>179313</b>
<b>*605</b>	Require property owners to waive Measure 37 claims prior to petitioning for annexation to the City (Ordinance)  (Y-4)	<b>179314</b>

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<b>SECOND READING</b>	
<b>606</b> Establish a sponsorship program for the Central City Pedestrian Wayfinding Signage Program (Second Reading Agenda 542) (Y-4)	<b>179315</b>
<b>607</b> Streamline and improve regulations that govern trees and required landscaping on private property (Second Reading Agenda 569; amend Title 33) (Y-4)	<b>179316</b> AS AMENDED
<b><u>FOUR-FIFTHS AGENDA</u></b>	
<b>607-1</b> Appoint Mark Rosenbaum to the Portland Development Commission for a term to expire July 10, 2008 (Report)  <b>Motion to suspend the rules to hear Agenda Item 607-1:</b> Moved by Commissioner Adams and seconded by Commissioner Saltzman. (Y-5)  <b>Motion to accept the appointment:</b> Moved by Commissioner Adams and seconded by Commissioner Sten. (Y-5)	<b>CONFIRMED</b>

At 1:20 p.m., Council recessed.

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<p><b><u>WEDNESDAY, 2:00 PM, JUNE 8, 2005</u></b></p> <p><b>DUE TO LACK OF AN AGENDA THERE WAS NO MEETING</b></p>	
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**June 9, 2005**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,  
OREGON WAS HELD THIS **9TH DAY OF JUNE, 2005** AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Potter, Presiding; Commissioners Adams, Leonard,  
Saltzman and Sten, 5.

At 3:05 p.m., Council recessed.

At 3:13 p.m., Council reconvened.

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

<p><b>608    TIME CERTAIN: 2:00 PM</b> – Appeal of Marcia Leslie against Hearings Officer’s decision to approve the application of Douglas Pollock, Darryl Abe, Jeffrey Fish and Donald Pollock to divide a 5,855 square foot site into five lots for attached housing located at 11299 SW Capitol Highway (Hearing; LU 04-068765 LDS)</p> <p><b>Motion to deny the appeal, uphold the Hearings Officer’s report with the supplementation of the report to include addressing the issue of compatibility and sight distances as outlined by the Deputy City Attorney:</b> Moved by Commissioner Leonard and seconded by Commissioner Saltzman. (Y-5)</p>	<p><b>Disposition:</b></p> <p><b>TENTATIVELY DENY THE APPEAL AND UPHOLD THE HEARINGS OFFICER’S REPORT WITH SUPPLEMENT. PREPARE FINDINGS FOR JUNE 23, 2005 AT 2:00 PM</b></p>
<p><b>609    TIME CERTAIN: 3:00 PM</b> – Appeal of Impregilio-Healy-Obayashi of Purchasing Board of Appeals selection to award preconstruction services and possible construction services for the East Side Combined Sewer Overflow Project (De Novo Hearing – RFP No. 10321B; Previous Agenda 537)</p> <p><b>Motion to deny the appeal, affirm the Purchasing Director and Purchasing Board of Appeals and direct the Purchasing Agent to return with an ordinance authorizing preconstruction contract with Kiewit/Bilfinger Berger:</b> Moved by Commissioner Sten and seconded by Commissioner Adams. (Y-4; N-1, Leonard)</p>	<p><b>DENIED APPEAL; AFFIRMED PURCHASING DIRECTOR AND PURCHASING BOARD OF APPEALS, AND DIRECTED PURCHASING AGENT TO RETURN WITH ORDINANCE AUTHORIZING PRECONSTRUCTION CONTRACT WITH KIEWIT/BILFINGER BERGER</b></p>

At 7:22 p.m., Council adjourned.

GARY BLACKMER  
Auditor of the City of Portland

By Karla Moore-Love  
Clerk of the Council

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

**June 8, 2005**

**Portland City Council Meeting**

(Closed Caption service was not available on June 8 due to technical difficulties. June 8<sup>th</sup> was the first meeting in temporary location, Auditorium of The Portland Building.)

Key: \*\*\*\*\* means unidentified speaker.

**JUNE 8, 2005                      9:30 AM**

**Potter:** Good morning everybody. This is the temporary home for the Portland City Council. Before we begin the formal part of the meeting, we're going to do what we always do every Wednesday morning. That is to open it up with a question to you and to the folks that watch this on cable. How are the children? Because if the children are healthy and well educated in a community our society is good. And so each week we bring in an expert to talk to us about children's issues. This week we have Penelope Biggs, a 5<sup>th</sup> grader at Chapman Elementary School. Penelope, can you come up? Thank you for coming.

**Penelope Biggs:** You're welcome.

**Potter:** What did you want to tell the City Council?

**Biggs:** I'm kind of concerned about the nutrition for the school lunches. For one thing, kids learn better when they have food in them. And most of the food has a lot of sugar and fat in it, so it's not as healthy.

**Potter:** Did you want to read your statement?

**Biggs:** The salad bar has a list of the nutritious stuff on it and at my school I see a lot of kids skipping the salad bar. I'm saying that sometimes kids should be required to take the salad bar because it's healthy and I like the salad bar. It has some good food on it—yummy. Kids should know what they are eating.

**Potter:** I noticed on your written statement that you said you like to eat. So what do you eat?

**Biggs:** I like...well my Dad is a cook and he makes yummy, nutritious food I like.

**Potter:** So what else do you do at school? Do you play soccer? What position?

**Biggs:** Yes, I'm a forward.

**Potter:** Have you won any games?

**Biggs:** I think so, yeah.

**Potter:** I also understand in your class you tested highest in math. So, what are you going to be when you grow up?

**Biggs:** I don't know! (laughter)

**Potter:** You're doing very well. Anything else you'd like to tell City Council? Thank you very much for being here.

**Biggs:** You're welcome. (applause)

**Sten:** And Mayor, would you ask our guest to say Hi to her Mom and Dad for me?

**Potter:** Council will now come to order. Karla please call the roll. We will now hear Communications, please read item 578.

**Item 578.**

**Larry Tuttle:** My name is Larry Tuttle, my address is 610 SW alder, #1021, Portland. I'm here in my capacity today as the co-director of the Center for Environmental Equity. Our organization works primarily on public lands mining issues. It may not be perfectly obvious why I would be coming to City Council talking about public lands mining issues and I would have thought that myself about 3 months. Our research has revealed that none of the County assessors in Oregon are assessing improvements to public lands mining claims of the 6,000 active claims and the 20,000 inactive mining claims in this state. That means that when counties fail to assess a whole class of properties, those counties draw down disproportionately on the state school fund, because property



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taxes are deducted as we know from the State school fund distribution. That's part of the reason why, for example Malheur county taxpayers got back \$4.24 for every dollar they paid into the state school fund and Multnomah county taxpayers got back .80. By contrast, counties like Multnomah, city of portland have continuously had to back fill the state's school fund distribution. So why am I here? As I try to expand the awareness of this issue publicly we're going to be citing the city of portland's history of backfilling these short falls and we wanted to give you some context in case it comes up. It also begs a larger question that may be a public policy issue that you can discuss with your colleagues, with the league of Oregon cities and others. Are there other properties and whole categories of properties that are currently being omitted from taxation? What is that effect on high tax based counties like Multnomah county. Thank you very much.

**Adams:** Could you please email us copies of your statement? [paper copies given]

**Item 579.**

**Charles E. Long:** My name is Charles E. Long. I'm a native of Portland. In observance of the 150<sup>th</sup> anniversary of Portland's downtown first Baptist church, the church is offering a concert of organ music plus piano, trumpet, hand bells and also a silent movie. The public is invited to attend. That is on Sunday the 12<sup>th</sup> of June at 2pm, SW 11<sup>th</sup>, 12<sup>th</sup> and Taylor street. Ever since it was organized, first Baptist church has been a diverse congregation. Over a century, before diversity became a politically correct issue. I was reading in the book by Jewell Lansing, a history of portland, people, politics and power, --Mrs. Lansing was former auditor of portland public schools. There used to be great prejudice against minority groups in portland. I'm quoting from her book: in 1879 a mass meeting was held in portland protesting president Rutherford Hays veto of the Chinese exclusion act which would have prohibited entry into the u.s. Oregon's governor, Thayer, presided assisted by the Multnomah county district atty and the chief justice of the state supreme court, passed a resolution which said the Chinese are alien to every principle of american civilization. It falls to the interest of our industrial population who have not assimilated and never can assimilate with our people who bring with them all the debasing vices of their efete social life who contribute nothing to the wealth of our country and who serve as a constant drain of our prosperity, sending away to china all the wealth they can horde by living in hovels. We demand that this bill be passed by the president. In 1882 congress did pass the Chinese exclusion act which was in effect for 60 years until world war 2. The reason I cite this is because first Baptist church welcomed the Chinese into their fellowship and called a pastor from san Francisco who could speak mandarin, their language. first Baptist has also welcomed blacks and in the 1970's, helped the Cambodians assimilate in portland. They have a ministry even today. The church also has welcomed Hispanics and have a ministry for them.

**Item 580.**

**Paul Phillips:** Paul Phillips and thank you. 180 seconds 35 people are injured in the United States on the job. What injuries and fatalities? 5,840 a year die. And of course you heard about 9/11/2001. 6.3 million non-fatal occupational injuries a year. I explained to the security people here in the building after they read the cdc report the first paragraph 16 people die a day. At war, luckily isn't as bad as that. Doesn't come close to the injuries and fatalities. What I'm here to talk about is June 15<sup>th</sup>, I'll read a letter, who knew about growth rings. This x-ray report, if you see the words underlined, suggested a remote fracture. I went to the library on 10<sup>th</sup> street and asked what a remote fracture was, just to make sure that it was a medical term. They said there isn't any definition in the medical dictionary. Of course a remote fracture of what? I know what the word suggestive means, do you? The xray report is less than 100 words. If you can't understand those 4 words, you certainly won't be able to understand the rest of it. But I'll be back June 18<sup>th</sup> and 25<sup>th</sup>.

**Item 581.**

**Richard L. Koenig:** Good morning Portland. Richard Koenig. The allegations are Commissioner leonard's allegations. Because of that we won't be addressing the substance that I've been trying to

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put on the commissioners desk here. The substance is something that's killed too many people in the city. Commissioner Leonard's allegations, most did not have enough context for me to deal with. Did not have names and dates. There was one. I was reminded of this one last year when Kate Brown filed for a stalking order in the Multnomah county circuit court. You've got the case number so you can reference the entire file. I'd been referred to senator Kate Brown, my senator, by another senator in writing, to get the legal definition of the person who has to be granted the privilege to use the highways or the streets of Portland. Senator Brown told the same story in her petition that Commissioner Leonard told last week. The truth is that in 1997 after I worked for 6 months on a project that the women's legislative caucus unanimously voted to sponsor, senator Brown, who somehow missed the boat, asked them to retract their support. The day before the bills have to have numbers on them. I asked my senator, how did you do that? She said we'll have to talk about it later. I said sooner rather than later. Using that old Christian metaphor about heads on a platter, I said, or I'll have your head on a platter. Senator Brown pulled a fast one on Commissioner Leonard. Because according to him, she was so scared that she had to have his escort service. Well she pulled a fast one on the court too, because to obtain the stalking order, she had to allege at least 2 contacts within 2 years with intent to cause fear or alarm to her, her family members or immediate household. Well, she didn't quite do that. She only alleged one count of one contact and did not explain. The most outrageous comment is on page 3 of her petition and you have a copy of that. Being under oath she decided not to purger herself. She scribbled over her initial entry and checked the box that indicated nothing that she had said in her petition caused her to fear. She specifically mentioned the story about her head on a platter. And that's there for your reference as well. I want to thank the court administrator next door for helping me get these things. He had them at the front door of the court house today so I could share them with you. I'll address any other allegations that Mr. Leonard has made if he'll provide me sufficient detail to respond. I'd like to move on.

**Item 582.**

**Teresa E.A. Teater:** My name is Teresa Teater, Oregon city. I'm here today because I made a suggestion to Commissioner Leonard on bicycle registration fees. Registering bicycles in this town as a revenue source for funding the jail beds and supporting the programs afterwards—prevention. I am concerned that more people use bicycles than cell phones and you'd get a broader revenue source to get the little stickers on the bikes. I told Commissioner Leonard that when I was growing up in Missouri back in the 60's, the dayglow sticker like on your cars. It was renewable every year. At that time it was .50. But I think we could go a little higher now. You renew them every year for a buck. It would offset the cost of creating the stickers, get them distributed to sporting goods stores, like G.I. Joes. When you buy a bike you buy them immediately and turn the revenue back over to the city. Also I'm going to be attending your summit next Friday on the three issues, workshops. Hopefully this idea will have generated some interest by then. I'm concerned with a couple more things. You're going to have a bill of rights for children. My daughter used to belong to the Mayor's youth council in Nebraska for about a good 8 years in a row. From all the schools. They got back to the Mayor about things going on in the schools. We had street dances for the youth to get them off the streets at night. You have Pioneer square, you could close in. They could bring schools together and get bands in. That's what I did, I was a volunteer chaperone. It went really well. If you also would include in a bill of rights in writing for these children ways to protect themselves. Like 911, what it's for. If an adult asks you to keep a secret, then that adult has a hidden agenda. Things like that should be in a bill of rights type document. There is a copy of the 4-tiered tax incentive program in Nebraska and also on another page the entertainment tax for companies that bring in entertainment industry. That's on a state level, but I don't see why you couldn't do it on a city level.

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**Potter:** We'll now take a vote on the consent agenda. Commissioners, do you have any items you wish to pull off consent? Does anyone in the audience wish to pull any item off? Please come forward.

**Elaine Cogan:** I think what you have on the consent agenda is the pedestrian wayfinding which you heard a lot about last week. And as one of the three consultants on the project to the portland development commission, I want to assure you that—as many of you know—I probably have 200+ years working on public outreach, public involvement projects at least. It has been one of the joys of my professional career to work on that particular project. We had such a broadly based stakeholder involvement. It seems easy and when you see those posts coming up all over the city, it will look like, why didn't we do this a long time ago. But to see citizens wrestling with thing like, if you are standing by pioneer square and you want to get to the art museum, how are we going to help them get there. So the whole pathway that we're going to be directing pedestrians. Color of posts. I want to assure you that this is one of the most inclusive projects as far as outreaching to people. One of the most helpful was the concierge of one of our hotels. He knows what pedestrians want in the city of portland. This was a process that worked. I know I'm also on the agenda to speak on Mark Rosenbaum appointment to pdc and I heartily endorse his appointment. He understands very well some of the things I've been speaking to you about this morning.

**Potter:** Thank you. Thank you for your 200 years of service. [laughter] Karla please call the roll.

**Adams:** I just want to comment for the record on a couple of items. #587 has 3% slated for mwesb. #588 has a 15% slated to go to mwesb; 599 has 10% going to mwesb. 600 has 20% going to mwesb. Aye.

**Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye.

**Potter:** Aye. OK we'll go to the time certain.

**Item 583.**

**Saltzman:** Thank you Mayor, members of the Council. Agriculture is part of the legacy of our city and our state. Many efforts are currently underway to encourage the production and consumption of local food. The report you are about to accept will assist in those endeavors. People today are looking—are more concerned as we heard from Penelope today—what type of food they are eating. Is it coming 1500 miles away or 50 miles away? We associate less energy consumption with something coming closer to your home. They also care about is it growing organically or by some other method. This awareness of food and where it's coming from is happening not only here in Portland, but throughout the country. I was just in San Francisco last week and couldn't help but note, anecdotally how many people I ran into from cab driver to retail sales clerk who just mention—they had no idea why I was down there—how they looked forward to going to their farmer's market whether it was in daly city, alatto(?), or san Francisco at least weekly to get a major portion of their food. So it's not just here in Portland. But here we need to do our share to have more farmers' markets, more community gardens and other agriculture uses. 6 months ago, I brought to city council, and council approved resolution 36272 that directed city bureaus to conduct an agricultural inventory of city-owned lands to determine their feasibility for becoming either community gardens or other agricultural uses. This idea came to me from where many of the best policy ideas ever come from—our citizens. In October of that same year we learned of the unique partnership between a citizen and sellwood and 2 city bureaus. This woman had been watching a piece of property owned by the city and wondering if grassy field on top of pump station could become a community garden. She contacted Parks and Bureau of Environmental Services. In October, that's exactly what happened, City council adopted as one of 3 new community gardens in our city. As we heard during our current budget discussions, there is a current waiting list for community gardens. There is a strong cadre of supporters and food sustainability is a top priority of citizens. Our urban growth boundary protects farmland and concentrates development within its borders. Positive for land use planning goals, but has fostered somewhat of a disconnect between

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our urban residents and our rich history in agriculture. The popularity of organizations such as Zenger farms and the community gardens programs tell us our citizens desire a closer desire for agriculture issues. I myself am included. A study of Lents by the food policy council showed that many there would like to eat fresh foods but do not have access to it. It also concluded that the population would be interested in growing their own food but does not have land to do so. This inventory of property is suitable for farmers markets or community gardens or other agricultural uses is a first step to making these objectives happen. By looking for other opportunities to collaborate like we did in sellwood. One of the issues we faced re this inventory is that it wasn't budgeted and would require a great deal of time and effort. Facing this constraint and realizing we have a lot of talent in our own community in Portland State, we turned to the Nohad A. Toulan school of urban studies and planning to assist in the effort. A team of masters of urban and regional planning or merps agreed to take on the project as a workshop. This is a requirement for graduation from the program. Using geographic information systems, the psu consultant team worked with my office, the food policy council and other city bureaus to conduct this inventory. They also completed a good deal of policy research, and stakeholder outreach which we will hear about shortly. Hundreds of sites were identified using established criteria that could be potentially used as community gardens or other agriculture uses. Many of them are larger than ¼ acre. We also have with us today members of the food policy council that have suggestions for city council to consider on where we go from here. This is the first step of inventory of eligible sites. Next steps are which are most appropriate, ready to bring in as community gardens or other ag uses. With that I will turn it over to my staff member, Brendan Finn and the psu team to report on the results.

**Brendan Finn, Commissioner Saltzman's Office:** Good morning, mayor and commissioners. Brendan Finn, commissioner saltzman's office. I guess the question this morning is can you dig it? [laughter]

**Adams:** Don't steal our lines, Brendan.

**Finn:** Well I can say I dig it.

**Adams:** You've already started shoveling [more laughter].

**Finn:** With me here this morning are two members of the psu consultant team, lisa Petersen and Teak Wall. I'm going to be brief. It has been a great pleasure and partnership with portland state university and the city of portland. This group of students were professionals. We pay consultants to do this kind of work, but with the budget constraints we have to think more creatively. I'm here to tell you that this works. I know during the planning budget discussions, commissioner Saltzman and leonard recommended that we take a look up the street at this world class university we have and see what resources we have. I want to recognize those who oversaw the group, mentors and professors. Deborah Howe and Connie Ozawa here who have put together most of the planners we have in the planning bureau and all across the country. The report is available on portlandonline.com, commissioner saltzman's office. We literally did this with no budget. I'm going to turn it over to the team right now and I'll be available afterward if you have any questions.

**Teak Wall:** My name is teak wall and this is Melissa Peterson and we are masters of planning. We'll present our project, the diggable city, making urban agriculture a planning priority which is the culmination of 3 months of very hard work. Before we begin I want to define urban agriculture. It is not just community gardens but other types of agricultural uses like farmers' markets, educational farms, community supported agriculture and many other possibilities. A significant part of the project was conducting an inventory of city owned land and analyzing the potential of expanding urban agriculture in portland. With this inventory portland can build on its reputation as a sustainable city by utilizing publicly held lands.

Presentation:

Background--

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Sellwood Community Garden led to Resolution 36272 directing bureaus to inventory their lands. BES, Transportation, Water and Parks submitted property inventories.

**Melissa Peterson:** Criteria was developed to synthesize data from the individual bureaus into one data base. Criteria were permeable surface area, pedestrian and water access, tree coverage, proximity to transit lines and other site characteristics. Land categories were :small scale site of 1000 sq. ft to ¼ acre; large scale site of minimum ¼ acre with no maximum size. Two sub-categories of site requirements used were immediate availability and impervious surface area. Actual sites were visited. Small scale agriculture can be accommodated on any size lot. Needs minimum five years tenure on the land. Placement within residential neighborhoods gains community buy in, which is a key factor in program success. Small scale agriculture include pocket, vertical, community (7500 sq ft + in size) gardens. Impervious sites can be used as farm stands or container gardens. Large scale sites (slide shown) has adjacent bike path, partial tree cover and close to transit line. Current zoning on this site is R-5 which restricts agriculture uses to community gardens program. Large scale sites have the most potential as they can be used for multiple projects. 10 years is the minimum tenure for large site projects as they take longer to develop. Large scale urban agriculture include community gardens, educational farms, community supported agricultural operations, fruit stands, farmer's markets and nurseries. The final inventory was comprised of 289 locations, 47 small scale and 242 large scale sites. Note that small scale operations can occur on larger sites. There is great potential for urban agricultural opportunities in the city of portland. The distribution across the city is amazing. Note there are currently no community gardens east of I-205. As shown on the map there are many potential sites in that area.

**Wall:** In addition to the inventory, numerous interviews, focus groups and surveys informed the process. [video shown, unintelligible]. Recommendations on how to use the information in the inventory are: develop inventory management plan; create Urban Agriculture Commission; expand inventory and develop evaluation criteria using bureau collaboration and use current report as a model; adopt formal policy on urban agriculture that addresses social and health benefits; conduct comprehensive review of policy and zoning to identify obstacles.

**Peterson:** Recognition of the project team members. Kevin Balmer, James Gill, Heather Kaplinger, Joe Miller, Amanda Rhoads, Paul Rosenbloom.

**Adams:** What would it take to complete the inventory?

**Peterson:** The next step is to determine what uses the lands should be used for. Then work with community and non-profit groups to develop implementation strategies on site by site basis.

**Adams:** To clarify, the recently to be abandoned Kenton Elementary School which has a huge green field behind it—is this on the list?

**Finn:** No these are only City of Portland owned properties. Mainly BES, Water and Parks.

**Leonard:** I have a practical question. In the budget discussions, the first thing Parks offered to cut was community gardens. Community gardens are one of the most successful programs in the city. People were upset when they thought they were going to close. I feel a responsibility if we make this kind of commitment that we figure out how we are going to pay for it.

**Finn:** Yes, the roll out of the program is not going to go beyond what the program can take. The budget talks also included how we're going to deal with community gardens and work with other groups. This something that needs to be explored, opposite this inventory.

**Leonard:** We did explore that and it wasn't pretty. I'm just sending the signal that this is a great program, but I am not going to make false promises to the community.

**Wall:** In our report we did our best to see what other cities are doing about funding. There are examples in the report of public/private partnerships and other funding methods.

**Leonard:** The funding has to be part of how we proceed.

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**Saltzman:** The next step is to give this report to the food policy council which more or less is our urban agricultural commission. We'd like to invite them to come up now and tell us what they would like us to do with this report.

**Marcus Simantel, Co-Chair of Food Policy Council:** I am Marcus Simantel, co-chair of the Food Policy Council of Multnomah County. The Food Policy Council has been involved in this before this originally came to City council. We congratulate the PSU team. Page 59 is the most important page. Food Policy Council is on record as supporting this and asks City to send this to Office of Sustainable Development. We request OSD house the data base and work with FPC and various bureaus to come up with a process to take this forward. We will work with the Commissioner in charge of OSD who would bring a resolution back to city council. I was shocked at the number of parcels available. Commissioner Saltzman mentioned that our land use policies have been great for agriculture and great for cities because it's made us look within our cities and make good use of our land. One negative, it's pushed where our food comes from outside and the people inside. You used the word reconnect and I think that's what needs to happen. I do have the recommendations of the FPC written out and I'll distribute to you.

**Leonard:** I'm curious why you chose OSD. They are very competent, but Parks has the community gardens program and staff.

**Simantel:** OSD is very involved with the food policy council and seems to fit in.

**Leonard:** I hear what you are saying, but am mindful not to duplicate efforts.

**Brian Rohter, Member, Food Policy Council, owner New Seasons:** One reason we suggested OSD is we hope this might go beyond community gardens. We wanted to go to a bureau with a broader scope. For example the purchase of local food. There is high degree of interest, particularly from our immigrant community in growing food for sale in stores. Unfortunately many of the immigrants don't have access to property. We're hopeful that this might give them access to property where they can grow food, generate some revenue for themselves, potentially some revenue for the city depending on how the structure of the transactions is put together.

**Leonard:** Do you think this could be a self-sustaining program?

**Rohter:** It is too early in the process to answer that question. Today we're here to say we want an opportunity to take the information back into the food policy council and work with OSD to come back and give you a more informed answer. I want to thank Commissioner Saltzman for his leadership on this issue. A few years ago no one was interested in the subject. Portland has been a leader in the US for considering these issues. Commissioner Saltzman was the first one to bring it up. We're encouraged as citizens to see he is continuing to work on that and is encouraging you to see there is something city government can do to help.

**David Yunkin, Co-owner Hot Lips Pizza and member, Food Policy Council:** As recently as world war two over 40% of the food consumed was produced and prepared in the home. It's been a relatively recent change, this system we're doing now. We are also witnessing childhood obesity. It comes from a disconnect from where the food comes from and what you put into your body is what you are. I am fortunate enough to go into schools once a month and talk to kids about agriculture and food issues. I now use powerpoint and show kids slides of fields, flour mills, pizza dough ball, end product, salads. Show them that food comes from someplace and doesn't just arrive in a package at the grocery store. The change with the kids, having a visual picture of where food comes from, has been astounding. You can see it on their faces. If we could return to a system where this food is part of our lives we would see a decrease in obesity. I support this and encourage us to take it to the next level and start looking into where the costs may lie and where it may be housed in the city.

**Ron Paul, representing proposed Portland Public Market:** Supports and addresses the inventory in larger context of city's support of local agriculture—both production potential and demand. Portlanders are clearly interested in purchasing locally produced food as seen at the farmer's

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markets. Supports the city's understanding the critical role urban agriculture plays in not only the supply side but the demand and making sure we have broad food systems the report begins to identify.

**Leslie Pohl-Kosball, Community Gardens staff:** Reads letter from David Streeter, volunteer garden manager of Pier Park Community Garden in St. Johns. Watched three boys throwing rocks and interested them in gardening. Eventually hired one of the boys to work in the garden. Garden has grown and is multicultural in nature. Gang member have also become interested as they are looking for something better to do. Garden is successful. David challenges the City to help other low income communities in the same way. Council is invited to upcoming barbeque.

**Karen Wolfgang,, Tryon Life Community Farm:** TLC is a sustainability education center in southwest portland. Native habitat restoration, urban agriculture, permaculture gardening. Tryon Life Community Farm is a place where people can learn the skills they are going to need to build sustainable community gardens and the other projects that diggable city projects is working on. We strongly support the efforts of the city to make Portland amenable to this type of activity.

**Paul Sunderland, Portland Multnomah Food Policy Council:** I also am a broker for OSU/ OSU extension service here in the Portland region. I want to thank Commissioner Saltzman and the Council for your vision and taking the risks to say let's explore this. We're on to something big here. That's just coming from inside from where I'm at and having an understanding from working with other metropolitan areas around the country with their extension programs. It's creative. And as we approach this opportunity and looking at open space in some different ways, particularly to use it to the benefit of adding to our regional food economy, is something that is new and creative. Thanks for giving Portlanders the opportunity to explore this. I commend our psu team. Those students do a tremendous job. And this is phase one. I've worked on the task force advisory that Brendan put together. I look forward to staying engaged, as does Oregon state university. We are now at an opportunity where some of the resources from osu, particularly the college of ag sciences and college of health and human science can be instrumental in helping add next steps and more workhorse to those next steps. I'm cognizant that we often go down paths without a thought to what the cost is. It's important to ask how do we bring fiscal consciousness to that effort? But in order to be creative you've got to step away and bring that in at a time as you have an idea of where you're headed. I see the food policy council doing that. I look forward to seeing where phase 2 takes us.

**Pam Leitch:** I teach permaculture in the collie neighborhood which is one of the areas where there is still a large number of lots that haven't been infilled yet. I was on one of the focus groups to this project. I wanted to point out the under our current zoning if someone has an empty lot in an R5 zone they cannot grow agricultural food on that land. It's prohibited. You have to go through a type 3 process if you have a 10,000 sq ft lot or an acre in R10 zone. That is a hindrance to the urban agriculture process. Also, I agree that budgetary constraints are very important, however when it comes down to the bottom line, people can live without a swimming pool, but they cannot live without food.

**Adams:** That R-5 prohibition seems on its face pretty silly. Do you know what the original purpose of it was?

**Leitch:** People were probably afraid of tractors and pesticides and the things that we perceive that go with industrial agriculture, instead of organic small scale that we're talking about.

**Leonard:** Just to share with you my experiences with the Buckman neighborhood association. They would have a response from some of their seniors and others to those in the community who suggest they could live without a pool. There are people who feel very strongly about their quality of life and health that the pool allows them to have. I wish everything was quite that simple.

**Leitch:** I appreciate the feedback. Thank you.

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**Wisteria Loeffler, Executive Director of Zenger Farm:** Zenger farm is an educational farm in southeast portland on foster rd owned by bureau of environmental services, project originally sponsored by Dan Saltzman. I want to commend the psu team and dan for bringing this resolution forward and doing this research and really starting this work. There's a few things from my perspective I want to share with the council and the group present today. This is an exciting time in sustainable agriculture and particularly in urban agriculture. I want to speak mostly to where the funding is going to come from. I think we're going to have to be extremely creative. I want to use our case model as an example. Zenger farm is run by a non-profit group that does all their fund raising. We get support from the city. The city provides staff, and also occasional funding for various different site improvements, maintenance. But all of the programming that happens on site is fund raised from the community, private foundations and individuals. Another example of this would be the Japanese garden. So I think a lot of these programs have the potential to be spearheaded by non-profit and community citizen run events and organizations. As public funding what can we invest as a leverage point to kick off work that would cascade down? So that's where I see the funding coming from—not a city bureau with a bunch of overhead and staff, but a small amount of staff support that can support community efforts. The other thing from our perspective—the immigrant farming piece is something we have been working with. The food policy council, mercy corp nw, heifer international and a number of regional organizations are looking at what are the next generation of farmers. One of the groups that's come to the forefront is recent immigrants and refugees who have families with a rich agriculture tradition. Again the difficulty is access to land. We're hoping with this agriculture inventory, in addition to community gardens, would be an immigrant farm apprentice program that would feed into the farmer's markets. That's another program that could be run by a non-profit and supported by the city. The last piece of interest is the school food piece. I think as the city thinks about how through zoning and various different barrier reductions you could invest in the project, there could be a suite of community partners stepping up to the table to help take it over.

**Potter:** Does the Council have any questions?

**Leonard:** I was just going to say there is nothing I've gotten more feedback on in the last few months and I'm convinced of the success of our community gardens for all the great reasons we've heard here today. I'm finding I'm the wet blanket on all of these exciting discussions. I've had to tell the area of the city that I live in that is by all accounts part deficit that I cannot support new parks in east portland until we can figure out how to fund the existing parks. It's irresponsible for me to make those kinds of commitments when I know that we're having a challenge just funding what we have. I would support this going forward, but it has to be responsible. I've heard the reasons for office of sustainable development being involved and I think they are good ones so it should be analyzed in conjunction with parks. For it to be a balanced, experienced analysis, we need to have the people who run the community gardens currently at least partnering equally in development of a proposal. And finally when we come back with a report I'm going to insist that it not talk about where money may come from, but actually secure funding in it. I appreciate some of the comments made that people are confident that the community will come forward. I heard from none of them when the proposal was to close community parks this last time. Nobody came forward. Again, it was Commissioner Saltzman and I working together with parks budget to figure out how to fund them. If there are people out there willing to fund them, I would have appreciated hearing from them a couple of months back. With those caveats I think this is an exciting proposal that I would be happy to support.

**Adams:** I have two quick questions. From the list of the folks involved I don't see any participation of the extension services? Is that because they have been cut away a long time ago?

**Saltzman:** Paul Sunderland who we've just heard from is from the extension service.



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**Sunderland:** Because of program cuts, I am the only extension service agent for the area today. We're in new times. Osu is interested in what new ways there may be to tap the resources and knowledge base of the university.

**Adams:** Are you still called the extension service?

**Sunderland:** Yes.

**Adams:** The other question is 4-H or kids—can somebody amplify on the efforts to involve kids?

**Leslie Pohy-Kosball:** I can say one thing, there is a parks program that is partially funded by parks, partially (unintelligible). Very small and underfunded, but a start.

**Adams:** So does 4-H exist locally?

\*\*\*\*\* No.

**Potter:** We also had Penelope who spoke earlier.

**Saltzman:** No question. I move that we adopt the report and direct the food policy council and the office of sustainable development to set up a process to review the proposals and to report back to the commissioner in charge and ultimately the city council itself.

**Leonard:** What about having parks involved and a mechanism (unintelligible).

**Saltzman:** I think parks will be involved. They have been involved in the process to date. Again, not everything is necessarily looking at the model of the community garden as we currently have it.

We're also looking at farmer's markets, immigrant agricultural inventory uses. Parks will be involved in this process. I'll be happy to include them in the motion.

**Leonard:** I'd like that.

**Saltzman:** So I'd like to make a motion to accept the report, direct the food policy council in conjunction with the parks bureau and the office of sustainable development to set up a process to review these proposals and to report to the commissioner in charge the ultimately the city council within eight months.

**Leonard:** Will we have within that proposal a recommendation for funding proposal as well?

**Saltzman:** Yes.

**Leonard:** Second.

[roll]

**Adams:** I want to compliment not only the good work that you did but what has to be one of the best presentations before city council in a long time. I've very excited about this having grown up in a rural part of the world and coming from a family of ranchers, I think it's great to the extent that we can become more self-sufficient in terms of food. The city of portland can continue to lead the way for the rest of the country. So much the better. Thank you all for your good work and Commissioner Saltzman for his leadership. Thanks to Brendan the staffs for their good work as well. I enthusiastically vote aye.

**Leonard:** And I look forward to getting back the recommendations. I can't think of any other program we got more feedback on in the budget process. My concern is if we do it that we succeed. Aye.

**Saltzman:** I think there is a lot of interest in farming, community gardens. Of all the interests the biggest deficit is the land. We need to have the land to get started. We have people, products, seeds. What we lack is the land. This inventory is the first step in identifying what the city has under its own nose in terms of available parcels or potentially available parcels that can be converted into agricultural uses and can help people eat and purchase local food. This is a good first step. There are still many issues to be resolved and that's why the food policy council, parks bureau and sustainable development will process these recommendations more in depth. I do want to take this opportunity to really thank portland state masters urban regional planning students. I hope this project gets you across the threshold—across the graduation stage. It's a very good project, very professionally presented. I know you worked long and hard and I want to thank Brendan and jeff of my office also. I'm pleased to vote aye.

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**Sten:** I also want to thank Commissioner Saltzman and his team, Jeff and Brendan and all the people who have volunteered on this. I was very inspired this morning. This is really—I don't know if the future is the past—but I think this is really important stuff. It resonates on so many levels in terms of health, local economy. I've very excited to hear what comes next and would love to work with you on each piece of it. I hope we can keep all the volunteer talent engaged in the next couple of levels too. In addition to the issue we're talking about, a lot of what is going to hold us together in the future is getting more citizens tied into real ways in which to change things. There are so many people out there who want to contribute. It's often hard to find a way to lend your talents. This is well done on Commissioner Saltzman's team's part to set this up to use all these talented people out there. Small side note to put on people's radar screen and get back to you with more details, I become working—and Dan's going to be part of this—with the school district to take a look at is there a way to rethink the way they actually create and serve lunches. It's a longer term project but the context is they need to redevelop the blanchard site which is that big place just north of neb roadway where the school district offices are. It happens that they probably will not be there as an antique building and they really ought to get into more modern offices. The kitchen is on that site, so there is a sort of once in a lifetime (or however long a kitchen lasts) moment when they move that kitchen, to rebuild it and think about how the kitchen as a central point, how does the food flow through there, where does it come from, what are the possibilities. I don't have an answer for it, but I suspect that the collective minds I'm looking at right now could come up with one. It's something we're going to work together on and I think it could be a way to take some of the things you're talking about and put them into practical use in terms of feeding kids soon. It could also be an interesting link to the rest of the state if we could buy more of their agriculture to serve our kids would be terrific as well as healthy. Also, there is another related item on the agenda, our progress on global warming. I invite you to stay if you have a few more minutes to hear the presentation. It will tie directly to all the fine work you are doing and why we are making progress on global warming on this kind of work. I'm glad to vote aye.

**Potter:** I'd like to commend Commissioner Saltzman and he will be appointed as secretary of agriculture. And to the fine folks at psu and the food policy council, this has been an excellent presentation. I look forward to the day we don't have to cart our food 1500 miles to portland which is the average food on your plate today is transported that distance. Reduce it by 1499.5 miles so that we can have agriculture particularly in some of the lower income communities. That is not just something as a hobby, but it's life sustaining and important. I'd like to see it as commissioner sten indicated in our schools. I think there is a lot of opportunity for this. But I would hope the food council will heed commissioner leonard too in terms of the statements of how we pay for these things. I'm sure you folks are creative. Certainly this presentation displayed that and I'm really excited about the possibilities for this. I vote aye.

**Items 584 and 585.**

**Sten:** Thanks mayor potter and council. When I was first on the council some years ago, commissioner Blumberg pulled me aside and said (he'd been on council 18 years at that point)—and said I could ask you for a lot of things, but there is one thing that really excites me that I've been working on that I'd like you to at least consider taking on the legacy of. He explained to me how in 1993 just a couple of years before I got started here that the city had become the first city in the country to have a local plan to reduce greenhouse gas emissions. At that point, being completely honest, I knew about global warming, but not much more than the term. I sensed it was a problem and literally for mike to come and ask me that—as a person I admired for a long time—I thought I've got to take this seriously. He literally said this is the only thing I'd ask you to take on. I decided after studying it this was both substantively and symbolically a critical issue for the city. Not just in terms of what we need to do, but how we fit into the global picture. We talk a lot about thinking globally and acting locally. The reason I think this is so important is that I believe that

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greenhouse gas emissions are themselves a huge danger to our future. They also are symbols. If you were running a sustainable city and the kind of place that people actually live, it turns out you almost always produce less emissions. When I first got into this I was asking the question how do we get people interested in greenhouse gas emissions and global warming. Now that's not a hard question any longer, because people are very interested and are very well aware of the issue. The answer in the early '90s was you actually don't have to because the way you lower greenhouse gases is renewable resources, recycling, transportation options, land use planning. Those things all ring a bell because they are things we are trying to do in portland and it turned out if you do the right things—and those are the things that make our community more livable—those are the things that reduce green house gas emissions. That's the key to it. I wanted to highlight two things, one is that portland has made and this is a joint plan with Multnomah county. Our emissions since 1990 are up only 1%. If we had projected from 1990 at the rates we were going—keep in mind this is the time people started driving much bigger cars and all these issues—we would be up 17%. That's a dramatic change. Our per capita emissions are down 13%. Per person we are exceeding the Kyoto protocol that the us has refused to ratify and had we had a flat population during this period, we would have actually achieved those in real numbers. Our goal is still to achieve those in real numbers. My second point, which ties into the last conversation is that I believe these types of programs are the right thing to do. I also think they can be and are becoming a critical component of our future economic strategy. The world is going to have to take this problem on whether the u.s. continues to ignore it or not. The u.s. ignored this issue under democratic presidents it is now completely ignoring it under a republican presidency. So it's a bi partisan ignorance of this issue. Nevertheless the world is moving forward. I believe the lessons we have learned, the ways we are trying to do things, the green technology—we have more green buildings than anywhere in the country and probably in the world at this point. We can grow into industries that not only can we export, bring more money into our state—to have a good economy you have to export something. We're not going to export a lot of hard goods any longer, so exporting our brains and expertise is an excellent strategy. At the same time we're doing something that makes a lot of sense. I really believe this plan in some ways is about the entire strategy that we're following and it's focused on a specific indicator, which is the amount of greenhouse gases we're putting forward. I would end by saying that this problem cannot be solved worldwide. I believed it has to be solved unless the u.s. changes its ways. The u.s. will not change its way from a national standard. It will not come from the top. So the way we're going to change u.s. policy is by demonstrating it locally and proving that the u.s. thesis which is that it's too expensive to reduce emissions is flat out wrong. Not only is it not too expensive in the long run, I think that even in the shorter run if you look at some of the economic successes we've had in portland during this time period it can actually be very good business. Portland is doing this because it is the right thing for our city as it is for Multnomah county. But the implications are that the national thesis that this problem cannot be tackled is flat out wrong. A little longer than I wanted to be, but I'm very passionate about this issue. I'm going to turn this over to susan Anderson.

**Susan Anderson, Director, Office of Sustainable Development:** I will take the first 30 seconds to talk about the food thing first, the last item. Just to get to Commissioner Leonard's comments. As you know OSD is a really small bureau. We're only as good as all our partners. We don't own land, run buildings, do transportation, housing, economic development, but we mess in all of it. In this case parks has been in the leadership position in this. What we bring to the table is our entrepreneurial kind of connectedness to businesses and organizations and non-profits. And hopefully to bring some of our expertise working along with parks to move some of those things forward.

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**Leonard:** I want to say I've learned that about you and your bureau. You are very proactive in doing the right thing. I appreciate you saying that and I suspected that would be the case. I've also learned I need to be clear about where I'm at.

**Anderson:** One thing that's clear about working with commissioner sten in all these years is that he has been a true leader on this issue. I was at the breakfast where mike lindberg asked erik to take this on and I looked at erik. He was like, what is he talking about? Erik has learned a lot. Because of that I don't have to say a lot. Today we are here to share some really good news on the environment and in particular on global warming. We're here to report a really encouraging trend that's happening here in portland, and not really any other place on the planet. And that is that greenhouse gas emissions here in portland—the pollutions that cause global warming—that those emissions are coming down here in portland while they are zooming up in most other places. As you know if you stop to think about it, none of you are out at parties or on your block talking about global warming. It's not an issue that in general, except for a few of us, that people are fighting campaigns about. The trend is positive. The emissions are down because for the past 30 years Portland residences and businesses have been taking care of a slough of other problems. Taking actions to make Portland a more livable community and the amazing by-product is that by doing all those other things, all these different policies and actions by government, by business and residence—that has had an impact of less pollution and less carbon emissions. So, global warming is a very scientific and technical issue but it's also a huge global problem with millions of local, simple day to day solutions. Before I jump into the rest of the story I want to make sure you understand just how big this problem really is. We have with us here today someone who has been an inspiration to me for many years, dr. jane lubchenco, a distinguished professor internationally known for her work on climate change. She happens to be at osu in Corvallis. We're very lucky to have her. She has received numerous awards, MacArthur fellowship, Pew fellowship, 2002 Hines award on the environment and one that's very important is the Nuremburg prize for science in the public interest. That's important because she's not only a renown scientist, but she also blends her expertise with the desire to take what she's learned and merge that with public policy. For example, she's been the co chair of the governor's advisory group on global warming. Dr. lubchenco will provide us with a brief overview of the science of global warming, the regional impacts, and what the state of Oregon is currently proposing to do about it. I'm honored to introduce dr. jane lubchenco.

**Dr. Jane Lubchenco, Oregon State University:** Thank you very much, Susan. Mr. Mayor and members of the council, my name is jane lubchenco. I am an environmental scientist, as susan mentioned. I'm here today to convey three messages. One, congratulations. Very hearty congratulations on an amazing success in reducing greenhouse gas emissions. I hope you realize what a big deal this is. The second reason I'm here is to reinforce the importance of addressing this issue of reducing greenhouse gas emissions because climate change is here, it is happening and it's effecting our region. And three, to urge you to continue on this path and continue to be a leader for the world in reducing emissions further and achieving the goals that you have set out. I have a powerpoint presentation. I'm going to focus on the scientific aspects of climate change. I'm sure you know that over the last century global average temperature of the earth warmed by one degree Fahrenheit. Our best assessment is that that is due in large part to human induced emissions of carbon dioxide and other greenhouse gases. As we look to the future, greater increases in temperature are likely. The international scientific assessment scientists around the world that have the relevant expertise predict that by the end of the century we are in now, the global average temperature will be somewhere in the range between 2 ½ and 10 ½ degrees Fahrenheit. You see along the bottom the red line indicates the global average temperatures over the last 1,000 years. As we get into the light panel over the last century, you can see the upward trend of the red line, that's the increase in one degree. The fan of projections into the final panel there are the range of

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estimates. The uncertainty in those has to do with primarily how society is going to respond. How much we are able to reduce emissions is going to determine where we end up at the end of this century. The regional impacts of climate change were summarized in an appendix to the governor's advisory group on global warming report, appendix C. They are reflected in a consensus statement on the likely impacts of climate to the Pacific NW. That was done in the advisory group's effort. That report summarizes that in the Pacific NW we have already seen a number of changes happening. We have seen warming of about one degree over the last century in our region, increase in precipitation of about 10%, the coastline of the central and northern portions of our shores is sinking because of sea level rise. We see significant decreases in snow pack and earlier streamflows. Those are all documented changes that have been seen. To emphasize the temperature changes, these are data that indicate, the red shows the areas of Pacific NW region that have warmed since 1920 and the blue are areas that have cooled. You can see the size of the dot indicates the amount of warming, it gives a sense of how much warming has actually occurred since 1920. Snow pack, is also on the decrease, indicated in red. The blues are areas where there has been an increase. So there is some regional variation but the overall picture is significant increases in temperature and significant decreases in snow pack. What's ahead in the next 10-50 years? We fully expect, given our understanding of climate models that temperature will continue to increase in Pacific NW. The best estimates we have are 2 ½ by 2030. We can't make good estimates about precipitation because there's just too much uncertainty in terms of how the climate system works relative to precipitation in our region. Sea level will continue to rise. Snow pack is going to continue to decline primarily because of increases in temperature. As a result of that stream flow will be earlier. Thus more likelihood of floods earlier in the season, but then droughts in the summertime. Marine ecosystems are going to be uncertain as to how they will respond to this. We've already seen dead zones two of the last three years. That in fact is suspected of being a result of climate change. We think that that may continue. We don't know, we don't understand exactly what's happening. Terrestrial ecosystems are likely to experience increased drought stress and vulnerability because of fires, droughts, disease and insects. I think it's important for us in the Pacific NW and along the west coast to realize where we sit in terms of our contributions to emissions. You are aware the three west coast governors have committed themselves to reducing climate causing greenhouse gas emissions. If you sum up the total of emissions that the three West Coast states generate and if you consider us to be a country, we would rank the 8<sup>th</sup> in the world in terms of our emissions that are released. So we are not insignificant. The northeast states combined are also a significant contributor. All this information fed into the governor's advisory group on global warming. We made a number of recommendations based on key principles that were to set real measurable and meaningful reductions in emissions, cost effective actions and those that would create investment and entrepreneurial opportunities and avoid actions that would impair reliability of our energy systems. The goals that the governor's advisory group recommended were to arrest growth of emissions by 2010, achieve 10% reduction by 2020, achieve climate stabilization by 2050. The strategies for doing that are much the same as the strategies that you here in Portland have been adopting. Looking at a portfolio of different kinds of activities that together would have some very significant impacts. The trajectory that the state is currently on is shown on the slide. The proposed strategies for the state would reduce greenhouse gas emissions and bring them back to the target which is 1990 levels. It's going to take a very substantial package of efforts to accomplish that. I would emphasize that we're not alone in this. Commissioner Sten emphasized the importance of state and regional efforts in this regard and in fact not only the west coast states, but also the northeast states are taking this very seriously and are putting together a package of proposals and actions that are in fact are beginning to address climate change. I would also note, even though there has been insufficient attention to climate change at the federal level, that businesses are taking this topic increasingly seriously as the reality of climate change is more

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and more obvious and opportunities to make money are more and more obvious. The recent announcement by general electric of May 9<sup>th</sup> of a new campaign that they are launching called eco-magination emphasizes how seriously this largest publicly traded company in the u.s. is taking climate change. They have committed in this campaign to more than doubling their investment in r&d in cleaner technologies such that by the year 2010 they would be investing 1.5 billion. But they anticipate sales of 20 billion by that same 2010. So this is an area that's receiving increasing recognition and importance by a few key local visionary communities such as yours and by a number of businesses. I'd like to conclude by telling you I know that it is easy to take good things for granted, and to assume that the good things that are happening here are happening everywhere. I want you to know what a big deal your progress is. It's absolutely astounding and I know of no other city any place in the world that has been able to reduce greenhouse gas emissions to the extent that you have. Congratulations are very much in order. It's remarkable. It's also extremely important and I urge you to continue on this path to be the leader that you have been and provide the state, region, country and the world with an example, a beacon of hope. An example of what can and should be done, not only because it's right to do, but because it brings health benefits to our citizens, economic benefits and environmental benefits as well. Congratulations.

**Anderson:** I'm going to continue with a little bit of a report here. I want to thank Jane so much for coming and being part of this presentation. I think she ended there on an inspirational note, but as you saw where you look at that trend where it just leaps up there, and I don't know how many of you have seen that line before. It's a scary, sobering one. As she indicated, since 1990 total greenhouse gasses in the u.s. have gone up dramatically. But for 100,000 different reasons Portland has begun to tell a different story. As commissioner sten said, since 1990 emissions have actually declined. You had a little bit of last minute information that we are not 1% above 1990 levels. We are now just a little bit below 1990 levels. Per capita emissions in Portland have been reduced by 13%. And all this was accomplished in a time of really rapid economic growth since 1990. Our economy was getting much stronger at the same time we were polluting less. So the success is the result—and this is the key point of the presentation—of millions of separate decisions, policies and actions that taken by business, residence, local governments, non-profits and others. Every day we take different actions—you decide to get on the bus, you use a low-flow shower head, you turn off the lights—or whatever. We think those things don't make a difference, but what we've shown here is that all of those things really do add up. Millions of actions make a difference. You all know some of the kinds of things that have happened in Portland that are adding to this difference. Most of you never think about as having an impact on global warming. You're thinking about it's going to reduce local air pollution, save local families money, help our businesses be stronger. But all of these things have had an impact on greenhouse gasses. The light rail and expanding it to new parts of the city, the hundreds of miles of bike paths, individuals who day by day choose to take the bus or max or use their feet to get around; we've got leeds buildings popping up everywhere saving energy; we have the largest wind farm in the u.s. right up the gorge at stateline, if any of you ever want to take a tour we can arrange that. More than 750,000 trees planted just by bes and parks since 1990. Soon I hope we will have 100% renewable energy for all our city government buildings. The list goes on and on. The amazing thing is that almost none of this was done to try to abate global warming. It was done to make our whole city a better place to live and to work. Portland's decline in emissions is big news. As we get this information out over the next few days, in the popular press and also in scientific journals, I know it's going to draw attention to our efforts and our city. Unfortunately, in reality this is only a drop in the bucket. We've slowed things down here. We're back to 1990 levels. As dr. lubchenco showed what we really need to do is more than a 50%, probably 75% reduction in emissions if we're going to keep global warming from being catastrophic. So that's the doom and gloom and some of the good side. I think it's essential that we do these things for many different diverse reasons. First and foremost it's essential for the

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environment and for the long term health of the people who live on this planet --for our children. Second it's important, not just for our future, but for very practical reasons for today. We need to get off of fossil fuels. We need to do that to avoid future wars, to save money, for our residents and our businesses. Using less oil, if we were to put all our economic development dollars that go to (sorry) pdc and put it into using less oil, that would stop more money from flowing out of our economy perhaps, than any of the money we put into trying to generate new job growth. So there is a huge leak in our local economy in the dollars that are flowing out of here. Almost every dollar that is spent on oil, almost all of it, flows out of the community. The third reason is for our families and our communities. Because less pollution and lower emissions really go hand in hand with quality places to live and work. And finally I think a very key important reason is that back again on our overall economy. As both dr. lubchenco and commissioner sten said, leading cities and countries that are stepping out on this are learning first hand that there are many, many benefits. Cities and countries that are stepping out for sustainable development and reducing carbon emissions are going to be the winners. They will be able to sell the knowledge and technologies and practices and services and products to the rest of the world. For portland this is still an enormous opportunity. But if we don't grab it soon, there are dozens of other cities that are just about ready to leap into this. That is my real urging out of this is that we have this great opportunity, we're known as sort of the green, sustainable city in the u.s. We have this great opportunity to take this platform we've built related to reducing emissions and use it not only to help the environment but also our local economy. We can take questions about this, but there are four to six people from local utilities and others who have been our partners in this who are the ones who are actually leading the way on this who would like to say a few words. Bill Edmunds from PacifiCorp and Diane Zipper from renewal nw project.

**Bill Edmunds, Environmental Policy Director, PacifiCorp:** Thank you for having me here. First I'd like to congratulate the City on this report that you have heard about. It shows that not only your leadership but the citizens of this city and county should be congratulated too for taking the initiative. Together we are reducing our greenhouse gas footprint. Portlanders are willing to do a little extra. We see that from time to time. A good example is what we see in the green power purchasing market. In April pacificorp was recognized as being the second company in the nation in terms of customers buying our blue sky power. We're very proud of that level. I'll also note that our utility colleagues at pge were right behind us on that ranking, and right in front of us on another ranking. So the competition continues. What this competition says is that we have folks here who are willing to step up on the issue and really think ahead. Utilities like ours have to think ahead too. We build resources that can last 40 years and more, out into the future where economics and risks are going to look quite different. We put together a plan ourselves called an integrated resource plan and that's how we try to prognosticate the future and figure out what's best. When we put that plan together, the first thing we do is put in conservation measures—as many as we can find, and as many cost effective ones that we can find. Then we go and get those and work hand in hand with energy trust of Oregon. Then we turn to renewables and obviously those resources don't emit greenhouse gases and are clean in many ways. In our current integrated resource plan we have a bucket of 1400 megawatts that we're looking for over the next 10 years. We're making good progress on that but we found it to be slightly more difficult than we had hoped. The first progress we've made is signing up at 65 megawatt contract for our wind project in Idaho. The challenge we face though is when you put in those renewables and that conservation, we have a gap still in terms of meeting customer demands. That means that there are additional thermal resources required on our system. We're building two gas plants right now and there will be additional thermal resources required to meet our customer demands. This means, as Jane as Susan said, that this is a vexing problem. As we look forward we have to think through some of these tricky questions. What's the next revolutionary technology that's going to help us through this? Is there going to be a wave

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power boom after the wind power build out? We also have to think about evolutionary technologies. How can we use technologies of today, gas and coal plants in more environmentally protective ways? We're finding that DSM conservation and renewals alone will not get us there. With all this on the horizon, what does a company like PacifiCorp do? A couple things, because there is so much uncertainty in the world. As we create this plan we're building carbon risk into our integrated resource plan. We're looking out there and saying while we don't know what constraints will look like, we're going to put \$8 a ton into our plan and sort of in a way pretend that there is a carbon tax out there and use that to create a plan that is more sensitive to carbon constraints in the future. The other thing we're doing is really monitor our carbon emissions. I guess I'd suggest this is an area where the city might turn as well. If we're going to have a market mechanism in the future, we're not going to be able to make a list of our good deeds and take them to the market. We're going to have to monitor them in a very careful and concerted way. We believe it's the California greenhouse gas registry that is creating the gold standard for what these registries look like. It's a bit of work. We've signed up as the first non-California utility to join the California registry. This year we run the gauntlet of going through all the measures to in fact sign up under the registry. In closing, climate change is complex. You heard it from Susan and Jane. This plan shows that there are many many things that a community like Portland can and must do. This is not a problem that lends itself to one silver bullet. We at PacifiCorp look forward to working with the city and our other partners in this march ahead. Thank you.

**Diane Zipper, Director, Green Power Programs, Renewable NW Project:** We are a non-profit organization headquartered here in Portland. We work in Oregon, Idaho, Washington and Montana advocating clean renewable resources such as solar, wind and thermal power. We work on policy issues, siting issues and renewable energy outreach. First, I'd like to congratulate the City and all the work that you've done on reducing your impacts on global warming. We're especially pleased that you are purchasing green power and that you have an RFP out currently to serve your entire city load with renewable resources. You are definitely in a leadership position, not only regionally but nationally and internationally. I think that's something to be proud of. As you know, power plants are the largest source of industrial air pollution in the nation and all utilities play an important role in addressing climate change. Our friends at PGE and Pacific Power we're happy to report are in the top 10 rankings nationally for green power programs. Their customers have shown a lot of support for renewable resources. This in turn has translated into some of the policy issues that both utilities are dealing with and integrating renewables and finding that they are both environmentally friendly and economically beneficial as well. We're very pleased to see such support coming from the Pacific NW. Both utilities have plans to add additional renewable resources to their portfolios by the end of the year PGE will add 75 megawatts of wind power from the project in Sherman County, Oregon. PacifiCorp will add a 65 megawatt wind project that is resource based. Both projects are good for the environment and will have local economic benefits. In Oregon we already have five working wind plants serving over 62,000 residential customers. We have the largest CD solar arrays located in Oregon. The largest is located on the Pepsi bottling plant in Klamath Falls. And the second largest on the Kettle Foods plant in Salem, which is not noted for its exponential solar resources, so they're definitely stepping out there. As a region we will add another 440 megawatts of clean power to our electric grid by the end of this year. That will serve over 110,000 households. This will put us over the 1,000 megawatt mark of in-resources in the region of the four states. I think the city plays a very important role in addressing climate change and in working through solutions to global warming and that we very much hope that your actions will inspire others around the region.

**Regina Houser:** My name is Regina Houser. I am executive director of the Oregon Natural Step Network. We are a non-profit organization. Our goal is to make Oregon a leader in sustainability and we do that by being a membership organization with both private and public organizations.



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Most of our members are in the private industry. We commend the City for its leadership and it is great to see these statistics. As someone who is constantly reading about global warming the news is almost always bad, so seeing something like this is truly remarkable. I think Dr. Lubchenco's remarks that this is a beacon of hope is absolutely right. The Network would like to say keep up the good work and our members are your partners and want to continue. They see the business benefits of acting sustainably. They do it for a lot of good reasons, right reasons, but also it is good business. And Portland can continue to be an example for the rest of the country and for the world.

**Sean Clark:** My name is Sean Clark. I'm the carbon offset portfolio manager for the climate trust. The climate trust is an Oregon based non profit organization that focuses on carbon offset projects and policy. Carbon offset projects are activities that either offset, displace or sequester greenhouse gases. Renewable energy, energy efficiency, transportation management, and reforestation are all examples of projects that can generate carbon offsets. The trust was established as part of an Oregon law, the first of its kind in the world. It required newly constructed power plants to offset a percentage of their global warming emissions. Since then other states have begun to follow suit and as a result we are working with other states such as Massachusetts and Montana. The climate trust is very pleased to have played a small part in the city of Portland and Multnomah county global warming accomplishments. One of the core missions of the climate trust is to purchase carbon offsets from project based activities. We have a portfolio of 11 offset projects, 2 of which are with the city of Portland. The first is a traffic corridor optimization program. Through the use of the climate trust funds the city is implementing state of the art traffic signals timing technologies to reduce automobile idling time on busy commuter thoroughfares into and out of the city. Reducing idling time results in fuel savings which in turn reduce global warming emissions. Our second project, the climate trust is one of the funding partners for the office of sustainable development's multi-family housing and commercial green buildings programs which implement a variety of energy efficiency measures in apartments and commercial buildings. Governments around the world, both local and national, are engaged in one of the most complex environmental policy issues we have ever faced. These solutions are not easy but they are within reach. Addressing the global warming crisis will take honest assessment, creative solutions and the involvement of multiple stakeholders. All of which form the core of the city's greenhouse gas action plan. The climate trust heartily congratulates the city, county, and the public servants charged with this task on their considerable achievements thus far. Now by all means, let's pause, take a moment to celebrate. Then it's time to get back to showing other cities how it's done. Thank you.

**Dennis Wilde:** Dennis Wilde, Gerding/Edlen development. As my nephew would say—awesome dudes. You guys have done an amazing job and the company and I fully support the recommendations that Erik Sten made that we really take this opportunity to create the economic engine for not only Portland, but the state of Oregon around sustainable efforts. This clearly provides a bedrock for pursuing that. To that end, 2 things I would suggest. One is help frame PDC's role as the economic development instigator from Portland to focus on sustainable efforts in their efforts to bring new and create new and emerging businesses in Portland. Around that vision. And also to share your success with your brethren in Salem who seem to think that pursuing a global greenhouse gas reduction strategy might somehow mean that the streets will all be vacant and we'll be wearing hair shirts and living in caves. That is not the case as you have so amply demonstrated. Thank you again.

**Potter:** OK, on item 584 we need a motion to accept the local action plan on global warming.

**Sten:** So move

**Adams:** Second

**Potter:** Call the roll please.

**Adams:** I want to thank commissioner Erik Sten for his excellent leadership on this. He's been at it for quite a while. Congratulations. Also, the office of sustainable development and all of their

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public and private partners. It's very exciting to be part of a city council in a city that is helping to lead this effort in a way that is being ignored on the federal level to the disappointment of many people. So I think it's great we continue and try to serve as an example and we can do even better. Aye.

**Leonard:** I'm glad one of Erik's mentors is Mike Lindberg because I've always considered him the same way myself. He's in many ways a fabulous citizen of the city and remains so. I remember a number of years back when I was involved in the legislature in environmental issues as a member of the salmon and water committee, Willamette river keepers invited me to join them along with Robert Kennedy Jr on a trip on the Willamette river. He said a lot of things that resonated, but one stuck with me that I've borrowed numerous times since I've heard him say it and that is that the environment is not a subsidiary of the economy. I've since heard him extrapolate on what that means and I actually very much agree with his assessment that for an example, goods and products that depend upon petroleum for their sale aren't really sold at the true cost. They are heavily subsidized by the health insurance industry and others because of the impact they have on the environment and the health on people and they should be taxed at a level that reflects that. Along with gasoline. I also, because of my involvement then, became a little more sensitive to some of the things I did in my own life. For those citizens of Portland who are listening by television, if you're thinking I'm tired of listening to Randy, I'm going to go out and mow my lawn, I hope you've bought a hand mower and gotten rid of that nasty mechanized device. And if you're looking for a place to buy them, I always look for an opportunity to promote local businesses—Al's Mower Shop on SE Division is the place to go for the best hand mower in Portland. I really believe that the issue of the impact that we have on the world we live in—air and water quality—is affected by what we do. I don't use fertilizer anymore after learning some of the things I did in the committee I was on. So I go out in my yard with a long screw driver and pop weeds out. It's good for you, good for your back as we get older, Mayor (laughter). And then it doesn't end up in our sewer system which spills into the river. The same with your animal waste. Not just because it's the nice thing to do, but it doesn't end up in the sewer system and dumps into the river. I too am very proud as Commissioner Adams said to be on a council that is cognizant of these things and the impact we have. And I also think each of us needs to set an example in our daily lives. I'm trying harder and harder to do that—and not to do things I would expect others not to do. Aye.

**Saltzman:** Well it is really impressive that the city of Portland has been able to reduce its per capita of greenhouse gas emissions by 13% over 1990 and in addition to reduce overall emissions. I want to thank Commissioner Sten, Office of Sustainable Development, but more importantly the citizens of Portland for stepping up and taking the little actions that accumulate into an impressive result. I'll continue to work on my own little reduction strategies which include getting my daughter to turn off the lights (laughter), getting her to do less than 20 loads of laundry a day which also affect my water bill (laughter). But all these little actions we continue to take. It's impressive and it does have economic potential for us to be able to sell the expertise we accumulate here to Gerding/Edlen to the world and to companies who figure out how to do it and then can sell it to other people. So it's both good for our environment and good for our economy. Aye.

**Sten:** I appreciate the council's support. I think I've said enough. I do want to thank the staff and all the community partners out there. And I do think this next phase is trying to get more and more individuals as well as the corporate actions and I want to mention that our website does have all this information if people are watching. It's very easy to get to. I do want to share one thing, it's important sometimes to be out in front, but it's also important to have people following and hopefully pushing and going. Portland was the first city. But there are not several hundred cities in this country that have local plans. We all work through a group called International Council of Local Environmental Initiatives which Mike was actually a part of forming. It's very rigorous process and so these numbers that you see are vetted through a scientific process. They are done the same way

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with every city. They follow the international protocol. So these are real numbers, they are not estimates we made up. They use a very tested formula. The point I'm trying to make is the country is moving. It isn't just portland. There are hundreds of mayors and city commissioners throughout this country who are taking the same steps that portland has. so the message that it works just underscores the fact that we've got to push. Interestingly enough the thesis of ickly which works internationally is that all over the world you have to move national policy you have to work locally.

So whether you are in the developing world, Europe or any of these places that seems to be evident—in Australia for example—is that in every situation whatever the capabilities are of the country and their economic capabilities the local governments are always willing to go further than the national governments. So that's the way things are let. It's a great pleasure to vote aye.

**Potter:** I want to thank commissioner sten. On July 1<sup>st</sup> I'm going to appoint him secretary of air particulates. Having these 2 issues together—the food and global warming reduction—is significant. It's been pointed out that it's not just this council, but stretching many years back in the efforts of the office of sustainable development our community, development community, there are a lot of folks who should be acknowledged for their fine work. We also are doing this for our children and our grandchildren. Someday they may be sitting around at a similar council meeting 50 years down the road celebrating the fact that we finally woke up in this world and decided to take better care of it. I wish to thank everybody and I vote aye. Karla, please read the next item to be voted on.

**Moore:** Item 585 is a non-emergency and passes to second reading.

**Item 607-1.**

**Potter:** In that case, we'll go to the regular. I need a motion to suspend the rules to hear my appointment to the portland development commission.

**Adams:** So moved.

**Saltzman:** Second.

**Potter:** Karla please call the roll.

**Adams:** aye **Leonard:** aye **Saltzman:** aye **Sten:** aye

**Potter:** Aye. Karla please read the item. Mark, please come forward. Do we have his application?

**Saltzman:** I've known Mark since high school. I could probably fill out his application if anyone has any questions.

**Potter:** Mark Rosenbaum is my recommendation for appointment to the portland development commission. The term will start in july. The reason that I asked mark to take this appointment is because of his commitment and interest to the city of portland and its welfare, his particular interest in the development commission. I think he's going to be a valuable contribution to that commission and I fully support his efforts and I ask you to as well. In front of you, you have his application. Mr. rosenbaum, would you like to make any comments?

**Mark Rosenbaum:** I'd be pleased to, thank you Mayor Potter. Since Mayor Potter announced his intention to nominate me a few months ago, it's been my pleasure to attend a few meetings and get a sense of the very important issues which are in front of the development commission. The first meeting I attended was of the planning commission because I feel strongly about the relationship between the two bodies and was interested in how they were working and making some connections there. I've attended council budget meetings to hear your concerns and listen to the debate as pdc issues came forward. I've attended each one of the portland development commission meetings since that nomination came out so I had a chance to listen to public testimony and get a sense of the issues involved. Attended the city club of portland's meetings and on their report and listened to the debate appropriate to that. Had many many one on one meetings with all sorts of people in the community who are very interested in this topic as you can imagine. I've paid close attention to the newspaper articles and online blog discussions which outline the community's sense of urgency

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around the pdc. What I've heard is not surprising. You've all echoed these sentiments, but we're as an agency to redouble our efforts as regard to transparency, public input and process, fiscal accountability and our ongoing partnership with the city in terms of planning. And not insignificantly continued efforts in areas of sustainability. I certainly look forward to working with pdc on these matters, I'm very excited about the mayor and council strategic planning and visioning process that's coming up. I think pdc needs to be an active player in that process as you come up with a city-wide and regional vision. The efforts of pdc can help coordinate and incent.

Furthermore I'm interested as well in the charter review commission that mayor potter intends to launch and I know the commissioners intend to support and understand that pdc's charter rules are going to be reviewed. I think that's appropriate in terms of an agency that has done so much evolution over the years and so much change in terms of its financing. I wholeheartedly embrace that process and look forward to it. I look forward with council's endorsement to get very heavily with the other four commissioners in looking at the operations of pdc and trying to extend the great work that has been done over the last 45 years in the history of that agency. Portland in spite of the local headlines and things that are going on is still looked at as you know as an international leader in certain areas of development. I look forward to playing a small part in that role. I'll conclude by saying just this, that I was reminded a week ago that it was my grandfather, Leopold rosenbaum who was born in Vienna who first had the opportunity as a rosenbaum family member to serve the community as a charter member of the metropolitan human relations commission. My father, who was also born in Vienna, has had the opportunity to serve this city in a number of capacities, not the least of which was his chair of the housing authority of portland for a number of years. it is a great pleasure to be able to give back to this community a little bit of time and effort in exchange for everything it's made possible for our family over the years. I look forward to this effort and welcome any questions or comments.

**Potter:** Thank you, Mark. The chair of the pdc, Matt Hennessee is here. Would you like to make some comments?

**Matt Hennessee:** Mr. mayor, members of the council, for the record my name is matt hennessee. I don't have any prepared remarks today. I wanted to be here to be of support to Mark. I very much appreciate mr. mayor, the caliber of persons you have recommended for the commission. I've had the opportunity to speak with mark one-on-one and to see him as he has mentioned in several of our recent pdc meetings. I said to him and his daughter just a moment ago, that he's done all that, seen, heard, read all that and is still excited about being a member of the commission. I think he brings a wealth of knowledge and experience. I think it's an excellent choice.

**Potter:** Mr. Hennessee I want to thank you for your many years of service to the city, to the pdc. I think you've done a great job and I just want you to know personally I appreciate that. Questions from the Council?

**Adams:** I do. Mark, you and I had a chance to have breakfast and talk in depth on the issues. I was impressed with your experience and outlook and sense of priority of the position we're appointing you to. Yesterday we had meeting with staff to go over pdc's budget and the legal standing of that budget is we have to include it in our budget. But legally we can't change it. in previous years there has been more of a collaboration between the city council and the pdc regarding the creation of its budget. That's necessary because we oftentimes have to approve the bonds that pay for tax increment funding and other projects. I would like to have a more collaborative relationship between pdc and the city and the creation of its budget, which is after all not just the way it spends money, but its Workplan. I wanted to know your views of that.

**Rosenbaum:** I can tell you in general that I believe that the greatest strength that the city and the region gets out of pdc as a result of this synergy and the partnerships that we can sustain. So very specifically, it's my hope that we will see substantial joint work in regard to future planning efforts and the vision process we just discussed. I think that in terms of planning we need to be intimately

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connected. To that end that the budget needs to be cooperatively planned, that's fine. My inclination is also that the implementation of the plan that is jointly created by portland, pdc and all the regional partners is something that probably want to leave to pdc to implement with some oversight in reporting. But I look very much forward to very close alignment with the city.

**Leonard:** Appreciate you being here. I've been on the Council a little over 2 ½ years now and I thought I was a fairly worldly person before I came here. I've been caught flat-footed at times over the animosity that exists surrounding developments that the council at times has to deal with. I'm thinking of various projects in northwest, southeast portland and skinny houses comes to mind. So I was struck when the issue of the bridgehead process was developing how—and frankly I didn't get in the middle of who had the better design or any of that—one of the developers did something I had yet to see and that is to get a community to support a development. I was actually very intrigued by what the process was that the individual used to do that. I thought that was ingenious and said so before the decision was announced. I'm not one who subscribes to conspiracy theories.

Portland's small and secrets are hard to keep. I do think there are some judgment issues involved however. As much as we've discussed environmental impacts of petroleum use, I do subscribe strongly to the belief that the cost of using petroleum isn't fully reflected in the price at the pump. I also believe that the value of the development is necessarily who may have the deeper pockets. I think there is a value when you can get the community to support a project even if on a balance sheet it may not indicate that. I don't think there has been a checkoff list at pdc for that factor. I think in connection with our hearing today how I could best state my concern. Those are corollaries to that. What I'm suggesting requires breaking the prior mold of how the pdc has approached development. As I've said many times since I've come here, if change was easy, somebody else would have done it. It isn't. So questioning the status quo, assumptions, second-guessing the staff is not pleasant—I can tell you that. But it is very important and the singular reason I think the pdc has confronted problems. Not because of bad motives, or that there is the best interest of the city at heart, but I do think there is a disconnect between the pdc staff and the pdc commission. You can call it a reluctance to what some call micro-managing—what I would call managing—and taking on faith some things that are said and not asking a lot of hard questions. I've given you a broad overview of what my concerns are. I think each of us on the council in our own ways might agree that kind of gets to the heart of the issue. I'm not interested in replacing pdc members with people who—I like the work that pdc does, I like where we are going—but I also think that some of these factors need to have a lot more attention.

**Rosenbaum:** Let me give you my take on some of those just briefly. One of the things I watched in chairing mayor potter's executive committee on the election was a community response to an election which was extraordinary. One of the most precious aspects of that campaign was being able to sustain and value the grass roots efforts that were going on. I agree completely with what you are saying with the enthusiasm that was being generated on a couple of projects and how extraordinary it was. I also think that pdc may have created a situation of some of this animosity by virtue of not giving to the neighborhood evaluation committee a set of weighted criteria by which to evaluate the proposal. My view of it was pdc gave out criteria as if they were equally weighted and then applied an appropriate community overlay to the committee's response. And evaluated the response and said yes, we understand what the neighborhood is saying but the broader community values which were charged to oversee lead us to this and this conclusion. Maybe one of the things we can enter into going forward is to have a discussion with the city council and others about what weighted community priorities might need to be given to neighborhoods as they evaluate the projects which they are going to have to live with. Part of that process hopefully would be a policy discussion with city council about what those weightings should be. It's just one thought I've had commissioner leonard in respect to your very important item.

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**Leonard:** There have been some people who have said to me about the city council that they appreciate that we're all working well together. That there is a value in there being disagreement publicly at times which I agree with. Not for the sake of disagreement, but consensus goes so far. If you have legitimate concerns and you're burying those in order to have consensus that is not necessarily in the public's interest. I'm looking for you to sometimes be the lone no vote. I'm actually going to be observing to see if you're the person that's speaking differently than what the rest may be saying. I think the community including myself is searching for answers right now for development and economic development in portland. We need to hear people on the pdc articulating and reflecting what the legitimate concerns are right now. I have before on these appointments for a variety of reasons have just voted and kept my mouth shut, but I'm really optimistic about the future and think that it might matter for me to say what I'm saying. I hope you take to heart some of the good things that I think are being suggested now for the pdc. I fear we are getting to a point where people are getting defensive and creativity goes by the wayside when that happens—on both sides. I don't want that to happen.

**Hennessee:** If I could mayor and commissioner leonard, I am so thankful as a member of this community to have opportunity to express at least in this forum the importance and appreciation for being a student of life. I think everyone of us should approach every opportunity which I believe this is to learn. And I think we learned a great deal through the bridgehead process. I think that it's important for each of you to know that you're talking about people who volunteer their time, who love this city, who give a tremendous amount to it. And we will make decisions as do you that are questioned a great deal and that people may not agree with. But in the end what is important, and I pray that you don't think that we as a commission are defensive or not able and willing to learn, because we are. We very much value the continual dialogue that goes on and even though I speak as commission past almost, I think that those of us who are still giving our time to the last day that we serve at pdc are doing so to protect the rich heritage of those who framed the pdc charter that became effective in 1958 and for the many people who have served on the commission and the people who work at pdc everyday. I hope you know we welcome with open arms any constructive criticism you wish to give. I pray that you understand that we are not doing our jobs to try to be anything other than transparent and helpful to the process. That's the way we would always want to be. I also hope you know that we have been a commission who has asked probably far more questions than sometimes even our staff and executive director wished we would. We've done it because we believe it's the right thing to do. I think over time there are decisions that have been delayed, policy (the bridgehead was one of them) which was headed down the road for a decision in December which we absolutely extended because we felt it was really important to make sure we were listening. Our decision was one that many people did have a hard time with and there are certainly learnings that I have taken away as chair that will make me a better person, that will help me serve the public in the future in a better way. In the end I think that we made the best decision. Could we have done it differently? The answer is yes. And you and others have expressed many public opinions about that.

**Leonard:** I appreciate your comments a lot and as one who has tried to do some of the things I'm suggesting that the pdc do, I absolutely appreciate how difficult things I'm suggesting is. Maybe more than most because it is not easy. But I've also learned it's important for me to breathe clean air sometimes—when I have an opportunity to meet people from the community in my office I actually suggest that we meet in their neighborhood. Because of the environment and people react differently there. I worry that there is a culture—and I see the distinction between the pdc staff and the pdc commission. But I'm worried there is a culture at the staff that needs a lot of the same work we did at bureau of development services. As I pointed out yesterday in the budget talks when I suggested to don mazziotti early on that I would like to see in the budget customer service training and an audit, he didn't argue. He did it and was great about it. So I don't want it to sound like I'm

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always negative, because I'm not. In fact your staff and I as I mentioned yesterday, met last night at lents to work with the lents community and we're going to be doing some great things out there. Because of the commitment of your staff. I'm very cognizant of the good things, but the other things need to be addressed.

**Hennessee:** I think this is really good if I could make one last comment. I think that through this whole process there are some good things that have happened. I've appreciated commissioner parsons talking to the staff, to the mayor's chief of staff and I think the person in charge of pdc day to day operations, Rochelle lessner, being there as well. The Mayor's visit did a lot to boost the confidence of the members of the staff who sometimes I think can feel pretty much in crises and pretty much taken out to lunch, thrown under the bus through all of this. I think pdc wishes to continue the collaborative and important relationship it has with city council. I can assure you that when commissioner Wilson and I first came three years ago, we were champions of a very important issue. We felt immediately an us against them kind of environment at pdc and we have worked very hard, and will till we leave to make sure we don't have that.

**Potter:** Thank you. Any other comments or questions?

**Adams:** Mark, I think that there are good people doing good work in the economic development department. I think that though there needs to be changes in the way that we locally and regionally go about seeking to support business expansion and to complete business recruitment. I want to know how open you are to doing that differently.

**Rosenbaum:** More than open. I view it as a personal responsibility to delve into just how coordinated is our approach in terms of economic outreach. My observation is that state has some involvement, regional partners, pba, pdc, city council has some involvement. What I don't see in all of that at least so far preliminarily is any kind of strong strategic plan backing those involvements in any particular focus or target. So I not only embrace it, commissioner adams, I intend to make it a point of personal interest to see if we can work together with the council and others. Really focus in on that and I'm interested in seeing with Mayor Potter's vision strategy for the community how we target that economic development around regional clusters of strengths in terms of industry, arts etc. And tie education to it as well. There is a whole system that you could probably enumerate better than i. But I am very interested in that.

**Adams:** Glad to hear you say that. I'm interested in working with you, the rest of the pdc, the council and mayor and other public and private partners in the region to reinvent our business improvement and retention efforts, beginning with trying to achieve a mutual agreement on what our goal is. Both for business success and for family and individual prosperity. When I review the 30-odd years of effort on the state and local level, what it lacks is an agreed upon actual, not just a column, but a mark on the column of what we want to achieve. It's complementary to the Mayor's efforts on strategic planning which I wholeheartedly support, but I think it's critical and we need to fast track it for jobs and economic development and family prosperity. The other thing is, pdc I would encourage to develop as strengthen as part of pdc and have always thought to do this on the city side as well, but it's difficult. And that is to debrief after your projects. What went well, what didn't go well? From all different stakeholders perspective. City government I think has a challenge as does our agencies to constantly be learning. And not just learning of folks like us talking to each other, but other stakeholders that every project will have its winners and losers. We need to know from all perspectives as we move forward how it really went for everybody.

**Rosenbaum:** Good point.

**Potter:** Other questions? I need a motion to accept the appointment.

**Adams:** So moved.

**Sten:** Second.

**Potter:** Karla please call the roll.

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**Adams:** Thank you matt for all your huge, big commitment to the city, to pdc. You've made great strides and I wish you well. Thank you. It's a tough job. Mark, I look forward to working with you. I'm very excited. I enjoyed our conversation the other day. You are very impressive and will bring great talents, outlook and perspective. Aye.

**Leonard:** I appreciate your responses to my questions and I greatly appreciated Matt's comments. And I appreciate your service to portland. I think we're at a crossroads. I'm only speaking for myself, but I think most people agree we're at a point for a variety of reasons it's important to talk about the future of how we develop in portland. I want to make it clear, not if, just how. From my view, that's the question. I'm a strong believer in the tools that pdc uses. And a defender. I say that in the hardest places in this community to say that at times. They are important tools and I care so much about them that I'm willing to do things that others may think of as unthinkable to preserve those tools. So I hope that we can enter an era where we see productive discussions about how to improve administering those tools and how better to coordinate them. I appreciate you are willing to step forward into the breach at this point in time and look forward to doing whatever I can to help you succeed. Aye.

**Saltzman:** Well thank you Mark for taking on this assignment. I'm sure you will definitely be an asset to the pdc. I look forward to your tenure. I want to also acknowledge matt hennessee who has been an asset to pdc and a strong leader. Thank you for all your work on behalf of the citizens of portland. Thank you both. Aye.

**Sten:** Well as to the vote at hand, I haven't asked any questions because I know mark well and am quite confident you'll do a terrific job and was only reinforced in that listening to your answers which were very thoughtful. We've had a few forums on pdc recently. There's more to come next week as I'm well aware. This is probably not the moment at this hour to talk a long time. Just a couple of short comments. In terms of economic development, I don't think we have a thesis. I think we completely lack a thesis as to what we are trying to do. As I lean into that, I don't think that's the case with affordable housing. We have pretty well developed policies. When the council develops policies clearly in public with the commission, the staff is tremendous at implementing them. So I think we do need an implementation policy. I think the citizens are best served if it has some independence from the council. But I think we have made the line much more squishy than it needs to be between policy and implementation. I think that the answer is for the council to be more clear in what it considers the policies to be. I say the council because the council has to set clear policies if we expect them to be implemented. It has to be in this day and age with the choices that are in front of us and the real different values and other things, we have to give you more of a policy structure of what we want in development and economic development. We have to say, on the controversial ones, if our sense as a policy body that the community doesn't want a big box on burnside, we need to lay that out. And probably not on burnside, but we need to have a big box conversation. What types of places should they go? I'm not trying to say that all the issues are the council's fault, but I am trying to say that I think the solution is in the council being more clear in what it considers the policies to be and that way the caliber of commissioners that we have including our chair matt hennessee will get them implemented, but I think that direction has to flow from citizens through us to you. At times in the past I think it's gone in the opposite direction. At that point, I think then we should live with your decisions. The ones we like and the ones we don't like and say we gave you the policy and you are implementing it. I think that's where more work needs to be done and I'm very eager to do it with you. I vote aye.

**Potter:** matt, thank you so much for your service to portland. I know there's been a lot of fire directed towards you, the pdc commission and staff. I think for the most part you folks have held up wonderfully. I know you do volunteer your time. This isn't something you get paid for, so I especially appreciate the fact that you are doing it under those circumstances. To mark, I look forward to working with you. I think you'll be a great asset, not just to the pdc but to the city as



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well and to our region. We do have to think more regionally as to how we resolve problems and so I look forward to working with you. I know on behalf of the mayor's staff, the rest of the community I say thank you and vote aye.

**Item 601.**

**Potter:** I have to excuse myself for a jr rose festival parade.

**Leonard:** Do we have staff here on this. Public testimony? Now we can move it to second. Item 602.

**Item 602.**

**Peggy Anet, Benefits Manager, Bureau of Human Resources:** Good afternoon, I'm peggy anet, benefits manager. Given the time, I will be very brief. This is an issue with which you are well familiar. This ordinance authorizes the council to authorize the use of the city's health fund, unrestricted reserves to subsidize the difference between city core and Kaiser medical health plans for 2005 and 2006. The city's labor management benefit committee considered this issue and has brought this recommendation forward to you with a unanimous vote. The impact or cost of this will be approximately \$8.5 million for the next year. And with that essentially the unrestricted reserves that the city now uses to subsidize the rates will be depleted. The reserves have been used to subsidize the city's health care rates since 1998-1999. The practical effect for example of this action is to provide approximately \$200 in support for family coverage on city core and \$163 in the subsidized city Kaiser family coverage. We all know what we're looking at in terms of dealing with health care issues and we've enjoyed the relief that the reserves have provided. We're asking for your authorization to continue to use reserves for this purpose for 2005-2006.

**Leonard:** Why does this hit me as irresponsible?

**Anet:** There is a long standing legacy of the use of the reserves for this purpose. The way the current labor contracts read, in the absence of the use of the reserves the employees themselves would be paying the amount over what the city contributes. I think that is the reason the reserves have been used for that purpose. As I mentioned, on the family side, as the contracts are currently structures, employees would be paying for city core approximately \$200 a month to contribute towards—

**Leonard:** Peggy, that's my point. Next year it will hit them like a brick and why didn't they fashion a more scheduled implementation that cause the cost if you took the \$8 million and you used say 25% of it now and that much next year and the next year and slowly implement it. As opposed to driving off a cliff. I'm trying to understand the logic.

**Anet:** Again, commissioner leonard it's a longstanding legacy. And you know that my participation in this legacy is now at the tail end of the use of the reserves. The comment that I would make is that in terms of the discussions that the council had last December in terms of taking a look at a new funding formula, I think that that was a mechanism that recognized that we needed to adjust the cap and take some action to engage both the city and employees in cost control mechanisms. What happened in terms of the course of the discussions is that that is of course a negotiable issue. So what we have now is the discussion again between our labor groups as to how we're going to address the question. It has been a matter—always has been and will be—a matter of how we divide who pays for what in terms of the premiums.

**Leonard:** I understand that and I'm sorry to take up time because we're really running late, but I cannot support this.

**Anet:** I was trying to be brief.

**Leonard:** I cannot support this, my point being I think that it is ultimately irresponsible to the employees to hit them all at once. It's not defensible in my opinion. I'm happy to explain that to the groups involved, because I'm sure I'll have to now that I've said this.

**Sten:** Can I make one point? I want you to consider the benefit enrollment. The council did authorize this I think informally. I'm not a huge fan of the plan either, but the benefit enrollment

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package is in the mail, so everyone's benefits that start in 20 days, don't start if the council doesn't approve this.

**Leonard:** Well I'm not objecting to our approving the medical plan. I'm objecting to us using \$8 million to subsidize the plan. I think that should be used over some other period of time that is.

**Sten:** Take it out of general--? Somebody has to pay the cost.

**Leonard:** No they pay. Commissioner, a year from now under this plan all the reserves will be gone. They pay 100% of the cost.

**Sten:** It's not that I don't understand your point, I think it's --I want to be polite--much beyond late. The plan starts in 20 days.

**Anet:** May I make a comment?

**Leonard:** This is not something that's been on my radar--no one has talked about it. When did they vote to decide to use the reserves?

**Anet:** This was late April. Let me go back and explain one thing. When we brought this proposal to City council in terms of the funding formula last December, we actually proposed using the reserves to cover the cap gap difference. That was part of the proposal that we brought forward. We talked about at that time, knowing full well that we have to revise the funding formula when the reserves are depleted--we talked about this coming year as being an educational year in which we work with employees, and the city on wellness, disease management, education of cost issues. This proposal for 2005-06 was one of the pieces that we included in that December package.

**Leonard:** I'm sorry if it escaped my attention. I am focused on it now and I think a year from now we're going to hear a lot of screaming when people start paying \$250 a month all of a sudden versus maybe \$125 now and \$125 next year. This is not something that I am comfortable with. I apologize if it catches people off guard, but this is my first awareness of this issue.

**Saltzman:** That was in December that we talked about that.

**Anet:** Correct.

**Saltzman:** Isn't it probably at least from my perspective that we have not achieved much progress on this on the other fronts? We agreed to spend our reserve, but in terms of education and incentives for reducing healthcare costs, we've come up with nothing.

**Anet:** Well, what I did say is it's this coming year that was our major emphasis. I would say that we've begun the brown bag meetings and we've gone out to a number of the bureaus to discuss the healthcare cost issues. And wellness. I can say that at least in terms of employee reception they've been very enthusiastic. I think they know that healthcare is a significant issue. They are interested in becoming engaged in the discussion and some of the wellness ideas that we have been talking about. On the other hand, they are very much afraid of what level they will have to contribute. Of course a significant part of this is what we end up dealing with in terms of the negotiations with the various union groups in the city which ultimately is where the decision is finally made in terms of how much the employees pay and how much the city contributes. This coming year 05-06 was really intended again as a year where we could focus on those, bring the issues--we thought we had a funding model that would kick in after 05-06.

**Leonard:** Excuse me, Peggy, is there any scenario under which, no matter how we redesign this plan that we don't envision there being a substantial employee contribution next year?

**Anet:** I think that the answer to that question will be resolved at the bargaining table.

**Leonard:** I'm asking as a practical matter, what could possibly be done to the benefit structure to relieve an --what I thought I heard you say--almost \$300 a month contribution per family?

**Anet:** \$200 per month per family.

**Leonard:** What could reduce that substantially?

**Anet:** It would depend upon the contribution split negotiated between the city and employees.

**Adams:** We also have the opportunity for plan redesign or wellness programs that might get some of those costs down. I'm not an expert to know how far.

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**Leonard:** My question as a practical matter isn't there going to be a contribution by the employees?

**Anet:** This coming year under this model what we would be talking about is the employees at the family level would be contributing \$36 per month. In terms of the timing of the –

**Leonard:** Because we're using the \$8 million to subsidize.

**Anet:** Correct. And as you know we're in negotiations with the firefighters association and the health care cost issue is the premiere issue there. And then in the next year we will have a variety of other unions including the ppa that we begin this discussion with as well.

**Leonard:** So what's the 5% contribution now for the ppa members, because they have the agreement, the 95-5.

**Anet:** It's about \$50 a month.

**Leonard:** Is that subsidized?

**Anet:** No it is not. The city pays 95% of their cost and the employee picks up 5%.

**Leonard:** Is it theoretically possible that the plans negotiated would have similar contributions by the other bargaining units?

**Anet:** I think that—

**Adams:** That's our decision, isn't it?

**Anet:** I believe so. I think that's the nature of negotiations to discuss what the premium contributions will be.

**Leonard:** What I'm trying to get to is are we setting the employees up to be hit with a huge monthly bill that they will not be able to absorb as a practical matter? A lot of our employees are not that highly paid as you know and I don't know how we get people prepared for \$200 a month if they are living from check to check.

**Anet:** I think, in fact when we first started this discussion, last summer—almost a year ago in August—one of the things we talked about at that time, should the reserves be depleted and we not have an alternative funding model that employees would be looking at that level of contribution. I think that even though there are varying degrees of opinion as to how much employees should contribute for coverage, there is no one who thought that it was realistic to expect city employees to pay for family coverage \$200 a month. To that end, when we have looked at alternative funding models we've looked at ways where we believe there should be a shared employee/employer contribution but we're looking for ways to mitigate those cost increases and be cognizant of what the city's financial situation is.

**Leonard:** If we spend all that \$8 million isn't that money that's used for extraordinary medical costs as well? If that's not there, what do we do in that situation?

**Anet:** To frame this question, I believe what Commissioner Leonard is asking is if this money is depleted, does this mean that we have no other reserves to cover our large claims cost in what we call incurred but not reported reserve? Those wouldn't be affected because we have set aside and continue to set those aside as restricted reserves. So this action does not impact the set asides for those normal reserves you maintain for a self-insured plan.

**Adams:** Could you describe for me the nature of the Council action in December?

**Anet:** The nature was we had an extensive process with labor management benefits committee taking a look at funding, benefit design and essentially wellness kinds of issues. What happened as a result was the lmbc came forward with a whole series of recommendations and looked at different plan options, wellness issues and agreed to some principles with regard to the funding mechanism. We brought those forward. We did not recommend any significant benefit design change at that time. The kinds of things we talked about though were looking at a lower cost benefit option to be put into place for all employees, would also provide a more affordable option for retirees. We realize that employee communication was critical, that we were woefully lacking in that regard that we really needed to reinvigorate our efforts with regard to wellness activity. Commissioner

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Saltzman asked us to come back with a report on the possible implementation of a Canadian drug importation system. All to the eye of coming up with a way to make the plan more affordable.

**Adams:** Was is an ordinance, and executive session, work session?

**Anet:** There was an ordinance brought to the council which was adopted unanimously that laid out a strategy that talked about 2005-2006 being the status quo year and then we would implement this new funding model that would have a status quo for next year that I've described in this ordinance; the year after the city would move to a 95/5 contribution with 5% paid by the employees, 95% by the city. Thereafter there would be a new cap established.

**Adams:** So this implements an earlier ordinance approved by Council.

**Anet:** Correct.

**Adams:** Just to double check here. If this is not approved what would be the implication?

**Anet:** The implication would be, particularly given that it's an emergency ordinance, that we would have to revisit what we're doing with our open enrollment which is currently underway since our plan year begins July 1.

**Adams:** What if the decision was delayed a week because the emergency clause was removed?

**Anet:** The implications are that there is a different decision made not to subsidize it. We would have to either be telling employees that they would be contributing an extra \$200 a month beginning July 1 this year or we would have to look to city council for alternative funding source.

**Leonard:** Couldn't we adjust that with the reserve fund? My point isn't that we not subsidize it, but implement it in stages. So that you use the reserve to slowly implement what appears to be a train coming next year.

**Anet:** It will actually be the year after next. 05-06 is taken care of in this ordinance. July 1 of 2006 is the cliff you are talking about.

**Sten:** Peggy and commissioner Leonard, if I could—I'm not in a particularly comfortable position trying to, I think we have a problem here. If you recall we put an offer on the table for example to the fire bureau that assume this for this year and then had a specified split with them for the year after that was going to cost them a chunk and us a chunk. The working assumption at the council discussion which was a unanimous vote last December and gave the staff to work forward with this plan, I just don't want to put Peggy in the position of having to defend—

**Leonard:** I wasn't here in December and I'm telling you know I don't feel it's and unfair position to put people in that one day are paying virtually nothing and the next day paying \$200 a month.

**Sten:** But you're making an assumption that is not in line with the policy we adopted was, whether you were there or not. The assumption was that 3 things were going to happen in the out years. This is not my plan, but the entire council, including you I think, did vote to offer the firefighters this approach. And so there is pretty strong evidence that this is an approach that council has been offering people.

**Leonard:** To be clear, we offered an approach for a plan that did not include discussions about disposition of reserve funds. That's not my recollection.

**Sten:** Sure it did. You're wrong. They had this year was the status quo year and the only way to get there is with the reserve fund. And the assumption was that—

**Leonard:** That was not my assumption.

**Sten:** Well, it's what it said and you voted to authorize it.

**Leonard:** That means the benefits are status quo. Here's the problem we have.

**Sten:** Let me finish commissioner. You can do what ever you want. The council did make an offer to the fire bureau. The assumption for the out years was in that offer that three things had to happen. One was there had to be work to bring the price of benefits down, as commissioner Adams and you were talking about—I agree with you completely. And two was that both sides would have to pick up a chunk of what was left. That is what the council went on record saying to the employees that we don't believe that we can bridge this gap entirely through savings—which is

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what you're saying. And we went on record in December to all of our employees saying we intend to work with you though the next year to come up with a strategy and then both sides are going to have to pay. What you're saying now, is that there is a council assumption that the employees are going to eat all of that \$200 which is counter to what the policy was that we're going to fight to get it down and then we're going to have to come up with some split on that. I'm just trying to make sure we all understand what our bargaining strategy was.

**Leonard:** Then I misunderstood. Because what I always understood about the reserve fund is that it isn't necessarily the city's money or the employees' money. It's a reserve fund there to be a reserve fund. We have elected to use it to subsidize premium costs. When I've had discussions about the firefighter contract and others and I've talked about cost sharing for the actual cost of the plan, not with subsidies involved with the reserve fund. If we're talking about a 95/5 I'm not thinking that we subsidize those costs from the reserve fund. My working assumption has been the actual cost of the plan will be 95 we'll pick up. 5 the employees will pick up. My concern is if we don't think about this and we just adopt this now, a year from now if we have not done something substantial, then you are going to have employees that are going to go—when they get hit with a bill we have not resources to deal with.

**Sten:** We need to check the dates because I'm positive you were at this discussion and I'm not here to argue with you. I think we put staff in an untenable position if the council votes through a strategy that's—it was actually late November when we did this.

**Leonard:** Then I wasn't here. We had the discussion, I'll grant you that. My recollection is it's never been about using the reserve fund in the way we're talking about. It's there to subsidize rates and help. I get that. I'm saying if you use it all this year, what do you do next year when you reach the cliff?

**Adams:** If I could, one scenario, unlike and commissioner Saltzman expressed his frustration frequently about how we talk about making change but we never get there. The flip side is that this is the end of our ability to procrastinate on all sides. It is the finale. They are going to end this movie like Thelma and Louise, or with a happy ending. If council made a previous decision to go this route, I'm going to honor that decision. I happen to share your concerns, but if that was the previous decision and the plan reenrollments are out—

**Sten:** We need to go back and have people briefed on it. Again, this is not my argument with commissioner Leonard. I'm simply in a position where when council takes an action six months before benefits go out and we instruct our staff to proceed accordingly I think we're in dire trouble if we change it.

**Leonard:** And I agree with that, but my recollection of what you're talking about is the percentages of what—you're shaking your head no.

**Sten:** I think we should set this over a week and have people take a look at it. It's an important conversation. We asked Yvonne Deckhard to come to council with an overarching benefits strategy by late November, because the goal was—I was deeply involved in this—which we didn't achieve to try to get to an agreement with the firefighters by the end of the year. The reason was that we had a council who was unified on the goal and a new council coming. Everyone with open eyes thought if we could get this contract done this year it will solve a lot of problems and set some precedences. If we can't, it will take a long time and probably go to arbitration, which is exactly where we are when we couldn't get there in my opinion. I'm not saying we are going to go to arbitration, but that's the way it looks to me. So, we had Yvonne come with a strategy because I said to the council—because I was leading that negotiation—I cannot negotiate with the firefighters without an overall strategy. In terms of what does it mean for their overall benefits because you can't make a deal. The strategy that came back and was presented to council was one in which over the next 3 years we phase in a much more aggressive cost shift. It included making this next year an educational year. Whether that was a bad decision or not in retrospect I hear your argument.

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But that was part and parcel about what was offered to the firefighters and it was done after a council session in the chambers on television.

**Leonard:** But they voted no.

**Sten:** The benefit strategy was.

**Leonard:** But that package you are describing they voted on after Christmas, they voted no on.

**Sten:** Sure, but nobody has made a move to change our benefit strategy for the next couple of years. Here we are two weeks before it starts.

**Leonard:** Harry did you have something to say?

**Harry Auerbach, Deputy City Attorney:** Just for what it's worth, I do remember sitting in council session, I can't tell you what day it was, and there being conversation specifically about whether to incrementally deal with this problem or continue to fund the whole thing out of the reserves. And there was a conscious decision made not to do the incremental approach. Whether or not that was a good thing, the council did have that conversation. There was disagreement about it, but ultimately there was a decision made. I don't remember if there was a split recommendation from lmbc or what it was, but there was a conversation about whether to do it all at once or do it over time.

**Adams:** Do you want to set it over?

**Leonard:** No, I mean if—

**Saltzman:** I'm comfortable with setting it over a week. These are very important issues. With all respect, we did make some decisions in December and I feel compelled to honor those decisions but I 'm not sure I can tell you. I'm philosophically in full agreement with the notion of spending like crazy.

**Leonard:** I'm always nervous when I'm agreeing with commissioner Saltzman on employee relations issues [laughter].

**Anet:** If I may comment—and again, at different points in the discussion we've had our eyes on different prizes in terms of what the focus of the discussion was. For some time we've been discussing that the current funding model would not last beyond next year. We've talked for ever since I've been here about the fact that the reserve funds were going to be depleted and that was really the impetus way back when, when Yvonne was given the directive to have the lmbc look at alternative funding recommendations. In fact, where that recommendation came from was part and parcel of the ordinance passed last year to use the reserve funds to fund the cap gap for the year that we're in. We talked at that point that we needed to come up with new strategies, knowing full well that we were going to run out of those funds. That was the impetus for the work done this year. So I know for at least that period of time we've talked about the fact that we were not going to have anymore reserve funds anticipated frankly at the end of next year.

**Leonard:** Apparently I was asleep at the switch. Hopefully the unions that are representing the employees on the benefits committee are not and appreciate at least what my sentiments are? Did they discuss that?

**Anet:** It's been a very candid discussion about the consequences of the depletion of the reserves. Again, everybody is wondering which model we're going to go to. I don't think there is anybody that contemplates that we're looking forward in two years a \$200 a month contribution.

**Leonard:** One year.

**Anet:** A year from July. But this recommendation was unanimously adopted by the labor management benefits committee for the 05-06 year because the alternative was either paying a significant amount now or looking to the council for an alternative way of funding that difference. And we absolutely know that the key issue is how we are going to divide up the costs of the premium.

**Leonard:** Apparently I was Christmas shopping in my head when we had the discussion, so I'll support this today.

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**Sten:** One thing I want to mention is that the Council action did result in adjustment of the five-year forecast based on these projections. So there was a whole we're putting this on the table to the unions. I think the firefighters made a mistake turning this down. I've said that publicly.

**Leonard:** I agree.

**Anet:** And commissioner leonard, knowing you as long as I have, I think it's time for you and I to have another conversation about some of these issues.

**Leonard:** Apparently I missed something along the line regarding the use of the reserve fund, but I'm prepared to vote. Does anyone want to testify? Karla please call the roll.

**Adams:** I'm light headed from the lack of food, but I'll try. And when you take commissioner leonard to the wood shed...I'm going to support this, because of the previous council action and it does bring finality to what has been years of procrastination on all sides. I also though implore this city council to change the dynamic in which these discussions are happening and to not rely on the lmbc for establishing some measures of success and some principles-which I know they've come up with-for moving forward. And some face to face meetings with the city council and the heads of some of our labor unions where we can have an opportunity to agree on the facts or not and establish some success measures that then can be bargained by staff. But we are finally at that critical moment where we have to actually find a way to reduce costs or we will have to come up with ways to put more general fund in this and we have such competing demands. \$880 million strategic deficit for this city in terms of infrastructure needs over the next 10 years, so this is the time. Aye.

**Leonard:** Aye.

**Saltzman:** Well I appreciate the discussion that commissioner leonard does bring up because it is to me still like we're running blind here, spending our money and hoping that we're going to cross some new threshold where everyone is going to sit down and agree to some meaningful incentives to control health care costs. So we're doing this on faith, because I have yet to see any agreement that says any actions that will reduce health care costs. So this will only amplify the stakes in that discussion and I hope it comes out in the proper balance between employees contribution and tax payer contribution to health care costs. Because that's what it really comes down to. And the sacrifice that the opportunity costs is money from the general fund that goes to our other critical services. So there has to be more reckoning then there has been to date. I hope this ensuing year will provide that reckoning. Aye.

**Sten:** Commissioner leonard and I really don't disagree on this. I'm very worried about this and spend a lot of time looking at it. One of the things however I just want to be clear about that the council did is that we through this policy—and there are no great answers—what we did was we locked into our fiscal forecast the number the council is willing to put up for benefits for the next five years. It's a number that nobody can argue is not looking out for our employees, but it's a number that is not going to close the gap. One of the importance of staying on that approach is if we do get into contentious bargaining situations we can be very clear. We're not trying to push this completely off on employees but we've put this on the table. I think there is something about the clarity of our strategy. This fund has always vexed me. It's a fund that comes from contractual obligations to the employees. It has to be spent on benefits. So when they unanimously say they want to spend it down this year, I don't like that a ton. I also think that they will own that decision ultimately because we're not going to be able to fill that gap whether it's this year or next year. So it's not a situation I like. Aye.

**Item 603.**

**Jimmy Brown, Director, Office of Neighborhood Involvement:** Before we get to the ordinance, I would like to bring to council's attention to a technical amendment we're making to the ordinance. Specifically in section b of the ordinance, it currently reads, the funds in this reserve shall be held

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in the general fund 202. We would like that to be amended to read funds in this reserve shall be held in the insurance and claims operating fund.

**Sten:** Moved

**Adams:** Second

**Leonard:** Hearing no objections, so ordered. It is amended.

**Brown:** We here to take care of an issue that preceded me as director of Office of Neighborhood Involvement. And through Commissioner Leonard's leadership and listening to representatives from neighborhood associations and coalitions bringing forth a discussion and then some action around establishing a legal defense fund for the neighborhood associations. Folks are recognizing that there is some potential to lose citizen involvement or negatively impact citizen involvement by virtue of the potential of law suits. And in a city that values citizen involvement, local empowerment, that potential really places our system in a negative position. As a result, commissioner Leonard, in listening to those concerns asked that the office of neighborhood involvement come up with a mechanism for a legal defense fund. After some reviews of the potential funding mechanisms, the initial pot of resources we were looking at for this available for the defense fund we were able to bring this ordinance utilizing existing on resources through cost saving. As such we are asking in this fiscal year to establish a \$10,000 fund but to continue to fund that through the next year and the following fiscal year to bring a fund at least \$25,000.

**Leonard:** It would appear that even though we've been working on this for a while this is a very timely proposal.

**Brown:** It is.

**Saltzman:** Does this allow for paying of prevailing parties' attorney's fees?

**Brown:** Yes it does.

**Adams:** Are there any implications for the swrl complications?

**Amalia Alarcon-Gaddie, Office of Neighborhood Involvement:** Yes, once this is established any neighborhood association board volunteer that is sued can approach the city to access the fund to help secure legal counsel for themselves.

**Adams:** So there is nothing related to the swrl conclusion that would immediately have access to this fund. There isn't anything specifically as a result of the swrl effort?

**Alarcon-Gaddie:** No, this has been in the works for about 2 ½ years.

**Adams:** I'm talking about prospectively, swrl and no one else cannot come back to this fund and say we want this money.

**Alarcon-Gaddie:** No. Not for past. This is not about neighbors suing the city, but if a neighbor volunteer gets sued. Basically the federal volunteer protection act exempts volunteers from liability. But they still have to go to court to prove that they are covered by this. So the legal defense fund offers them some amount of money to allow them to retain counsel to help them do that.

**Saltzman:** In fact, I think the swrl board member that was voted out of office at the last meeting is now suing the prevailing board members.

**Alarcon-Gaddie:** Correct.

**Saltzman:** So they would have access.

**Alarcon-Gaddie:** They would if they chose to do that.

**Adams:** Would she have access too?

**Alarcon-Gaddie:** If she got sued if she were a board member.

**Leonard:** As a board member, but not as a private citizen. As Amalia said, long before this was on anyone's horizon this issue arose as a potential concern.

**Adams:** And part of the reason this issue exists is that the neighborhood associations are mostly non-profits?



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**Alarcon-Gaddie:** The insurance companies ceased to provide directors and officers' coverage for neighborhood associations as of a couple of years ago. To actually purchase that kind of insurance would cost about \$1200 per association. They are not arms of the city, they are independent and autonomous. So they are not agents of the city, therefore the city is not able to cover them under the city self insurance pool.

**Leonard:** Any questions or testifiers?

**Leonard Gard, Southwest Neighborhoods:** Swni does support this ordinance. Amalia was right, this is timely because premiums for d&o insurance have sky rocketed. For years, swni had insurance through northland covering our coalition board and also neighborhood association boards and officers. We lost that. They either quit offering that insurance or left the region. We have not been able to replace it. It is simply too expensive. We do have insurance for our coalition board but no longer for the associations. This is really a threat to the neighborhood association system because people are afraid to participate when they see themselves exposed this way to liability. Thank you so much.

**Mark Siebert, Director Neighbors West Northwest Coalition:** I'm going to echo what Leonard already said. We have specific neighborhoods who are refraining from making comment on land use issues because of the concern of not having liability coverage. While they are not liable under the federal statute, you still have to go to court to prove that. This is a very unique solution to a unique system that we have in this city which commissioner leonard proposed which will go a good way to giving assurance to those folks.

**Cece Hughley Noel, Executive Director at SE Uplift:** On behalf of my board and se uplift neighborhood association we strongly support this ordinance as a first step in providing some safety net for the volunteers who have worked so hard on behalf of their communities to provide livable cities and communities. We think that your voting on this ordinance today provides them with a little bit of assurance that you're behind them in the activity that they engage in everyday on the citizens' behalf.

**Sten:** Cece, congratulations on your new job.

**Hughley Noel:** Thank you, I appreciate it.

**Leonard:** Discussion. This will pass to a second reading.

**Alarcon-Gaddie:** One more comment. This isn't a solution. It's just a reassurance and a start. We need to be moving forward to look at ways to either appropriately fund the neighborhood system so they can provide insurance coverage for their volunteers or have a conversation within the city policy discussion about how we define agents of the city and whether we can at some point begin to provide coverage out of our self-insurance pool for people who do the kind of work these people do.

**Leonard:** Right. Thanks. Item 604.

**Item 604.**

**Jay Sugnet, Bureau of Planning:** There are two emergency ordinances before you today. Both of these are the result of a council action back in December as well. [laughter] These are two housekeeping measures that are the result of the pleasant valley plan district, adopted December 15<sup>th</sup>. At that time council directed that the effective date for the regulations be extended until june 13<sup>th</sup> to allow us time to do two things. First was formally amend the iga with the county and second to develop a measure 37 waiver. Al Burns is here to talk about that as well. To give you a very quick background as to why we're here. The pleasant valley plan was adopted as the result of an extensive community planning process that started back in 1988 when metro expanded the urban growth boundary. We spent the past 6 years working with our regional partners and the community to develop a plan to urbanize an area that currently has about 800 residents to a future urban community with 12,000 residents and 5,000 jobs. Portland will eventually annex approximately 290 acres of the 1500 and Gresham will annex the balance of that. The first item is amending the

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2002 iga. This is where the county has granted land use authority to the city. They have gotten out of the urban services business, rely on the city to provide permitting and urban services for all properties inside unincorporated Multnomah county within the urban growth boundary. So really we're not changing the substance of the agreement, we're just adding a map that shows pleasant valley as where this agreement applies.

**Al Burns, Bureau of Planning:** The second ordinance is a measure 37 waiver. This would apply to people who voluntarily annex to the city. Join the city generally get higher development opportunities and higher service standards. A condition of voluntary annexation would design to measure 37 to run with the land. That precludes you from making a claim on a regulation adopted before annexation.

**Leonard:** Testimony? Questions? Linda, no?

**Adams:** Do you like this or not?

**Linda Bauer, President, Pleasant Valley Neighborhood Association:** It's necessary.

**Leonard:** OK. Call the roll.

**Adams:** Aye **Leonard:** Aye **Saltzman:** Aye **Sten:** Aye

**Item 605.**

**Leonard:** Any testimony?

**Adams:** Aye **Leonard:** Aye **Saltzman:** Aye **Sten:** Aye

**Item 606.**

**Leonard:** Roll Call.

**Adams:** Aye **Leonard:** Aye **Saltzman:** Aye **Sten:** Aye

**Item 607.**

**Leonard:** Roll Call.

**Adams:** Aye **Leonard:** Aye **Saltzman:** Aye **Sten:** Aye

**Leonard:** Council is recessed until tomorrow at 2:00 pm.

At 1:20 p.m., Council recessed.

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2:00 PM

[roll taken]

**Potter:** Karla, please read the item.

**Item 608.**

**Potter:** Would the city attorney please describe the hearing and how it will be conducted.

**Kathryn Beaumont, Office of the City Attorney:** Thank you. Before we begin the hearing, I have a few announcements about the type of hearing we're having today, guidelines for presenting testimony. First, this is an on-the-record hearing. You must limit your testimony to materials and issues in the record. During this hearing you may also talk about the issues, exhibits, and testimony presented at the earlier hearing before the hearings officer. You can't bring up anything new. This hearing is only designed to decide if the hearing officer made the correct decision based on the evidence presented to him. If you start to talk about new issues or try to present new evidence today, you may be interrupted and reminded that you must limit your testimony to the record. In terms of the order of testimony, we'll begin with the staff report by kimberly parsons from the bureau of development services staff 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 10 minutes to present her case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to the council. Next will be the applicant who will have 15 minutes to address the city council and rebut the appellant's presentation. After the applicant, the council will hear from persons who oppose the appeal. Again, each person will have three minutes. Finally the appellant will have five minutes to rebut the presentation of the applicant and opponents of the appeal. The council may then close the hearing, deliberate, and take a vote on the appeal. If the vote is a tentative vote, which I recommend that it be today, the council will set a future date for the adoption of findings and a final vote on the appeal. Finally, as to guidelines for presenting testimony, again this is an on-the-record hearing. This means you must limit your remarks to the record. You may refer to evidence previously submitted to the hearings officer. You may not submit new evidence today that was not submitted to the hearings officer. 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 the 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 has raised issues today that were not raised before the hearings officer, you may object to the council's consideration of that issue. And that concludes my opening announcements.

**Potter:** Thank you. Do any members of council wish to declare a conflict of interest? No council members have a conflict of interest to declare. Do any members of council have any ex parte contacts to declare or information gathered outside of the hearing to disclose? No council members have ex parte contacts to declare. Do any members of the council have questions or other preliminary matters that need to be addressed before we begin the hearing? Ok. Staff, could you introduce yourself, please?

**Kimberly Parsons, Bureau of Development Services:** Kimberly parsons, staff with bureau of development services.

**Potter:** Ok. Please give us your report.

**Parsons:** All right. This is a city council public hearing on appeal of land use hearings officer decision. [inaudible]

**Moore:** Can you pull the mike toward you and scoot up maybe? Thanks.

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**Parsons:** Ok. So the purpose of the hearing is to consider an appeal, to approve with conditions a five-block subdivision for attached housing. The appellant is Marcia Leslie. So a brief summary of the land division proposal, the applicants propose five attached housing lots ranging from 950 square feet to 1,693 square feet. Access will be from Southwest Capitol Highway. Stormwater management for the lots is proposed to be the overflow planters or individual lots with overflow to a drainage off site. Sanitary sewer service will be provided from a public main to the north of the site and water service will be provided from a main in Southwest Capitol Highway. The appellant hearings officer decision is related to two issues, first that zoning code section 33.662 defines c.g. zoning and requires compatibility with the adjacent residential areas. The proposed five-lot subdivision and multistory attached housing is not compatible with adjacent residential areas and violates the c.g. definition and zoning requirements. The appellant claims that the lot size is not compatible with adjacent R-5 and R-10 zoning. Second, that transportation impacts are approved conditionally, but will be greater than projected with single family dwellings. So the site is shown on the screen with the cross-section, cross lines. The site is zoned c.g., general commercial zone. It's designed to allow auto and commercial development in areas already built in this area and in most commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. The zone's development standards promote attractive development and open and pleasing street appearance. Development is intended to be aesthetically pleasing for motorists, transit users and businesses themselves. The c.g. Zone allows by rights residential uses, including attached and detached houses, apartments and condominiums. Commercial uses, including retail office and vehicle repair, and institutional uses, including parks, schools, colleges, medical centers and religious institutions. This is a 2003 aerial photo of the site. So the site is located on the north side of Capitol Highway and Southwest Barbur is located to the north of the site. There's a range of lot sizes and development types in this area. This is a preliminary plan, so it's showing the attached housing lots, and then this is a more detailed proposed development plan. So a public stream improvements required by Portland transportation, construction of sidewalks and curbs, as well as adding additional paving to allow for a future bike lane. A total of three driveways are intended for the five attached houses. The driveways will be combined for lots two and three, and as well as for lots four and five. Related to the site characteristics, there's an 18 1/2 to 24 1/2-foot elevation difference between the front of the lot and the rear of the lot. So the site has an average slope of 33%.

**Saltzman:** That's sloping away from Capitol Highway?

**Parsons:** Down from Capitol Highway. The approval criteria for a land division in the general commercial zone are listed in the section. The hearings officer approved the proposed subdivision subject to conditions, and the hearings officer's decision included supplemental findings to include that all approval criteria were met. The appellant claims that zoning code section 33.662 defines c.g. zoning and requires compatibility with adjacent residential areas. The proposed five-lot subdivision and multistory attached housing is not compatible with adjacent residential areas and violates the c.g. definition and zoning requirements. So in response to this claim issue I have three points. First, chapter 33.662 does not contain criteria that require compatibility with adjacent residential areas. The criteria requires lots to be of a shape, size and orientation that is appropriate for the location of the land division and for the type of development and use that is contemplated. So the hearings officer found that the lot sizes are sufficient to allow for attached housing, given the slope of the site it's appropriate to orient the lots toward Southwest Capitol Highway. The average slope at the site of 33% does not allow for a driveway or a new street to serve as one main access point or to allow reorientation of the lots. Second, the description of the c.g. zone states that the zone's development standards promote compatibility with adjacent residential areas. So development standards include things such as building height, building setbacks from property

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lines, building coverage and landscaping. Clients with development standard is reviewed as part of a building permit, and are not considered as part of the land division review.

**Adams:** Could I interrupt through?

**Parsons:** Yes.

**Adams:** Maybe i'm missing something. The appellant is quoting a statement -- i'm just trying to compare the words -- that is pretty close to the staff response.

**Parsons:** Compatibility with adjacent residential areas isn't from section 33.662.

**Adams:** Ok. Where is from?

**Parsons:** It is from the description of the c.g. Zone in 33.130.

**Adams:** And therefore its significance?

**Parsons:** So therefore the description of the c.g. Zone is really discussing what the development standards are intended to do. And development standards are items that are applied to development at the building permit stage. You're looking at the specific structure or building type. So it would be building coverage, setbacks, landscaping requirements. Does that answer your question?

**Adams:** So one is an administrative review and the other is appealable to the city council?

**Parsons:** The approval criteria in 33.662 are discretionary and appealable to city council.

**Adams:** And the --

**Parsons:** And the development standards --

**Adams:** -- the compliance with the development standards are administratively reviewed?

**Parsons:** Right.

**Adams:** Ok.

**Parsons:** And then the third point, multidwelling development is allowed by right under a building permit. So what that means is that apartment or condominium development could occur on this property without public review, without the need for a land division the appellant also claims that transportation impacts are approved conditionally, but will be greater than projected with single family dwellings will not safely support planned development, nor will 95 feet of frontage improvements. The hearings officer included findings that on balance this criterion was satisfied. The required public street improvements are warranted and incremental public street improvements will result in furthering the system. There's nothing in the record that supports the assertion that safety will be impacted by the new lots or required street improvements. Pdot did not require a traffic study in this case because the project did not meet the standard threshold or study, and in addition pdot found there were no vehicle accidents at this location related to the transportation system. As I mentioned previously, three driveways will provide access for the five dwellings, and the slope limits the ability for one access point or reorientation of the lots. This is a photo looking west on southwest capitol highway. You can see the street starts to curve as you move west. And this is a photo showing southwest capitol highway east of the site. This is the view of the site looking north ascertain from southwest capitol highway. You can see the drop in elevation toward the rear of the property. And then this photo taken of the northern portion of the site of the rear of the lot. So you'll want to note the different in elevation and the slope of the site. The council may decide to deny the appeal, uphold the hearings officer decision, deny the appeal, but modify the hearings officer decision based on review of the record, or uphold the appeal in part or in whole based on review of the record, there by overturning the decision. That concludes my presentation.

**Potter:** At the very beginning of your presentation you mentioned that it was upheld with conditions.

**Parsons:** Yes.

**Potter:** Did you list the conditions out there or is that --

**Parsons:** I did not list the conditions. The conditions can be found on -- starting on page 20 of the hearings officer decision. So 20 to 22.

**Potter:** Could you summarize those for us, please?

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**Parsons:** Sure. Some of the conditions are related to final plat requirements. So requirements for showing easements, providing maintenance agreements. There's a condition related to the required street improvements that are referenced earlier in the presentation. There's requirements for additional information for utilities, there's requirements to comply with the tree preservation plan. A tree planting at the time of development. There was a sight distance evaluation provided at the time of building permit review for the attached housing project and additional geotechnical investigations.

**Potter:** Ok, thank you. Any other questions? Thank you. We'll now hear from the applicant. Would you please come up.

**Parsons:** Actually, mayor Potter, it would be the appellant.

**Beaumont:** Excuse me. The appellant. I just didn't read it correctly. I apologize. Thank you for being here today. You have 10 minutes. Would you please state your name when you testify.

**Marcia Leslie:** Ok. My name is Marcia Leslie, and I live on Southwest Pal Teen Street in Portland. On the map where it showed the location of the development, that's where my mother's house is located, where we live. The criteria for filing this appeal are that the proposed subdivision does not meet approval criteria for the c.g. or general commercial zone, and as a result that the city's land use services division erred in granting conditional approval for the proposal. This appeal notes that zoning code chapter 33.662 defines c.g. zoning and states that this proposal fails to comply with the zoning requirements specifically compatibility with adjacent residential areas. On page three of the decision of the hearings officer, signed April 7, 2005, under analysis, zoning, it states the general commercial zones development standards promote attractive development and open and pleasant street appearance in compatibility with adjacent residential areas. It also states household living, attached housing, is an allowed use in this zone. I don't know what the zoning definition of compatible is. The dictionary and thesaurus say it means harmonious, uniform, matching, resembling, parallel, suitable, appropriate. In the testimony given at the March 7 hearing, background information was given on the Southwest community plan. One of the eight regional plans that comprised the Metro 2040 growth concept plan. It was noted that the bureau of planning recommended maintaining the R-10 zoning already in existence and most of the far southwest neighborhood, with some R-5 and R-2. There was no recommendation to infill with R-1. This proposal is to subdivide a 58 -- 55-square-foot lot into five lots, the equivalent of five R-1 lots. In no way is such a division compatible with the lot size, adjacent residential areas. Compatibility, I beg to disagree. I don't believe that applies just to the planned structure. I believe it applies to the entire development. In addition, while the c.g. allows two to three-story development, most homes in the area are one-story ranch-style, with or without basements. There were photos provided at the hearing of typical homes in the far southwest neighborhood, built in the 1940's or 1950's, with some two-story built in the 1960's and 1970's. Most newer homes infilled into fields or previously forested areas of the far southwest neighborhood during the -- during the 1980's and 1990's, are two-story. The three-story units planned for these undersized lots, comparable to the photo of Mr. Pollock's development on Beaverton-Hillsdale Highway are again not compatible with the more traditional homes of the adjacent residential areas. As stated on March 7, the ultimate goal of the Metro plan was to achieve growth through infill without destroying the character of existing neighborhoods. As stated in supplemental evidence on March 13, the nearest units of comparable to this plan for this site are nearly two miles away in the Multnomah village area. It is argued that this planned subdivision and attached housing development will destroy the character of the adjacent residential area and violate the compatibility requirement of the zoning. It is entirely possible, even highly likely, that the household living or attached housing, which is allowed in the c.g. zone was originally meant to provide for owner-occupied living quarters for the owner of a commercial property. We all have heard stories of families living over the store which they operated, or over the bakery or behind the barbershop or whatever else, and I seriously doubt that the attached

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housing units planned for this lot, or what the drafters of the c.g. zone had in -- were what the drafters of the c.g. Zone had in mind. At a february meeting, mr. Sten mentioned attracting families to bring kids into the school system. This planned development will not attract families with children. Because of the slope of the lots and the attached design of these units, there are no yards for children to play in. If capitol highway to the south and office buildings to the north there will be no safe play areas for these units. The nearest safe play area is on the opposite south side of capitol highway at 53rd. The sight distance evaluation required before approval of the building permit for the site applies more to cars backing out of a driveway than a child or children trying to cross the street. At his beaverton-hillsdale site, there is a small forest north of the site away from beaverton hills day highway. Children can safely play there without having to cross the busy beaverton-hillsdale highway. This brings up point two of the appeal. Chapter 33.641, transportation impacts are discussed on pages 14 through 16 of the hearing decision. In the third paragraph on page 15, under findings, various required improvements to the site are identified and the conclusions given that with those improvements five additional dwellings can be safely served by this existing street without having any significant impact on the level of service provided. Because families are not likely to buy or rent these units, it is highly likely they will become rental units for students at sylvania p.c.c. About six blocks to the south. Because of the cost, anywhere from three to five students may move in to share expenses. This could mean two or more cars per unit for a total of 10 or more. And more when friends come to visit, whether it is to party or study. In the adjacent residential areas, the same 95 feet of street frontage be a home for maybe four cars. One or two per family. Increased number of cars will cause a much greater traffic impact than projected. I don't know how a sight distance evaluation is done, but to be anywhere near accurate in this location it needs to be conducted with a minimum of six to eight cars parked along the street, both in between and on both sides of the planned driveways. This would represent the increased number of residential and visiting cars and create an accurate obstruction to the line of sight of someone backing out of the driveway. Cars are difficult to see along capitol highway, especially at the excessive speeds, some up to 50 miles an hour, which some of them speed up and down the street. The required improvements of 95 feet of curbs and sidewalks along one side in the middle of a few thousand feet of unimproved roadway will make no significant change in the safety along capitol highway, especially for the potential occupants of these units. The applicant for this project, douglas pollock, may be familiar to the council since he has appeared before you on at least one other appeal that i'm aware of. That was the february 10 one that I referred to earlier. It involved the sylvan heights neighborhood, which appealed approval of an almost identical development. At both hearings, mr. Pollock expressed a willingness to work with the neighborhoods to resolve differences. At our far southwest neighborhood meeting in february, he stated he was doing the neighborhood a favor and that he could, as has been stated previously, put apartments or an office building on the capitol highway site without needing anyone's approval. In his decision, the hearings officer noted on page 10 that a commercial, retail or condominium building permit application could be submit without the need for a land division and preserving the trees on the site would not be required. At that hearing mr. Pollock was overheard saying that he could put a gas station on that site. He was told, no, actually he couldn't. No one in far southwest is saying that mr. Pollock cannot build on his site. It is to his credit that he endeavors to take lots with difficult slopes and works to meet metro's infill goals on these sites. However, attached townhouses are no compatible at the proposed site than they would be in sellwood, moreland, ladd's addition, irvington or grant park. Our neighborhood isn't exclusive, but like these other areas it has its own character and style. Even the prettiest painted lady townhouses in san francisco would be an eyesore in our neighborhood. They simply aren't compatible. We ask that other options be considered for the development of this site, including rezoning and splitting the lot with an r designation. Under current regulations, only the property owner can request a change in zone designations. I

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respectfully request that these regulations be revised to allow neighborhood associations to also request changes when an out of character lot such as this is identified as a way of preserving a neighborhood's character and tradition. The fact that a specific zone may allow a variety of uses does not make them compatible with adjacent areas. I also request that this council uphold the established traditional housing style and lot size of the far southwest neighborhood and urge mr. Pollock to consider rezoning this lot and building detached single family homes like he has in other neighborhoods. Such homes would be compatible with adjacent homes, allow for safe play areas for children, and would not impact the existing transportation system. By doing this he would indeed be doing the neighborhood and city a very big favor.

**Potter:** Thank you.

**Adams:** Thank you.

**Potter:** We'll now take testimony from supporters of the appeal. Has anyone signed up to testify in support of the appeal?

**Moore:** No one signed up.

**Potter:** Ok. We'll now hear from the applicant. Please come forward. Thank you for being here. When you testify, please state your name and you have 15 minutes.

**Darryl Abe:** Ok. First of all, my name is darrell abe, work for a company called w.b. Wells and associates. We're the engineering/planning firm representing -- working for mr. Pollock. I just have a very brief statement to make. First of all, we agree with the -- obviously agree with the approval of the project by staff and the hearings officer. This site is zoned general commercial, not r-5 or r-10. However, within the general commercial zoning designation is an allowance for residential development which must meet the criteria of general commercial zone, not the criteria of residential zone. The city's planning staff and the city's hearings officer approved this development because our application meets the requirements of the general commercial zoning designation. The following are the types of developments which are allowed outright come a commercial zone. Residential and development is allowed, which is what we're proposing. Retail sales and service is allowed. This development, this type of development, would also result in increased traffic generation in the neighborhood, require room for parking. It does not have marketing street exposure for retail sales and service developments as it would if it were on barbur boulevard, because it's primarily a residential street in character. Office space is allowed. This will probably take up the same or greater building mass as our proposal does, and potentially have a greater traffic impact to our proposed residential development. Quick vehicle servicing is allowed. I sort of view this as jiffy lube or a cleaners or a starbucks. I don't really know if all those categories fit in here, but let's use the jiffy lube idea. Again, have increased traffic. There would be noise during the week from just work that's done there. The smell of oil, fumes and exhaust. And plus the size and shape of the lot is not conducive to a development, type of development. Vehicle repair work is also allowed on this site, as it is zoned. I view this as a mechanic's garage, for example. Probably a little -- this type of development would probably belittle better in terms of traffic than vehicle servicing, however I would also view it as incompatible. Again, for the same reasons -- smell of fuel, exhaust, noise during the week. Outdoor recreation allowed. I don't feel there's enough room here on the site for that type of development. Parks, schools, colleges, medical centers, daycare, and religious institutions are allowed. Out of this group, daycare seems to be the most appropriate for a neighborhood. However the amount of traffic again rated by such a development would be more detrimental to the neighborhood than the approved residential development with parents dropping off or picking up their children at the beginning or end of the workday. In my opinion, a residential development meeting the requirements of the general commercial zoning designation is the most compatible use of this site. Again, our application was approved by the city's planning staff and the city's hearings officer as being compliant with the city's planning and zoning code. We met the required criteria. This property was purchased for the development under the current



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general commercial designation. Out of all the development possibilities allowed, mr. Pollock chose to create the most compatible type of development for this site, residential development. In addition, wanted to keep the r-5 or r-10 zone, was noted in the hearings officer decision on page four of the second paragraph, I believe. Based on the question of a zone change, I would conclude that the neighborhood compatibility is for the family structure. It was also noted that would allow for the development of one single family home based on the current size of the lot. Again, this property was purchased for the development under the general commercial zone designation, not an r-5 zone. This site is zoned general commercial and not r-5.

**Adams:** Could I ask a clarifying question?

**Abe:** Sure.

**Adams:** When the property was procured by your client, what year the property was purchased by your client?

**Abe:** I don't know that. [inaudible]

**\*\*\*\*\*:** about four years ago.

**Adams:** Thanks.

**Abe:** I have the questions for the appellant. If she's allowed to answer them, I don't know, but i'll state the questions. We'll see. Out of the allowed uses under the general commercial zoning designations, which I listed earlier, office space, vehicle repair, parks, schools, colleges, out of all those allowed, which use is the most compatible for this neighborhood? And what development solutions -- she already answered that. Never mind. I'll leave it at that.

**Potter:** Thank you, sir.

**Abe:** Any questions, further questions?

**Saltzman:** Is it the intent to make these owner occupied buildings?

**Abe:** Are they going to be owner occupied?

**\*\*\*\*\*:** Yes.

**Adams:** For sale.

**Potter:** Other questions? Thank you.

**Adams:** Well, I guess the follow-up question is, are there restrictions on -- are they being sold as condominiums or as --

**\*\*\*\*\*:** I could answer those now or when I come --

**Adams:** Oh, you come up later?

**\*\*\*\*\*:** Yes.

**Adams:** Ok.

**Potter:** Thank you, sir.

**\*\*\*\*\*:** Thank you.

**Potter:** We will now take testimony from opponents of this appeal. Karla, is anyone signed up to testify?

**Moore:** Yes. We have douglas pollock and--

**Beaumont:** There's a question of whether they're part of the applicant's presentation, in which they'd be allowed to use the balance of the 15 minutes. Or citizens testifying, in which case they'd get three minutes.

**Potter:** Are you associated with --

**\*\*\*\*\*:** Excuse me.

**Potter:** Ok, yes. How much time is left?

**Moore:** There's 9:22 left.

**Potter:** Ok.

**Mike Monical:** I'm an engineer with w.b. Wells. I helped with the sight distance evaluation submitted as part of the original application. Kurt krueger, transportation, asked me to provide some clarifying information. We've done this. This is basically the same diagram we've had for the

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presentation. It's those that would meet sight distance requirements. The 85 percentile, which they -- i'm not sure exactly when that was, was at 39 miles per hour. And this chart shows what the required speed limits would be for a 40-mile-per-hour posted speed limit. Ok? This diagram here shows from the two opposite driveways. If a car was sitting there, driver's eyes at this location, this demonstrates the sight distance from each driveway. And there's a photograph that's looking east and west. Basically we're demonstrating that we meet the sight distance requirements, which is one of the primary safety aspects of the development. The existing -- and it's off here, but we're just coming off here, this curb is the 650-foot radius curve, so there's no challenges with this development and no -- [inaudible] the appellant did state that parking is limited. That is true. The parking provided for this development is basically limited to the garage and the driveway, partially in the driveway. Those driveways are narrow and short. However, we don't think that parking is one of the requirements of this development, and we know that there are developments all over the city where we're trying to maybe not emphasize a car so much. If students are walking up to Portland state -- or Portland community college, then they can walk, they don't need a car, which may be good for the students. That concludes my testimony. Are there any questions as far as the transportation --

**Potter:** Could you explain the numbers at the bottom?

**Monical:** Yes, ok. Sight distance is measured by a distance that vehicles need to travel to be able to see in order to stop safely. Ok? It's a combination of both a brake time, where once you put your foot on the brake, how long it takes a car to stop. Also consistent with the driver reaction time, which is a statistical analysis of driver's reaction, and that's generally at these speeds the primary component of the sight distance. So each of these is -- is a distance -- city of Portland has a criteria. Sight distance there's another criteria. We can see that Portland's criteria is a bit more conservative. In other words they require more sight distance. Grades also impact the stopping distance. If you're going downhill, it takes you longer to stop than if you're going uphill. That is reflected here. This street, as shown here, basically you're going downhill when you're going to the west, I guess, or uphill if you're going to the east. So in fact the sight distance coming downhill is longer than going up. So that's what those numbers are.

**Potter:** Thank you. Further questions? Thank you. Thank you for being here, sir. Please state your name when you testify.

**Douglas Pollock:** Douglas pollock. I work for the applicant. And basically I think they've covered pretty well with regards to what input I could have. I think it's probably the most compatible of the allowed criteria, and as far as the transportation -- I mean, yes, the parking of cars, five units would probably be less than most of the allowed criteria under the code. Other than that, i'd be more than happy to answer any questions.

**Potter:** Any questions? Thank you, sir.

**Pollock:** You had one question about whether they're going to be sold individually.

**Adams:** Oh, yeah. Sorry. Thank you. Doing my job for me. [laughter]

**Pollock:** That's why we went to row houses, because they can be sold individually. Because we could have built an apartment house there, same number of units, same amount of cars, and then they would be rentals instead of apartments. No. These are homes. They're individual homes.

**Adams:** So they won't be condoed?

**Pollock:** No. That's why we do a row house, because each one has their own individual lot.

**Adams:** Right.

**Potter:** Thank you, sir. Karla, were there any other names?

**Moore:** That's all who signed up.

**Potter:** We'll now hear the appellant rebuttal. Please come back up.

**Leslie:** I'm sorry, this chart is still up because I wanted to show what the impact will be of some of the obstructions. There will likely be parking along this strip. These are the two main stretches of

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the capitol highway, the two main lanes here. And there very well be parking along this area here, at least two or possibly three cars, which is going to obstruct this line of sight out to at least this point. And in order to get back far enough to see past that point, the car's going to have to be out at least into the one line of traffic. Same way on this car, in looking up the road, there's parking along here. You can see where the lines are. It's going to obstruct the line of sight virtually all the way until they get back into traffic. It's going to create a problem. Thank you, sir. There are no commercial or office buildings along capitol highway between 49th and lesser road. This site is roughly in the middle of that distance that span. So to indicate that that would be a compatible use, any of those suggested things just isn't appropriate. This zone, it was argued that this zone should be a spot zone, although it is not completely surrounded by residential property. And that argument was dismissed by the hearings officer, that it should be -- because there is no commercial access anywhere along capitol highway, his argument was that the fact that it -- the access would be off capitol highway doesn't determine that it should be a residential lot, but that's basically all there is in this stretch where this development is planned. That's why mr. Pollock chose to put residential property there. But type of residential property, again, is not compatible with the surrounding structures. The lot could be split into two at the owner's option to request that, that change, but he does not choose to do so. I wanted to emphasize something that mr. Abe said, and that's when he was listing all the different clients, listing the ones that were not compatible. Again, the fact that a specific zoning designation may allow a variety of uses does not make any of them compatible with the area where that lot is located, zoned. I'm just sorry that there's no way for the lot to be rezoned to be more compatible.

**Adams:** May I ask you a question?

**Leslie:** Yes.

**Adams:** Has the neighborhood association taken a position on your appeal?

**Leslie:** The neighborhood association is aware of it. Nobody was able to be here. Several of them were out of town. They're not able to take time off from work. We've expressed numerous concerns about the traffic impact. They're also concerned about the compatibility. That was something in their initial argument that they hadn't really thought of. So they support it.

**Potter:** Do you have any documentation to that effect?

**Leslie:** No, I don't.

**Potter:** Ok.

**Adams:** Are renderings available of the development, the way it looks?

**Leslie:** Just whatever was in his initial plan. And that's mainly a footprint, not so much the actual detailed drawings of architectural drawings, and that is because it's something that it's in the future. And the only -- the only idea that we have to go by is this one development of his on beaverton-hillsdale highway that we located that's comparable in style.

**Adams:** Thank you.

**Potter:** Any other questions? Thank you very much. It's now time for council discussion. We've got some choices, but the city attorney has recommended that any decision be a tentative vote. Could you explain that for my edification?

**Beaumont:** Yet. My reason for recommending this be a tentative vote is that the hearings officer's decision doesn't address -- squarely address the issue of neighborhood compatibility or -- and I think the discussion of sight distances could probably be flushed out based on some testimony you heard today. So if the council was inclined to uphold the hearings officer's decision or uphold it with modifications, I would recommend that we supplement the findings on those two issues before -- as part of your final decision.

**Potter:** And so --

**Beaumont:** Obviously if the council was going to overturn the hearings officer's decision, you would need to have new findings presented to you.

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**Leonard:** So if we upheld the hearings officer's decision, you would want us to amend our findings to include findings relative to compatibility?

**Beaumont:** Compatibility and the issue of sight distances under transportation impacts, yes.

**Adams:** Isn't that a little bit of reverse engineering in the sense that either they're compelling to us or they're not now? I don't understand your advice. Sorry.

**Beaumont:** I'm sorry. My advice in a way is perhaps more of a technicality.

**Adams:** Oh.

**Beaumont:** The appellant has raised a focused issue on neighborhood compatibility. Staff has presented argument to you that that is not an approval criterion for this land division. I think if you're inclined to agree with the hearings officer and the staff, then the findings ought to be amended to make that clear, that this issue was raised, not an approval criterion to this land use division. On the issue of sight distances, you heard additional testimony from the applicant's representative on the issue of sight distances, and I think the findings should be reflected to amend that if you're inclined to uphold the hearings officer.

**Potter:** So we have three choices. The council can deny the appeal. The council denies the appeal, but asks for new information to be considered, and asks for amended language. And third, the council grants the appeal. Is that correct?

**Beaumont:** Yes. I might phrase it slightly different. You can grant the appeal and uphold the hearings officer's decision with the supplementation I've described. I'm sorry. That's denying the appeal and upholding the hearings officer with some supplementation. You can deny the appeal and decide you want additional conditions of approval, or uphold the hearings officer's decision.

**Leonard:** Can I try something out?

**Saltzman:** Can I ask a couple questions of staff before you do that?

**Potter:** Staff, please come forward.

**Saltzman:** Is the c.g. zoning from the southwest community plan or did it precede it?

**Parsons:** Umm, there's actually a discussion of that on page four in the hearings officer decision.

**Saltzman:** So it precedes --

**Parsons:** Yeah. The site was zoned commercial before the southwest community plan, and the southwest community plan upheld or continued to apply commercial zoning to the property.

**Saltzman:** And this is probably for transportation. Is it -- is onstreet parking allowed on this stretch of capitol highway?

**Kurt Krueger:** Currently onstreet parking is not allowed. Most likely at the time of the permit we would actually post no parking signs, so the issue of the sight distance being impacted by parking on the street I think is negated by the fact that there would be no parking.

**Saltzman:** So there would be no parking on the street.

**Parsons:** Right.

**Saltzman:** That's it. Thank you.

**Leonard:** I would move to deny the appeal, uphold the hearings officer report, but the supplementation of the report to include addressing the issue of compatibility and sight distances as outlined by the deputy city attorney.

**Potter:** Did I hear a motion?

**Saltzman:** Second.

**Potter:** Oh. Second I mean. Please call the roll.

**Adams:** Well, first I want to thank ms. Leslie for the very compelling and very coherent presentation that you made to the city council. I also know that your intentions are heartfelt and in the best interest of the neighborhood. And it's great that you took the effort and the time to pursue this appeal and to come to the city council to speak to it. Unfortunately I do not see a legal way for me to do anything other than to deny your appeal. The underlying zoning that they're working with, I certainly have questions about its compatibility, but because it's established and voters passed

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ballot measure 37 I don't feel I have the leeway to pursue anything other than as strictly allowed by the zoning. So I will vote aye.

**Leonard:** Aye.

**Saltzman:** I appreciate ms. Leslie bringing this appeal to us, but I do feel that given the c.g. zoning, and I do say it is somewhat of an odd duck in that neighborhood, but nevertheless that is what the zoning is, and the applicant is well within his rights to do this type of development. The concerns about too much cars being parked there, I think, are allayed by the fact that this will be owner-occupied, and there will not be onstreet parking, so I believe that that takes care of some of the distance sight issues that you raised in your appeal. So I also vote aye.

**Sten:** Well, I agree. I think you made a good case in terms of what would fit best, what's next there. It is, however, zoned c.g., and I think other things that you can do in c.g., the housing is the least impact on the neighborhood. So aye.

**Potter:** And I think that we may be getting some more information on this, won't we, city attorney? The amendment? Are we going to be getting more information as a result of that?

**Beaumont:** No, I don't think so.

**Potter:** Ok. Anyway, I vote aye. [gavel pounded]

**Beaumont:** So we need to set a date to bring this back for adoption of findings?

**Moore:** Is two weeks enough? It will be on --

**Potter:** Did you ask --

**Moore:** Yeah. She said that was good.

**Leonard:** What's the date?

**Moore:** It's June 23. I don't have you out, but --

**Leonard:** I will be. We have a new policy we'll actually let you know now.

**Moore:** Great. [laughter] do you need a time certain, Kathryn? Ok. It will be June 23, Thursday, on the regular agenda.

**Potter:** We got the other folks coming in. Do you want to take a short break?

**Adams:** Just five minutes.

**Sten:** Make it short, though. I want to get this thing done.

## TRANSCRIPT OF CITY COUNCIL HEARING FROM AUDIOTAPE RECORDING

**JUNE 9, 2005**

**3:00 PM**

### P R O C E E D I N G S

(Roll call.)

**MAYOR POTTER:** Karla, please read the item.

**MS. MOORE:** Item 609, appeal of IHO of Purchasing Board of Appeals selection to award preconstruction services and possibly construction services for the East Side combined sewer overflow project.

**MAYOR POTTER:** Thank you. We'll have pre-hearing comments by the city attorney.

**MR. AUERBACH:** Thank you, Mayor Potter, members of the Council. This is an appeal of the -- of an intent to award a contract. Under the city code, there are four bases upon which a protest can be based. One is that -- and the parties, of course, can address for themselves how they perceive it, but in my review of the materials, this is basically what I believe is in front of you. The first is that all lower bids, higher-ranked proposals, or other more advantageous offers are not responsive. As I understand the materials, IHO is making an appeal that the KBB project approach was non-responsive to the RFP.

1 The second is that the city failed to  
2 conduct the evaluation of offers in accordance  
3 with the criteria or processes described in the  
4 solicitation document. As I read the  
5 materials, I believe that IHO's issue on safety  
6 is related to that criterion.

7 The third is that the city abused its  
8 discretion in rejecting the affected person's  
9 offer as non-responsive. That does not appear  
10 to be applicable to this hearing, because no --  
11 IHO's proposal was not rejected as  
12 non-responsive.

13 And the last one is that the city's  
14 evaluation of the offers was in violation of  
15 these rules, ORS Chapter 279b, or ORS Chapter  
16 279a, which are the state purchasing laws. I  
17 didn't see citations to those in the materials,  
18 but the parties may have some. That's the  
19 backdrop against which the council will  
20 evaluate this appeal, whether the appellant has  
21 established one or more of those violations.

22 Again, because this is sort of a  
23 quasi-judicial hearing on your part, there are  
24 certain procedural things that we ought to take  
25 care of at the beginning. First of all, Kiewit

1 moved to intervene in this matter. They were  
2 not parties to the original appeal, although  
3 KBB was the firm that was given the notice of  
4 intent to award the contract. My understanding  
5 is that IHO has not objected to this  
6 intervention, and that the mayor has indicated  
7 he would allow that by order.

8 **MAYOR POTTER:** Yes.

9 **MR. AUERBACH:** Secondly is the question of  
10 the record before the purchasing board of  
11 appeals. The council wasn't explicit when it  
12 set this for a hearing. It said it wanted  
13 evidence on -- additional evidence on the two  
14 issues of safety and project approach, but I  
15 believe the intent was to have the purchasing  
16 board of appeals record, as the starting point;  
17 that is, that record would be considered by  
18 this council. And I think the mayor can order  
19 that also, if no one objects.

20 **MAYOR POTTER:** Yes.

21 **MR. AUERBACH:** The next thing is, this is

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22 not a -- because there are actual parties, and  
23 they're bringing their own witnesses, this is  
24 not a matter in which it would be appropriate  
25 to take public testimony beyond the evidence

5

1 presented by the parties.

2 **MAYOR POTTER:** Correct.

3 **MR. AUERBACH:** And then the council has  
4 indicated, again, that it's granting the  
5 hearing as to two issues. And so the parties  
6 need to be reminded to confine their arguments  
7 and evidence to these two issues. One is the  
8 issue of safety, including the safety memo and  
9 whether or not it was properly considered or  
10 improperly affected the outcome, and the other  
11 was the project approach that Commissioner  
12 Saltzman asked for evidence on.

13 I've been directed by the mayor to remind  
14 him if the arguments or testimony go beyond  
15 those two points, and he will cut you off. So  
16 please be warned and --

17 **COMMISSIONER ADAMS:** Could I ask a  
18 clarifying question?

19 **MR. AUERBACH:** Yes.

20 **COMMISSIONER ADAMS:** So in terms of the  
21 four criteria here that you just laid out, can  
22 you go back again and speak to the issue of  
23 non-responsiveness?

24 **MR. AUERBACH:** Yes. Is there something in  
25 particular I can --

6

1 **COMMISSIONER ADAMS:** I thought you  
2 mentioned that one of the parties is --

3 **MR. AUERBACH:** As I read the materials,  
4 IHO claims that KBB's proposal regarding  
5 project approach was non-responsive to the  
6 requirements of the RFP, which means it did not  
7 adequately or properly respond to what the RFP  
8 told them, the proposers, they were supposed to  
9 propose on. I don't want to make their  
10 arguments for them. I'm sure they'll do that  
11 themselves, but at least preliminarily, that's  
12 how I understood the materials that I've seen  
13 so far.

14 **COMMISSIONER ADAMS:** And then the second  
15 one is, failed to conduct according to the  
16 criteria?

17 **MR. AUERBACH:** Right.

18 **COMMISSIONER ADAMS:** I'm starting out this

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19 meeting with sort of the assumption that I'm  
20 here to try to figure out, in part, if the  
21 process was fair.

22 **MR. AUERBACH:** Correct.

23 **COMMISSIONER ADAMS:** And that is -- so  
24 that is an explicit criteria of our selection  
25 process?

7

1 **MR. AUERBACH:** Right. That is, did the  
2 evaluation vary from the -- what we told people  
3 we were going to do in the solicitation. So if  
4 there were criteria that were considered that  
5 we didn't say we were going to consider, or  
6 some other deviation from the announced  
7 process.

8 **COMMISSIONER ADAMS:** Can you get us a copy  
9 of the solicitation and the criteria --

10 **MR. AUERBACH:** Those are in the record.

11 **COMMISSIONER ADAMS:** -- for us to have  
12 while we hear people talk?

13 **MR. AUERBACH:** Can I magically produce  
14 that right now? Jim, do you have that? We  
15 will get them for you.

16 Thank you. And the mode of presentation,  
17 this is a hearing and not a courtroom. So the  
18 parties are represented by lawyers, and the  
19 lawyers will be making opening and closing  
20 presentations, but there will not be  
21 examination and cross-examination of the  
22 witnesses by the lawyers as with most council  
23 hearings. Witnesses will make their statements  
24 and answer questions that you, the members of  
25 the council, may have of them. And as is

8

1 typical of these kinds of hearings, it would be  
2 appropriate for the council to disclose, again,  
3 any ex parte communications that members may  
4 have had with any of the parties or  
5 representatives of the parties, including any  
6 personal contact, if you met or had phone  
7 messages or e-mails, letters, faxes, or so  
8 forth, or if your staff has relayed comments to  
9 you from the parties, or if you've read about  
10 it on the newspaper, television, radio,  
11 internet, blogs, that kind of thing, including  
12 the substance of any of those communications  
13 and whether it's going to affect how you decide  
14 this appeal. Anybody care to share?

15 **COMMISSIONER SALTZMAN:** I've had ex parte



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16 contacts with Len Bergstein, no formal  
17 meetings, but I was delivered the letter --  
18 hand-delivered the letter by IHO's appeal, and  
19 I think I've run into -- a time or two in City  
20 Hall's halls. I've certainly read about this  
21 in the media; however, that wouldn't influence  
22 my opinion, nor will the ex parte contact. My  
23 staff has also had contacts with, I believe,  
24 both parties, although they've not apprised me  
25 of the details of those meetings.

9

1 **COMMISSIONER STEN:** I've not had any  
2 contacts. I think we may have received a  
3 letter from the parties, but I did not read  
4 them and haven't been briefed by my staff on  
5 them, because I preferred to do this directly.  
6 I have read the media accounts. They won't  
7 have any effect. I did not vote to have this  
8 hearing, because I didn't feel it was  
9 warranted. Since we're having the hearing, I'm  
10 fully capable of listening to it on its merits  
11 and have no prejudgment. My vote was not to  
12 have the hearing, not an indication about the  
13 hearing, because I haven't heard it yet.

14 **COMMISSIONER ADAMS:** I was hand-delivered  
15 the letter requesting the appeal from Len  
16 Bergstein, and had a conversation with him in  
17 my office regarding that. My staff had a brief  
18 telephone conversation with Jim Francesconi,  
19 and those are the only contacts that I'm aware  
20 of that my staff or I have had. None of those  
21 contacts were in any depth or substantive in  
22 nature, and do not bias me in any way from  
23 hearing this appeal.

24 **COMMISSIONER LEONARD:** And I was contacted  
25 by Len as well, unannounced, unscheduled,

10

1 regarding this subject. And he left a phone  
2 message that I subsequently did not return.

3 **MAYOR POTTER:** My ex parte contact is  
4 limited to news accounts and I did see Len  
5 Bergstein in my office one day, but I didn't  
6 know why he was there, nor did I have any  
7 contact with staff as to why he was there, and  
8 it did not affect my ability to make a decision  
9 on this.

10 **MR. AUERBACH:** The process that the

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11 council's going to follow in hearing this  
12 appeal is that IHO will make an opening  
13 statement, KBB will make an opening statement.  
14 And BES will make an opening statement through  
15 their lawyers. Each of those will be five  
16 minutes. Then IHO will have 30 minutes to  
17 present its witnesses. KBB will have 20  
18 minutes for its witnesses as the intervenor,  
19 and BES will have 30 minutes for its witnesses.  
20 Then IHO will get a 10-minute opportunity for  
21 rebuttal evidence, and then IHO, KBB, and BES,  
22 in that order, will make five-minute closing  
23 statements and the council will proceed to its  
24 deliberation.  
25 And then we can talk about your options

11

1 when you get to the end, if that's where you  
2 want to go.  
3 **MAYOR POTTER:** Yes. If IHO would come  
4 forward for your opening statement, please.  
5 You have five minutes. Please state your name  
6 for the record when you testify.  
7 **MR. BARTZ:** My name is David Bartz of  
8 Schwabe, Williamson & Wyatt. I represent  
9 Impregilo-Healy-Obayashi. Thank you for your  
10 time this afternoon, Mr. Mayor and the council.  
11 Here with me today is Fulvio Castaldi, the  
12 president of S.A. Healy, the joint venture  
13 managing agent, two of the partners from  
14 Obayashi, and from Impregilo. I appreciate the  
15 time you'll take today.  
16 The RFP you issued last year for this  
17 project says, at page 20, "The city will award  
18 a contract to the proposer whose proposal would  
19 be most advantageous to the city." Page 20.  
20 That's a quote. Most advantageous to the city.  
21 That's what we're about today. You're going to  
22 hear lots of things from, apparently, lots of  
23 people, but that's what you're deciding today.  
24 That's what you get to decide. That's your  
25 responsibility and your opportunity as the city

12

1 council, because it says the city will award a  
2 contract to the proposer. Don't be bullied by  
3 lawyers who tell you you can't do this. Don't  
4 be rushed by people that tell you there's not  
5 enough time. There is enough time. Our

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6 witnesses can explain that to you. In fact,  
7 witnesses from the BES staff have said there's  
8 time to do this. There's time to get this  
9 right.

10 Garbage in, garbage out. The garbage here  
11 is the safety memo. It did get a bad process.  
12 Did get incomplete, inaccurate information from  
13 the city staff process. That wasn't what was  
14 intended. The evaluation committee, it's real  
15 important. The evaluation committee had one  
16 criteria that was the most significant criteria  
17 of all. 55 points for project approach. And  
18 the evaluation committee, at the written time  
19 and at the time of the final scores, gave IHO  
20 the highest number, by and far away of the  
21 points for project approach.

22 So you're getting most advantageous with  
23 IHO. You're getting it right now on the west  
24 side. But you're getting it for the east side,  
25 but for the safety memo. But for the safety

13

1 memo. Today we need to you ask questions and  
2 be skeptical. Two weeks ago, you didn't get  
3 accurate information. I have a submission here  
4 of exhibits that we'll provide to you, which  
5 are quotes from the hearing two weeks ago when  
6 Mr. Marriott and Mr. Gribbon talked to you, and  
7 deposition testimony from either those  
8 gentlemen or other witnesses that have already  
9 been in this process that directly refute what  
10 you were told two weeks ago. That's important,  
11 because Mr. Marriott tried to dissuade you that  
12 Mr. Cooke, whose deposition was taken, said he  
13 used the safety memo to score IHO. That's how  
14 we got the bad safety score, was he deducted  
15 five points based on manipulations,  
16 calculations he made directly from the safety  
17 memo. And you asked him, Mr. Mayor,  
18 Mr. Marriott, about it, and he said, "Well, I'm  
19 not sure you can assume that." Well, it says  
20 right here in page 19 of Mr. Kirk's deposition  
21 that he was relying on Exhibit 19, which is the  
22 safety memo.

23 And Mr. Gribbon told you that the safety  
24 memo somehow showed up on his chair. That's  
25 what he told you two weeks ago. It didn't just

14

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1 show up on his chair. Mr. Reiner and Mr. Darby  
2 were deposed months ago, told under oath  
3 that -- Mr. Reiner asked Mr. Gribbon if they  
4 could distribute that memo, after all the  
5 interviews were over with, just before the  
6 final scoring, could they distribute that  
7 safety memo. And they both testified that  
8 Mr. Gribbon said, Yes, go ahead and distribute  
9 that safety memo.

10 So you need to be skeptical, because what  
11 you were told two weeks ago wasn't accurate.  
12 That's in the stated record, not lawyer's talk.  
13 Skepticism is important today. KBB and BES  
14 will tell you that the safety memo is no big  
15 deal. Mr. Cook testified two months ago that  
16 it was used. I don't know what he's going to  
17 tell you today, but he testified two months ago  
18 it was used. He used it to make his score.  
19 Ms. Nelson, who's with the city -- it was  
20 discussed. She wrote notes of the final  
21 process. We've got a copy of those notes.  
22 They were provided by the city. Safety  
23 handout. City safety handout. This is her  
24 notes of that final review process. For  
25 everybody to tell you it didn't happen, we

15

1 didn't see it, it wasn't there, that's not what  
2 the testimony is.

3 Mr. Gribbon said he didn't intend that  
4 memo to be part of the process. Think about  
5 that. You're looking for a mistake that caused  
6 a problem for the city, that deprives you of  
7 most advantageous. That's the mistake.  
8 Mr. Marriott's told the paper and KBB's told  
9 people that the comfortable approach or  
10 suitable approach is enough for the city. I  
11 quoted the RFP. You wanted "most  
12 advantageous," not "comfortable" or "suitable."  
13 And you've got all the evaluators, apparently,  
14 here, but when they were writing notes  
15 contemporaneous with this evaluation in  
16 January, they wrote notes where Mr. Hagerman  
17 said he was concerned about KBB's approach.  
18 Mr. Ryan said he was concerned. "Fatal flaws"  
19 was the words Mr. Ryan used. Mr. Cook was  
20 concerned. Mr. Cadrey was concerned. Then you  
21 had five city staff people were helping the  
22 evaluation committee. Ms. Hinton, Mr. Strid,

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23 Mr. Corbin, Ms. Nelson, and Mr. Gribbon, all  
24 had concerns about the safety approach --  
25 project approach. When they tell you it's

16

1 comfortable and suitable, that isn't enough.  
2 That isn't the legal standard. It's not what  
3 you asked for in your RFP. Is that good enough  
4 for you and the ratepayers?  
5 Cost. They're going to tell you it's too  
6 early, can't do it. Well, KBB knew enough to  
7 fix their profit. Fixed fee, which is already  
8 fixed, \$67 million, \$3.5 million more than  
9 IHO's. That's their profit. They've already  
10 done that, but they tell you they don't know  
11 enough to tell you what the construction cost  
12 is. They've already scheduled the job, but  
13 they tell you they don't know enough to  
14 (inaudible) schedule. So the point of this is,  
15 on those testimonies you're going to hear that  
16 something didn't matter, or we're not ready, or  
17 we can't do it. The fact is, there's other  
18 evidence that says they're ready to go.  
19 The schedule they've used, proposing to  
20 you, is two times what you've gotten on the  
21 west side. They're going to do twice as better  
22 than even their partner has done in Europe. So  
23 you've got to listen to the testimony and ask  
24 the questions today. The appeal process hasn't  
25 helped you. That's why we need your help

17

1 today. Mr. Baer, the purchasing agent, never  
2 looked --  
3 **MAYOR POTTER:** Sir, you have to wind it  
4 up.  
5 **MR. BARTZ:** Thank you. He never looked  
6 into anything. He wrote a denial letter  
7 crafted on legal authority, given to him by  
8 KBB, and reasoning. We've got those exhibits  
9 in the binder we're going to make available to  
10 you.  
11 The Purchasing Board of Appeals, it never  
12 interviewed Mr. Baer, never talked to him. It  
13 ignored the evidence because they said that  
14 Mr. Cook's deposition -- The point is, the  
15 appeal process you've had up to now hasn't been  
16 helpful. That's why we need you to ask some  
17 questions today, to take a look at this

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18 evidence. Thank you for your time.

19 **MAYOR POTTER:** KBB, come up here, your  
20 opening statement, please. You have five  
21 minutes. Please state your name when you  
22 testify. Thank you.

23 **MR. HECKER:** Yes, sir. My name is David  
24 Hecker. Mayor, council members, I'm pleased to  
25 address you today. I'm an employee of Kiewit,

18

1 assistant general counsel, here with a number  
2 of other employees who will be addressing you  
3 today, including Bill Mariucci, our project  
4 director, Tom Corey, our project manager, and  
5 Cristof Metzger, our tunnelling manager from  
6 Bilfinger/Berger.

7 The main reason we're here today is  
8 because we made a commitment to you. We made a  
9 commitment to provide the city a safe,  
10 well-constructed, and low-cost project. In  
11 turn, in opening this project up for a public  
12 bid, you made a commitment to us. You said  
13 that if we followed the rules, we submitted the  
14 best proposal, evaluated with the highest  
15 score, we would be selected for this project.  
16 We played by the rules. Our concern is that,  
17 as we watch IHO's protest unfold, our  
18 commitment to the city and your commitment to  
19 us is being undermined.

20 First, we're concerned about the process.  
21 When we and IHO determined to submit proposals  
22 to the city, we both knew what the rules of the  
23 game were. We knew who was going to evaluate  
24 our proposals. We knew the involvement of the  
25 city, and we knew the scoring system, and we

19

1 knew the issues that were important to the  
2 city. In other words, we all agreed to play by  
3 the same rules. If we didn't like the rules,  
4 we could have decided not to submit a proposal.  
5 These are the same rules that IH benefited from  
6 on the west side project. They didn't complain  
7 then. Now they're complaining. The rules  
8 don't cease to apply simply because you aren't  
9 selected.

10 Second, if the council takes over this  
11 decision, every contractor will ignore the  
12 formal procurement process. IH is asking you

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13 to do in two hours what eight evaluators, 15  
14 experts did over a six-month evaluation period,  
15 in which they reviewed hundreds of pages of  
16 documents, spent literally thousands of person  
17 hours, and heard four hours of interviews from  
18 each member of the proposers.

19 In order to fabricate a reason to overturn  
20 our selection, IHO has raised the issue of the  
21 safety memo and attacked the integrity of city  
22 employees who have dedicated their professional  
23 lives to creating safe working conditions.  
24 Bottom line is, IHO lost. The safety memo was  
25 not the reason. The safety memo is not

20

1 prohibited by the RFP, or any other document.  
2 Both the RFP and the evaluator's guide was  
3 distributed to the eight evaluators to govern  
4 them on how to conduct themselves. Both  
5 contemplated that the evaluators would, in  
6 fact, be receiving comment and information from  
7 the experts hired by the city to assist them.  
8 Participation of the city staff and the review  
9 of the safety record was entirely consistent,  
10 the process described to and accepted by both  
11 of us. Technical experts always have been part  
12 of the selection process for city contracts,  
13 and were part of the selection process on the  
14 west side project. IH did not protest then,  
15 because the evaluators were provided  
16 information by city staff and city experts.  
17 Now they're protesting. Why? Because they  
18 didn't win.

19 We know for a fact that the city technical  
20 staff spoke with the evaluators and answered  
21 their questions after the interviews with the  
22 proposers were concluded. We knew that. Both  
23 parties knew that. When we were doing our  
24 interviews, the city technical staff was  
25 sitting right behind the evaluators. There was

21

1 no secret here.

2 In addition, take a step back and consider  
3 what the memo actually says. It says that  
4 Kiewit's approach to safety is better than  
5 IHO's approach. The memo is true. Kiewit's  
6 approach is better. The information presented  
7 to the evaluators established that Kiewit is

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8 more safe than IH has been on the west side.  
9 And it isn't even close. Kiewit projects,  
10 using Kiewit's approach, have been 10 times as  
11 safe as IH has been on the west side project.  
12 That's 10 times fewer visits to the doctor or  
13 the hospital. And it is Kiewit's safety  
14 program and safety staff who will be  
15 responsible for safety on this job.  
16 Now, when asked about how they were going  
17 to improve their safety performance on the west  
18 side -- on the east side project, what was  
19 IHO's response? This is their testimony. "If  
20 it ain't broke, don't fix it." That's a quote  
21 from their testimony, answering questions to  
22 the evaluators during the interviewing process.  
23 Simply stated, their record doesn't support  
24 such a cavalier attitude towards the safety of  
25 the employees working for them.

22

1 Finally, IHO has not established that the  
2 evaluation committee was influenced by the  
3 memo. In fact, they can't. And without doing  
4 that, the safety memo is totally irrelevant and  
5 merely an excuse to come before you today.  
6 Why wasn't IHO selected? Wasn't due to  
7 the safety memo. They were in second place  
8 after the review of the written proposals, and  
9 after that they performed poorly during the  
10 interview with the evaluators. People that  
11 were at the interview have testified an  
12 argument erupted between members of the joint  
13 venture. Quotes from that eruption are on the  
14 second two boards to my right. Coming in  
15 second on the written proposal and performing  
16 poorly on the interviews is the reason they  
17 were not selected.  
18 We offer not only the safest approach, we  
19 offer the best project approach. Our approach  
20 saves \$23 to \$32 million dollars, savings  
21 unique to our approach. These cost savings are  
22 offered without impact to the project schedule.  
23 We will finish the job six months early. That  
24 information was provided to the evaluators. As  
25 a result of our project approach, we offer the

23

1 least costly option, safest, best approach,  
2 least expensive. That's most advantageous.



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3 In conclusion, the city's evaluation  
4 committee recognized KBB as the most  
5 advantageous contractor for this project. We  
6 committed to the city to follow the rules, and  
7 we've done so. KBB has committed to perform  
8 this project as a world-class organization on  
9 safety, with the best approach and the lowest  
10 cost.

11 **MAYOR POTTER:** Sir, you have to wrap it  
12 up.

13 **MR. HECKER:** We invite the city to take us  
14 up on that commitment. Thank you very much.

15 **MAYOR POTTER:** Thank you very much. Call  
16 forward Bureau of Environmental Services'  
17 opening statement.

18 **MR JIM VAN DYKE:** Good afternoon,  
19 Mayor, members of the council. This appeal is  
20 IHO's opportunity to prove that there was a  
21 legal flaw in the selection process for the  
22 east side CSO. Such a flaw would exist if the  
23 selection process violated the terms of the RFP  
24 Or the city code, and you've heard Mr. Auerbach  
25 describe that. Based on the city's review of

24

1 the process, that did not occur. I'm not here  
2 to bully you into any decision, and I think if  
3 council knew the strength of your character,  
4 you would know that would not be possible.

5 You need to know, however, that the city's  
6 RFP was not only typical for the city, but  
7 IHO's project manager admitted in the last  
8 hearing that it was "very similar" to the way  
9 that IH was selected for the west side project.  
10 It's typical to use a points system to select a  
11 contractor, not some vague standard. That's  
12 how IH was selected during the west side  
13 process, because they got the most points.

14 It's typical for the city to use experts  
15 on its evaluation committee, and to be assisted  
16 by experts on a nonvoting technical committee,  
17 particularly in projects of this magnitude.  
18 It's typical that committee members are  
19 empowered to express their opinions about the  
20 relative merits of the contractors who want  
21 city money.

22 And it's typical that when people who  
23 interview for a job have a bad interview, they  
24 don't get hired.

25 IHO really has no credible contention that

25

1 a flaw existed in the way the evaluation  
2 committee scored the project approach  
3 criterion. I well understand IHO says it has  
4 the better approach, and KBB says it has the  
5 better approach. I'm not a professional  
6 engineer, but I know that our evaluation  
7 committee contained professional engineers,  
8 Ph.Ds. They were assisted by professional,  
9 registered engineers and experts on tunnelling.  
10 It is appropriate to defer to them in this  
11 regard, because that is what the city asked  
12 them to do when they asked them to volunteer  
13 their time.

14 In regard to safety, there was no legal  
15 flaw in permitting BES employees to express  
16 their opinions about the safety approaches  
17 suggested by the competitors. In fact, that's  
18 the very reason that the city's RFP expressly  
19 permitted new information to be -- to be  
20 received. And that's on this first one you're  
21 going to get a copy of, the RFP, and it  
22 basically says that the committee will consider  
23 new information that relates to the criteria  
24 that were established.

25 However, by inquiring about the substance

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1 of the opinion stated in that document, you are  
2 setting a higher standard than the legal  
3 standard I just described to you. If you  
4 decide to go in that direction, it's important  
5 to know three things about the content of that  
6 document.

7 Number one, the city memo, the safety  
8 memo, was just one little piece of what the  
9 evaluators considered. You can ask the  
10 evaluators how the safety memo affected them,  
11 seven of the eight evaluators are here. I  
12 believe they will tell you that it didn't  
13 affect them very much.

14 Second, you need to know that IHO's  
15 performance at the oral interview regarding  
16 safety, as well as other matters, was terrible,  
17 and that the contemporaneous notes of the  
18 evaluation committee reflect that. Those notes  
19 are in the record. For example, the

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20 contemporaneous written notes of Mike Custer,  
21 the representative from Hoffman, said the  
22 following in regard to IHO's presentation on  
23 risk and safety, he said, Wrong, substandard,  
24 poor, minimal response.

25 Third, although the safety document could

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1 be improved -- and what document couldn't after  
2 three months of review by lawyers -- the BES  
3 employees got it right. The information  
4 available showed to them -- showed that KBB had  
5 a much better approach to safety than IHO.  
6 When you could hear about the details, please  
7 don't overlook the forest for the trees.

8 Finally, as you assess IHO's credibility  
9 today, I concur with council that you should be  
10 skeptical, because you must consider that it  
11 gave incorrect information to the evaluation  
12 committee and the Board of Purchasing Appeals  
13 about its safety program. It told the  
14 evaluation committee that it was the first  
15 tunnelling contractor ever to be accepted in an  
16 OSHA safety program. This is one of the  
17 powerpoint presentations that they made, where  
18 they said they were the first tunnel contractor  
19 in the U.S. to be accepted for the voluntary  
20 protection program. However, I'm here to tell  
21 you -- if they won't admit it, I will -- that  
22 they are not accepted into that program. The  
23 only thing that's been accepted is an  
24 application into that program.

25 At the board of appeals, IHO also referred

28

1 to its status under the OSHA program, calling  
2 it the merit status. And here's a copy of  
3 Exhibit 27 from the board hearing in which they  
4 referred to IHO's VPP merit status. I believe  
5 that if you ask them today, they will admit the  
6 fact that they don't have merit status from  
7 OSHA. They've applied for that.

8 In summary, from a legal perspective,  
9 there has been no legal error in the process.  
10 If you choose to go with a higher standard on  
11 behalf of the public, I understand that, but  
12 you need to know that BES employees got it  
13 basically right.

14 Third, I believe that you should bring

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15 that skepticism to IHO's presentation today  
16 based on the previous presentations they have  
17 made. Thank you.

18 **COMMISSIONER ADAMS:** Can I clarify one  
19 point?

20 **MR. VAN DYKE:** Yes.

21 **COMMISSIONER ADAMS:** Just for those  
22 watching on TV, you're the city attorney  
23 representing the council in this decision, and  
24 you're the city attorney representing the  
25 Bureau of Environmental Services.

29

1 **MR. VAN DYKE:** Yes, I am.

2 **COMMISSIONER ADAMS:** Okay. Thank you.

3 **MAYOR POTTER:** Okay. Next is IHO  
4 witnesses. You have a total of 30 minutes.

5 **MR. MCDONALD:** Good afternoon, Mr. Mayor,  
6 Commissioners. My name is Jim McDonald. I'm  
7 the project manager for  
8 Impregilo-Healy-Obayashi's joint venture on the  
9 west side CSO Project, and I've been designated  
10 project manager for the east side CSO Project.  
11 We've given you a handout book and some of the  
12 statements I'll make will -- I'll refer you to  
13 certain tabs and exhibits, so that it's easy  
14 for you to see what it is. For example, tab  
15 A-1 is the excerpt from the RFP that shows what  
16 was required by the RFP in the safety category,  
17 and so forth.

18 At the request for a hearing two weeks  
19 ago, city council asked to limit discussions to  
20 safety and project approach, and so those are  
21 just the two areas I'll be addressing today.  
22 First area I want to address is safety, and in  
23 particular the safety memo and the west side  
24 experience.

25 First, I want to -- I want to depart from

30

1 what I prepared for just a second to share  
2 something. This morning when I came to work, I  
3 found on my desk these -- this little file with  
4 these letters from four of our carpenters, and  
5 I just wanted to read an excerpt from one of  
6 these. It said, "I've worked for many large  
7 contractors throughout my union career,  
8 including Kiewit. Of all the contractors I've  
9 worked for, only two have meant it when they

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10 said, "Safety first, production second. These  
11 contractors were Impregilo-Healy-Obayashi and  
12 Bechtel." Further, Mike Anderson said,  
13 "Impregilo-Healy-Obayashi's safety department  
14 said it best, safety is a value, not a  
15 priority. Priorities can change on a moment's  
16 notice. Values, on the other hand, do not  
17 change. This philosophy is practiced by the  
18 entire company from senior management to the  
19 newest workers."

20 Now, I didn't ask for this letter, and it  
21 kind of surprised me to see it, and it actually  
22 kind of touched me, that our employees would  
23 care enough to say such a thing to me.  
24 The safety memo that we've talked about is  
25 important to the project. It's this document

31

1 you've become familiar with. And it's  
2 important to the process because it's wrong,  
3 and it mattered in the process. In the book,  
4 the safety memo is at tab A-2, and there's some  
5 highlighted versions of it at A-3 that I'll be  
6 referring to.

7 It's wrong for a number of reasons. First  
8 of all, it was unauthorized. The authors  
9 testified that nobody asked them to write this  
10 memo. They were asked to come up with some  
11 questions -- review the proposals, come up with  
12 some questions that the evaluating committee  
13 could ask the proposers at their interviews.

14 Secondly, the proposal clearly lacks  
15 objectivity. It's inaccurate, and misleading.  
16 It's crafted to hurt IHO. In Mr. Darby's  
17 deposition he stated that Mr. Reiner first  
18 wrote the section on KBB, the one with the  
19 flowering praise, and he gave it to Mr. Darby  
20 and told him to write the other sections.  
21 Well, when you look at the memo, that's not the  
22 first section that got written. In fact, the  
23 order of the thing is not even the order of the  
24 interviews. So just unclear what -- what was  
25 going on here.

32

1 The safety memo's incorrect about IHO. It  
2 ignored a lot of other readily available  
3 statistics on the west side project, and  
4 other -- and other information that we provided

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5 in our statement of qualifications.

6 The second sheet of this highlighted memo  
7 shows some -- at the bottom right there --  
8 other things that the city tracks regularly.  
9 They know a lot of stuff about our safety  
10 program, and they've judged it to be way below  
11 the Oregon average -- or better than the Oregon  
12 average that is.

13 The safety memo's wrong in a couple of  
14 other areas. When you get into it, there's a  
15 couple areas that really stick out. Page 3 of  
16 this thing, there's a deal about the approach  
17 to -- approach to training and education. It  
18 says, under IHO, no specific details provided.  
19 Well, this is wrong. This is incorrect. On  
20 the right, you see an excerpt from our  
21 proposal, where we talked about training in  
22 great detail.

23 On the next page, the lower part of this  
24 page, the safety memo says that inspections  
25 will be performed, but no details are provided.

33

1 But if you look on the right side of the page,  
2 there's more excerpts from our proposal.  
3 There's a whole list of inspections. IHO -- I  
4 mean the safety guys who wrote this memo got it  
5 wrong. They made up stuff in the memo.

6 The safety memo's also incorrect about  
7 KBB. They plagiarized KBB's proposal and gave  
8 you some new -- some different information, and  
9 put it forth as their own conclusion. Right in  
10 the middle of this first paragraph on KBB, it  
11 says the JV safety record is among the best in  
12 underground construction, and six times better  
13 than the industry average. Well, the proposal  
14 didn't say that, although the proposal did have  
15 those same words, only it said Kiewit had the  
16 same record and six times better. So they took  
17 Kiewit's statement about themselves and applied  
18 it to the whole joint venture. This is  
19 incorrect, this is misleading. This joint  
20 venture never worked together. They don't have  
21 a record. There's no record that they've  
22 performed any work.

23 It's also important that no due diligence  
24 was performed in this -- in regards to the  
25 information that was presented in the

1 proposals. Tab A-5 here is kind of a  
2 spreadsheet we've put together, and it refers  
3 to various depositions and indicates some of  
4 the lack of due diligence.  
5 I saw in the newspaper today this article  
6 about this project and this hearing. And I see  
7 where Mr. Marriott said that this was a  
8 routine, understandable part of the hiring  
9 process, the safety specialist, safety memo,  
10 akin to checking a job candidate's references.  
11 There's one big difference to me. When I check  
12 a job candidate's references, I make a phone  
13 call. Nobody made the phone call here. Nobody  
14 checked the Internet. Nobody looked into this  
15 stuff. They took their word for it, took  
16 people's words for certain things.  
17 The safety memo uses an unfair methodology  
18 as well. They pick and choose what they want  
19 to put in here. They cherry-pick good stuff on  
20 KBB and other stuff on us. For example, the  
21 recordable rates of -- the RCIR -- the incident  
22 rate, recordable incident rate, it's a valuable  
23 tool for tracking safety performance, but it's  
24 not accurate to say this is the only way. It's  
25 not the complete analysis. In fact, the sheet

1 I showed you there, the second sheet under 3-A  
2 shows a lot of other things that the city  
3 regularly tracks to determine your safety  
4 performance. Severity, for example, is very  
5 important. Our severity is about a fourth of  
6 the state average for cost/loss ratio.  
7 On KBB, it's interesting that, here,  
8 they've analyzed information that's completely  
9 incomplete.  
10 **COMMISSIONER ADAMS:** Where are you at?  
11 **MR. MCDONALD:** On the executive summary  
12 under KBB. Actually, it would be the top of  
13 the second page on the -- well, on the  
14 unhighlighted deal. It's the second page.  
15 **COMMISSIONER ADAMS:** Okay.  
16 **MR. MCDONALD:** It talks about the incident  
17 rates and stuff.  
18 In a statement of qualifications, Kiewit  
19 didn't submit their OSHA 200 logs. They didn't  
20 submit their safety information for their  
21 company. They submitted some limited

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22 information on one division of one company of  
23 the joint venture. This was the underground  
24 district, so-called underground district of  
25 Kiewit, and it's not clear what it is, but you

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1 can see from the number of people involved with  
2 this that there are less people in this  
3 division of Kiewit than there are on the west  
4 side project. This safety information covered  
5 about 900,000 man-hours. On the other hand,  
6 Kiewit gave you man-hours for Kiewit that said  
7 they worked 27 million man-hours in 2003. They  
8 didn't give you any statistics. They didn't  
9 give you the OSHA 200 logs for all those  
10 people. It's not appropriate for this analysis  
11 to be made and their demonstration that they're  
12 six times better. They're talking about their  
13 underground division which is 1/27 of the work  
14 they do. The underground district division  
15 didn't submit the proposal to you, Kiewit did,  
16 and Bilfinger/Berger.

17 And Willamette Valley constructors is the  
18 third one. Certain members of that joint  
19 venture did present information in their SOQ,  
20 their statement of qualifications, about  
21 incidents, recordable rates; but the authors of  
22 the memo said, Well, these guys didn't perform  
23 any tunnelling operations in the United States,  
24 so we're not going to make a comparison. Well,  
25 the joint venture did construction work. The

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1 status is applicable. Where's the evaluation?

2 The results of the safety memo is that it  
3 advocated one proponent over another. It  
4 ignored evidence to make IHO look bad and  
5 falsified KBB information to make them look  
6 good.

7 The other thing about the safety memo, it  
8 mattered. The RFP did not contemplate that  
9 there would be a separate evaluation of the  
10 proposers by city staff that would be  
11 ultimately given to the evaluating committee.  
12 It was provided to the evaluating committee.  
13 We showed you earlier, it shows up in the  
14 depositions and in the notes of some of the  
15 technical review committee, and it did provide  
16 scores for the evaluating committee to use.



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17 The timing is critical here. The timing  
18 of safety memo, as we see from the depositions  
19 we heard two weeks ago, it came out after the  
20 final interview and before the final scoring.  
21 Consequently, none of the evaluators had a  
22 chance to ask questions of the proposers about  
23 that information, and the proposers didn't have  
24 the opportunity to answer any questions on  
25 that. It kind of amounts to jury tampering.

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1 The jury's left the room, the trial's over,  
2 they're starting to deliberate, somebody comes  
3 in the back door to give you some new  
4 information that you didn't see in the  
5 courtroom.  
6 Now, we've mentioned before Roy Cook's  
7 deposition. It's tab A-7 here. Roy Cook  
8 testified that the safety write-up that he's  
9 talking about is the safety memo, it's Exhibit  
10 19, which is the safety memo. Then he says,  
11 there on page 21, "My final numbers are based  
12 upon taking the three scores that were in the  
13 safety write-up." Nothing could be more clear.  
14 He used the city's scoring thing, and he used  
15 those scores as his own there.  
16 Bill Ryan is another member of the  
17 evaluating committee. He's a city employee.  
18 He testified at the board of appeals, yeah, he  
19 saw this memo, he looked it over, he didn't  
20 have time to read the whole thing, but he got  
21 the gist. The authors liked KBB. They  
22 preferred them. They didn't like IHO. As a  
23 result of this -- let's see, the last page of  
24 this section 3-A -- we had -- at the end of the  
25 written evaluation, we had 81% of the available

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1 points on the safety approach.  
2 After the interviews, when this memo was  
3 circulated and poised in the process, our  
4 scoring dropped to 50% of the available points.  
5 It seems this is exactly why we ended up with  
6 the lowest -- lower number of points on this.  
7 The safety score swung 31 points in this one  
8 category, is the basis of that.  
9 I'll talk to you just a minute about the  
10 west side safety. KBB may talk about it. BES  
11 may talk about it. So I'll just mention a

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12 couple things. West side safety record is not  
13 really the issue here. It's not really an  
14 issue here. There hasn't been any debate about  
15 it. You haven't heard any bad news on safety  
16 every six months when the BES people come and  
17 update you on the west side CSO Project. The  
18 project's been invisible for almost every point  
19 of view, including safety problems.

20 The results we've given you are really  
21 good. So far we've saved the city \$2 million.  
22 I have a display there on -- at tab B-4, an  
23 analysis that shows what I'm -- what I mean.  
24 These are savings on the OCIP premiums due to  
25 the low losses on our project. The city says

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1 our loss ratio is less than 1% of payroll.  
2 Typically, for jobs like this, it's 8%. The  
3 results are good.

4 The other thing I want to share about  
5 these results is that organized labor  
6 representing our workers is satisfied with our  
7 safety record. Tab B-2 here -- B-1 has a  
8 couple of letters that we received, and the  
9 operating engineer said it does not happen  
10 without the leadership and dedication from  
11 management and supervision, which has been so  
12 evident on the west side CSO. Impregilo-Healy  
13 is to be commended for the training they  
14 provided to the local work force who are now  
15 more experienced and prepared for the future.

16 The laborers, they called the -- the VPP a  
17 tribute to the joint venture's dedication to  
18 the health and safety of the workers. "It's  
19 been a pleasure to work with you." How many  
20 times do you see labor praising management?  
21 We're getting praise from labor here. Some  
22 west coast projects, labor sues the management  
23 because they're not satisfied with their  
24 project approach.

25 Let me talk a little bit about project

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1 approach, the other area we wanted to discuss  
2 today. The RFP, actually, the criteria section  
3 here is project approach, contractor fixed fee.  
4 It's one section. It's the most valuable  
5 section, has the most valuable criteria. It  
6 has 55% of the available points in the score,

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7 in this one category. By far, at both stages  
8 of the process, IHO got the highest points  
9 under project approach and fee. In the final  
10 scoring after the interview, we were 25 points  
11 ahead of KBB, so a significant number. We're  
12 proud of this, and it reflects the effort, the  
13 work that went into our proposal to give you  
14 the most advantageous project.  
15 The scoring on the project approach, when  
16 you look at it, it also gives you an  
17 unvarnished look at the proposal without  
18 influence of an inaccurate memo. There was no  
19 tampering with the process.  
20 Cost and schedule is also an important  
21 part of the project approach, very important  
22 part. The cost is largely determined by the  
23 approach. The approach is the nuts and bolts  
24 of the job. The contractor tells you how he's  
25 going to build this job, what equipment he's

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1 going to buy, what order he's going to do the  
2 work, when he's going to build what, where.  
3 All of this leads to your final cost. You  
4 selected an alternate contracting approach.  
5 The basis of that is that it must result in  
6 substantial savings to the taxpayer. And there  
7 must not be a limit to competition. That's the  
8 course you chose. It's a good course.  
9 The RFP did say if the award through the  
10 contractor, the proposer whose proposal -- have  
11 to emphasize -- whose proposal is most  
12 advantageous to the city. That's on page 20 of  
13 the RFP. You'd asked for the RFP earlier, I  
14 don't know if you got it, but the last tab in  
15 this book is the complete version of that.  
16 (Tape changes.)  
17 -- and equated that to mean best value.  
18 Throughout our proposal, every section deals  
19 with giving you the best 8-value, the most bang  
20 for your buck, savings in every category we  
21 could. We looked at a number of approaches,  
22 and we came up with the best way to do this  
23 job.  
24 We have the most relevant experience with  
25 this work here in Portland, and having done the

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1 west side work. Therefore, we know how to do

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2 this job. We told you how to do it, and we laid  
3 out a blueprint for how to successfully  
4 complete the project.  
5 Our fixed fee, another part of this  
6 component of the project approach, is the only  
7 fixed cost amount in the proposal, in the  
8 contract. For us, that was a reimbursable cost.  
9 Our fixed fee was over \$3 million less than  
10 KBB. It was the lowest proposed fee of any of  
11 the proposers. In addition, we were the only  
12 proposers who gave you another option to make a  
13 little alternate contracting approach to it  
14 that would save you another \$3.5 million. The  
15 \$6.5 million is not an insignificant sum of  
16 money. It's a lot of money. IHO proposed the  
17 lowest cost, and IHO is willing to take the  
18 risk of performing the project.  
19 The total construction cost is also an  
20 important thing. It's important for the  
21 ratepayers who are paying for the project.  
22 It's important to BES. They asked the question  
23 at the interview of every proposer, what do you  
24 think the estimated total construction cost of  
25 the project is? This wasn't required in the

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1 RFP, and the answer would not be binding on the  
2 proposer. That was clear. It was a fair  
3 question, and only KBB said we don't want to  
4 say at this point. Willamette Valley  
5 Constructors said, We included it in our  
6 proposal. They tell you they are saving some  
7 money, but off of what? You have to have a  
8 number that you are saving money. A sale at a  
9 department store, 50% off, 50% off of what?  
10 Something that's marked up 100? We don't know.  
11 There was, contrary to some assertions that  
12 were given two weeks ago, there was enough  
13 information to come up with an estimated  
14 construction cost. An experienced contractor  
15 could look at the plans and give you that cost.  
16 KBB knew enough to fix the profit. They knew  
17 enough to make a schedule. They knew enough to  
18 tell you how much they are going to save.  
19 The schedule is another key component of  
20 the project approach. Let's talk about schedule  
21 a minute, because schedule matters. On the east  
22 side project, the cost will be around \$5  
23 million a month. Nobody disputed that. If you

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24 have a delay of six to eight months, or impacts  
25 on that order of magnitude, there's going to be

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1 thirty to forty million of risk there.  
2 A-3 is the tab that talks about schedule a  
3 bit. There is several issues with KBB's  
4 schedule. Let's look at the most important  
5 one. That's where they predict the tunnel  
6 advance rate that's two times in a very  
7 difficult soil at the north end of the project.  
8 Two times what we got on the west side in  
9 similar soils. It's two times what  
10 Bilfinger/Berger got in Vienna on a project  
11 that's similar. Now, we're not talking 30 feet  
12 a day versus 25 feet a day. We're talking two  
13 times what we have got on the west side. It's  
14 just not going to happen. In fact, the  
15 technical review committee people said KBB  
16 identified this gravel (inaudible) as the most  
17 difficult soil, but they gave it the fastest  
18 advance rates at the end of the tunnel.  
19 IHO provided a realistic schedule that  
20 allowed for construction contingency. We know  
21 what will occur, just as your staff let you  
22 know. In fact, we gave you several schedules.  
23 We looked at different approaches, we gave you  
24 a schedule for each of the approaches. Our fee  
25 included three months of the valuable flow to

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1 the contingency time that's necessary.  
2 To compound the scheduling difficulties of  
3 KBB that we see and the comparison here, also  
4 need to mention there's a big difference in  
5 approach, a very big difference in approach.  
6 KBB proposes one tunnel boring machine to do  
7 five miles of tunnel on the east side. They  
8 are the only finalist to make this proposal.  
9 Five miles of tunnel in very difficult ground  
10 conditions, under the water table and a very  
11 abrasive geological formation in Troutdale, and  
12 this machine, after five miles, is going to be  
13 near the end of its design life. This is a huge  
14 risk. If the machine can't make it, it's on its  
15 last leg, going to 17th Avenue, under  
16 McLoughlin, and the main bearing goes out. The  
17 main bearing is a large bearing that -- upon  
18 which the cutter head rotates. It takes six to

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19 eight months to fabricate. You'll probably  
20 have a spare at the beginning of the job, but  
21 that if goes out, the only thing you can do  
22 is -- well, a couple of things you can do. But  
23 you'd have to sink a shaft, essentially, over  
24 the top of it because of this tunneling under  
25 the water table. A shaft on McLoughlin Avenue

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1 is not something that anybody would want.  
2 We considered this one machine to be just  
3 an intolerable risk for the city and that's why  
4 we proposed two tunnel boring machines.  
5 Interestingly enough, the city, BES, gave a  
6 primary schedule in the RFP. They anticipated  
7 two tunnel boring machines as well.  
8 KBB told you a second tunnel machine could  
9 cost you \$15, \$20 million more. Well, that's  
10 only the equipment. It doesn't take into  
11 account the savings of time, savings of a  
12 support staff that's watching two tunnels being  
13 driven at the same time rather than the one,  
14 one long one. There's no way, just no way IHO  
15 would risk this.  
16 A couple other things I want to say about  
17 the approach that you just need to know because  
18 this is not your ordinary project that we are  
19 vying for here today. Tunneling in Portland,  
20 in these soils, is among the most difficult in  
21 the country. The west side project is the  
22 first time in the United States that this  
23 technology has been used. It's a -- we're  
24 mining through saturated soils, sand and soil,  
25 well below the water table. 100 feet below the

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1 water table. High water pressure. Have to use  
2 a machine that exerts a pressure on the face,  
3 and its supported by a compressed air bubble.  
4 So to get to the cutter head to work on this  
5 machine, you have to go under compressed air.  
6 They call it a hyperbaric intervention. You  
7 have to go in through an air lock, much like  
8 divers do, and, and go under pressure as if you  
9 were descending 100 feet below the ocean level.  
10 This is very difficult. It slows you down. It  
11 slows down the advance rate, requires certain  
12 safety things. IHJV on the west side has  
13 developed, probably, the most comprehensive

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14 hyperbaric medicine safety program in the  
15 United States. Maybe the only one like it. Or  
16 OSHA, when they evaluated us recently, they  
17 said this hyperbaric medicine program is beyond  
18 reproach, beyond compare. KBB even recognizes  
19 the value of it because they said, in their  
20 proposal, they proposed to use people we  
21 adequately trained on the west side CSO. So  
22 the training is there.  
23 In conclusion, let me wrap this up. The  
24 selection process was broken. Your staff let  
25 you down. They introduced this safety memo at

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1 an inopportune time. The safety memo was out  
2 of order. It was so inaccurate that, quite  
3 frankly, I would never -- if it was a letter  
4 coming out on my letterhead, I would not sign  
5 that letter without big, big revisions.  
6 Mr. Gribbon stated two weeks ago at the board  
7 of appeals hearing that he didn't intended for  
8 it to go out. He didn't intend for it to go to  
9 the evaluation committee at this time. But it  
10 did go to the evaluation committee, and it  
11 counted. It influenced the score. This memo  
12 is not worth 500 million dollar. This is not a  
13 500 million dollar memo.  
14 Mr. Marriott sent you a memo in March  
15 where he was showing he was concerned about  
16 some of the press coverage on this project and  
17 on this appeal. He said the evaluators  
18 considered KBB's approach and they were  
19 comfortable with it. As Mr. Bartz said  
20 earlier, is comfort what you want? You want to  
21 be comfortable? The RFP didn't ask for  
22 comfortable. They asked for most advantageous.  
23 Comfortable is not something we want to give  
24 you. It's not something we could live with.  
25 That's why we gave you the most advantageous

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1 proposal. We gave you a proposal that deals  
2 with every aspect of the project in-depth,  
3 whether risk, cost, safety, and the technical  
4 approach.  
5 The evaluators weren't comfortable. You  
6 look at D-1, at Mr. Marriott's memo, and after  
7 that, there's comments from some of the  
8 evaluators. Mr. Hagerman says, "One TBM risk."

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9 He's the city employee on the committee.  
10 Mr. Ryan, another BES employee on the  
11 evaluation committee says, "One, machine cost  
12 not completed, risk not addressed. Main  
13 bearing. Fatal flaw." To me, fatal flaw says  
14 you can't do it, or it's very risky to try to  
15 do it. Mr. Cook, Mr. Cook is the head of the  
16 design group over on the east side project, he  
17 is a very learned man. He asked, "Does the use  
18 of a single TBM provide the best risk reduction  
19 approach?"  
20 Mr. Cook was very, very, very concerned  
21 with the use of one TBM. And you can see in  
22 the excerpts of his deposition, he wanted to  
23 talk about it with the evaluation committee  
24 during the deliberations more. But he was cut  
25 off. He said he was told, "Don't worry about

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1 it. If they need two TBMs, they will get two  
2 TBMs."  
3 Mr. Cadrey, another one of the evaluators,  
4 under, Does the project approach reduce cost to  
5 the city? Does it seem reasonable? Mr. Cadrey  
6 wrote, "It's not clear on KBB's proposal.  
7 There's no commitment to cost." Deanna Hinton  
8 was on the technical review committee. She  
9 said, "I don't think that they have adequately  
10 addressed the risk of schedule regarding using  
11 only one TBM." Julius Strid is your cost  
12 control manager. He works for the consultant,  
13 BES's consultant on the CSO programs. He said,  
14 "It appears, Greg Corbin, the tunnel expert  
15 that they had hired, has the same concern about  
16 schedule and excavation rate with one TBM that  
17 the rest of us do." The rest of us? Sounds  
18 like just about everybody has this concern with  
19 KBB's approach.  
20 Patty Nelson, in her notes about the  
21 deliberations, she said, "Two out of three  
22 proposers raised concern about (inaudible) in  
23 Troutdale, making it too high of a risk to go  
24 with one." Only KBB proposed one TBM for the  
25 project. Paul Gribbon, at his hearing, said

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1 he couldn't remember if other people had  
2 concerns but he said he did. He questioned the  
3 approach.



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4 The city invested heavily in our  
5 experience in the west side. That experience  
6 has paid off big dividends. Now, we know this  
7 doesn't guarantee -- this does not guarantee we  
8 get the site job. We knew the need for a level  
9 playing field was out there. We understood  
10 that. But in the end, the playing field was  
11 tilted away from us, and we didn't even know  
12 why. We found out why afterwards. It was this  
13 memo. We took our experience and we put it  
14 into our proposal and we created a proposal  
15 that presents the most advantageous approach to  
16 the city. We earned this project. Thank you.

17 **MR. MCDONALD:** Do you have any  
18 questions at this time?

19 **MAYOR POTTER:** We'll get to the  
20 questions after we hear the others.

21 **MAYOR POTTER:** Next, we'll hear the KBB  
22 witnesses.

23 **MR. AUERBACH:** Before KBB makes  
24 its presentation, I've been told that  
25 Commissioner Adams has an additional disclosure

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1 that he wants to make, that, depending on what  
2 it is, IHO may need an opportunity to respond.  
3 Go ahead.

4 **COMMISSIONER ADAMS:** Apparently,  
5 unbeknownst to me and my staff, two members of  
6 my staff, Warren Jiminez and Maria Temai  
7 (phonetic) had expert contact with Len  
8 Bergstein on June 18, and again -- I'm sorry --  
9 on May 18 and again on May 24. But they  
10 weren't discussed with me.

11 **MR. AUERBACH:** So then, they're  
12 not ex parte contacts. If you don't know about  
13 them then they're not --

14 **COMMISSIONER ADAMS:** I do now.

15 **MR. AUERBACH:** You know what the  
16 substance of those were? Okay.

17 **MAYOR POTTER:** KBB witnesses. You have 20  
18 minutes. When you testify, please state your  
19 name.

20 **MR. MARIUCCI:** Thank you, Mr. Mayor.  
21 Members of the council, my name is Bill  
22 Mariucci, project director for  
23 Kiewit/Bilfinger/Berger. For the next 20  
24 minutes, we would like to address two specific  
25 issues that council wants to hear. First is

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1 safety, the second is project approach,  
2 including the one versus two TBM machine  
3 debate. Safety first. I've been with Kiewit  
4 for 24 years, and over this time, I am proud to  
5 say that I worked for one of the industry's  
6 safest contractors. We know our commitment for  
7 safety is shared at all levels of our  
8 organization from the craft in the field to our  
9 managers to our chairman. This is the culture  
10 that we will bring to the east side CSO  
11 project. At issue here today is the safety  
12 memo, specifically it's appropriateness,  
13 accuracy, and its effect. We would like to  
14 offer our perspective on the first two items,  
15 appropriateness and accuracy.

16 The first issue is if the safety memo, as  
17 prepared by city staff, should have been  
18 provided to the evaluation committee. Our view  
19 on this is: Who better than the city staff to  
20 provide input to the individuals who represent  
21 the city's interests of safety. While IHO  
22 wants to make the safety memo all about IHO, we  
23 believe that the safety memo is much more about  
24 what the city expects and demands from their  
25 contractor regarding safety. The city wants a

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1 contractor with real commitment and  
2 accountability and with a record that supports  
3 its words. Beyond what simply is right  
4 procedurally, both the RFP and the evaluator's  
5 guide allow for the preparation and use of the  
6 safety memo. There is nothing in any of the  
7 contract documents that prohibit the  
8 preparation or its use.

9 Finally, if any contractor had an  
10 objection to the involvement of technical  
11 experts, such as those involved with the safety  
12 memo, during the procurement, they had plenty  
13 of time to object. I know that we didn't  
14 object, and I don't expect that IHO did,  
15 either, until now. I can honestly say we would  
16 never expect the city's technical experts to be  
17 isolated from the evaluation committee, to be  
18 prevented from providing any comments, either  
19 verbally or in writing. After all, it is the  
20 city's project.

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21 Next, was the safety memo accurate? Let's  
22 start by reviewing the safety records discussed  
23 in the memo. Safety records are objective and  
24 speak to the effectiveness of the safety  
25 program. The bottom line, the better the

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1 program, the better the records. Now, as was  
2 suggested by council a couple of weeks ago, it  
3 is useful to understand where the records come  
4 from. As discussed in the safety memo, the  
5 recordable incident rates are maintained on  
6 OSHA 300 logs, which record each worker injury  
7 on the project. Those are shown on the two  
8 right easels here. Each OSHA 300 log is  
9 required to be signed by a company executive,  
10 as you can see in the middle circled in red,  
11 with penalties for providing false information.

12 Now, regarding the range mentioned in the  
13 safety memo, OSHA logs were provided by each  
14 proposers as part of their statement of  
15 qualifications document. They are implicitly  
16 verified.

17 Now, let's take another look at the record  
18 of the proposers on the chart on the far left.  
19 You will remember this chart from a few weeks  
20 ago. This chart tracks the OSHA recordable  
21 injuries of construction industry and the  
22 Kiewit company over the past ten years. IH's  
23 performance on the west side CSO project is  
24 documented here as well. Now this information  
25 was included as part of the statement of

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1 qualification's document. What does this data  
2 tell us? Clearly, while the industry is  
3 trending down and reducing accident frequency,  
4 that's not the case on the west side project.  
5 In fact, IH's rate -- 2004 rate of over 13,  
6 excuse me, almost 11 as presented in the  
7 qualifications document, is more than double  
8 where Kiewit was moreover a decade ago. To put  
9 this into further perspective, as shown in the  
10 statement of qualifications document, during  
11 the first six months of 2004, at least 18 IH  
12 workers were sent to the doctor as a result of  
13 being injured, while Kiewit underground  
14 division had one single injury for all of 2004.

15 As shown here, a good safety record

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16 doesn't happen overnight. It takes years, as  
17 you can see in that chart, to instill the  
18 attitude and commitment to make a successful  
19 program. IHO has a long way to go. At the end  
20 of the day, the safety record is reflective of  
21 the safety program. And it can be concluded  
22 that IH's record does not support an effective  
23 program. The words don't match the results.  
24 All the safety memo did is point out that fact.  
25 Now the real question becomes, why did IHO

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1 drop evaluation points between the written  
2 proposals and the final scores. While IHO has  
3 only wanted to talk about the safety memo, they  
4 have ignored their own interview, where it is  
5 well documented, and it has already been said,  
6 that IHO did perform poorly on risk and safety.

7 Now, observed in this board of appeals  
8 testimony, it was IH and their managers' casual  
9 attitude -- will you put up the other one,  
10 please -- that regardless of the number of  
11 injuries, if it ain't broke, don't fix it.  
12 Based on what we have seen here on some of  
13 these statistics, I think that becomes a  
14 difficult attitude to accept. All the safety  
15 memo did was point out what the city could  
16 expect on the east side project in regard to  
17 safety performance.

18 Secondly, let's not forget about that this  
19 category is also about risk. There's not only  
20 worker but also third party risk. Risk to  
21 existing utilities, buildings, and bridges. An  
22 area of even greater concern on the east side  
23 CSO Project when starting the tunnel boring  
24 machine from a site in a densely populated  
25 area. Clearly, this was also not handled well

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1 by IHO during the interview, as you can see on  
2 the middle close to there. Notably, since they  
3 had experienced this type of problem on the  
4 west side project.

5 In summary, risk of safety was important  
6 to the city on the east side project. Enough  
7 so for the city to want to consider the opinion  
8 of its own safety managers. This makes sense.  
9 It's the responsible thing to do. The fact  
10 that IH has a poor record of injuries on the

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11 west side project and told the city in the  
12 interview that it would bring the same thing on  
13 the east side project is not related to the  
14 safety memo. Rather, it was IH's performance  
15 in their interview that caused the drop in  
16 points.

17 The second item that we would like to  
18 briefly discuss is project approach. While  
19 this is a very broad subject, we believe that  
20 the issue council would like to hear most on is  
21 our approach of using a one tunnel boring  
22 machine on the east side project. We are also  
23 prepared to answer any other questions or  
24 concerns you may have on the other aspects of  
25 our approach.

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1 For the past several months, IHO has  
2 attempted to discredit our approach constantly  
3 by alleging that somehow we will expose the  
4 city to additional costs. This is not true.  
5 To cover this, I'll now turn the presentation  
6 over to Tom Corey, the project manager, and  
7 Cristof Metzger, tunneling manager.

8 **MR. QUARRY:** Thanks, Bill.

9 Mr. Mayor, Councilmen, my name is Tom  
10 QUARRY. I'll be the project manager for the  
11 job. Cristof and I, we are here to talk about  
12 our project approach. The project approach  
13 that will save Portland rate payers money  
14 because -- because of it being the lowest cost  
15 option. We'll also be completed ahead of  
16 schedule, and it's the lowest risk to the rate  
17 payers. Last but not least, it will have the  
18 least construction impact on the community. In  
19 our time today, Cristof and I will address the  
20 key factors leading to the decisions in the  
21 development of our one TBM decision.

22 First, I'd like to hit a bit on the level  
23 of effort we expanded -- we expended during the  
24 proposal process on this matter, including  
25 detailed analyses to develop our approach, a

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1 process that we spent over nine months on. We  
2 studied the city's RFP in great detail.  
3 Overall, we had many people working to  
4 understand all the necessary requirements such  
5 as schedule milestones, technical  
6 specifications, and the geotechnical data.

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7 From here, we performed four independent  
8 geotechnical analyses to fully understand the  
9 Portland soils and how they would react to the  
10 tunneling. We also developed numerous  
11 schedules based on our experience and similar  
12 types of soil with the same geology. And when  
13 we -- and then we performed cost and risk  
14 analysis. These were done and performed by  
15 multiple estimates where we -- each estimate,  
16 we analyzed the risk and the impact to the  
17 community.

18 From these analyses, we concluded that one  
19 TBM was viable and offered the most advantage  
20 to the project. In order to make this  
21 determination, there were many factors and  
22 details that we considered. They included  
23 where and how to handle precast segment  
24 lining -- handling of the tunnel spoils. We  
25 met with the power company to determine that

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1 there was going to be sufficient power  
2 requirements. We looked at the trucking and  
3 how the construction traffic would happen on  
4 the project. We also looked at different  
5 phasing and sequencing for each one of these  
6 events. There are a host of other factors that  
7 we looked at. Unfortunately, time today does  
8 not give me the opportunity to get into each of  
9 those.

10 Based on the above, we then prepared a  
11 detailed proposal around the use of one TBM.  
12 After all this, what does this mean to the city  
13 of Portland? First, lowest cost. There are a  
14 number of cost savings that are exclusive to  
15 our approach. Our approach will save the city  
16 between \$15 and \$20 million with the use of one  
17 TBM. Based on our experience with precast  
18 lined tunnels, we can redesign this liner, and  
19 we feel we can save another \$4 to \$6 million.

20 Next, a savings of \$3 to \$4 million based  
21 on our method for launching the tunnel boring  
22 machines based on our experience and the  
23 lessons learned from the west side experience.  
24 Here, it is important also to recognize that  
25 besides this cost savings, this will also

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1 reduce risk, the risk that is inherent to the

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2 break in and break out of the tunnels in the  
3 shaft.  
4 And finally, you have heard from Bill  
5 about our attitude towards safety. We will  
6 save the money. We will save the city money  
7 here. Overall, we are confident that our  
8 approach will lead to a cost savings to the  
9 city and the ratepayers somewhere in the range  
10 of \$23 to \$32 million. This cost savings --  
11 what these cost savings offer the city with no  
12 compromise to the project's schedule. Our  
13 analysis of this project will be -- our  
14 analysis showed this project will be completed  
15 six months early with one TBM. If two were  
16 used, it will be completed 12 months early.  
17 Clearly, either option completes this project  
18 well ahead of the DQE December 2011 date.  
19 Therefore, it is in the best interest of the  
20 city and its ratepayers to recognize the  
21 substantial cost savings associated with our  
22 project approach of one TBM.  
23 While much has been said about our fixed  
24 fee being marginally higher than IHO, the facts  
25 are that saving the rate payer approximately

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1 \$29 -- \$29 million is the most important issue.  
2 **UNIDENTIFIED SPEAKER:** Mr. Mayor, Council  
3 members, we too recognize that this approach  
4 will require close management of (inaudible).  
5 Managing the schedule with one TBM will start  
6 with the fundamental process and early  
7 involvement in the procurement of the machine.  
8 We at Bilfinger/Berger, as one of the world's  
9 leading slurry tunneling contractors, has  
10 brought its (inaudible) experience to this site  
11 project. First, the (inaudible) reasonable  
12 production rate of our expected tunnelling rate  
13 is such (inaudible). Of the three finalists on  
14 this project, this rate is the average of the  
15 proposals. This expected rate is based on our  
16 detailed evaluation of the ground conditions  
17 and our own past experience in similar ground  
18 conditions and includes a learning curve and  
19 (inaudible). Our expected rate is being fully  
20 supported by the west side project where, in  
21 similar soils, production rates currently yield  
22 at (inaudible) 60 feet (inaudible).  
23 I want to pick up two things which I read

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24 a while ago and surprised me a little bit.  
25 (inaudible) one project in comparison to the

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1 east side or west side project. There is  
2 nothing to compare. I was the site manager for  
3 and in charge for the tunnel (inaudible) for  
4 this project, which had a total length of  
5 approximately 1,300 feet and we (inaudible) the  
6 dirt in eight weeks, including (inaudible)  
7 break in and break out and all that stuff. So  
8 I'm ready for questions.  
9 The next thing was (inaudible). In all  
10 our preparations, we checked it and we prepared  
11 all the lists and projects where single TBMs  
12 were used to the project with even longer  
13 distance, even bigger diameters, in different  
14 soil conditions and (inaudible). Our proposal  
15 schedule is based on five days, working five  
16 days a week. It will be possible to expand  
17 this to six or seven days if required. This  
18 will allow us up to 30% additional working days  
19 (inaudible) time duration.  
20 Replacement of TBM work parts. We will  
21 also have a plan to mitigate any impact  
22 associated with work to the TBM over the length  
23 of the tunnel. This plan involves a close  
24 inspection of TBM (inaudible) specified  
25 location with ordering replacement complements

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1 as necessary. We will equip the machine  
2 detection with (inaudible) detection systems,  
3 which will give us realtime information about  
4 those tools. In addition to that, this  
5 inspection will be used to determine the  
6 potential for procurement of an additional TBM  
7 (inaudible).  
8 **MR. QUARRY:** We presented you  
9 this afternoon with a very quick overview of  
10 our project approach based on using one TBM.  
11 If the city feels that it would like two TBM,  
12 we are definitely open to consider them. Thank  
13 you.  
14 **MAYOR POTTER:** Thank you. Any BES  
15 witnesses?  
16 (Inaudible conversation.)  
17 **MAYOR POTTER:** You have 30 minutes for  
18 your presentation. Please state your name when



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19 you testify.  
20 **MR. RYAN:** Mayor Potter, Commissioners, I  
21 am Bill Ryan. I am the chief engineer for the  
22 Bureau of Environmental Services.  
23 Let me first say that safety and the  
24 ratings given on safety were very important.  
25 The real story, in my mind, is not safety or

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1 the safety memo, but how does a contractor, who  
2 is on schedule, on budget, for 75% complete on  
3 a \$400 million project, lose 55 points on a  
4 project approach. Talk a lot about how many  
5 points they lost in safety. Look at their  
6 project approach. They lost 55 points. Why  
7 didn't they score 100%? They are batting a  
8 thousand as far as the work in the field is  
9 concerned. Why didn't they score 100% on the  
10 project approach? First of all, I think you  
11 heard an allusion to it, but this joint venture  
12 is not the same joint venture that is currently  
13 working on the west side. There's an  
14 additional party in this joint venture. The  
15 'O' is Obayashi, the Japanese firm that's the  
16 new addition to the partnership.  
17 When asked, in the interview, about tunnel  
18 boring machine selection, a heated, I would say  
19 even venomous, short -- it was short, but there  
20 was a heated argument between these two members  
21 of the IHO partnership. That concerns me very  
22 much.  
23 At the beginning of the selection process,  
24 Paul Gribbon gave the status, a summary report  
25 on the west side tunnel construction. One

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1 element, and it was a small element, it was a  
2 summary, was a discussion of significant  
3 challenges or problems that occurred on the  
4 project to date at that time. It included a  
5 leak at the pump station shaft, very important,  
6 very deep, large diameter shaft. Two, major  
7 failures as the tunnel boring machines left the  
8 (inaudible) shaft. And finally, a major  
9 equipment failure in the tunnel boring machine  
10 itself. Each one of these caused quite a bit  
11 of time of scheduled construction, as well as  
12 cost quite a bit of additional money. On IH's  
13 behalf, they made that back up, and they are

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14 still on schedule and on budget. But they were  
15 significant events nonetheless.  
16 During the interview process -- this is  
17 the same interview where we have already seen  
18 an argument between partners on the IHO  
19 Partnership, joint venture -- during this  
20 interview, they were asked about lessons  
21 learned. IHO was asked about lessons learned.  
22 What have you learned on the west side? I, as  
23 an evaluator, I was -- I was a voting member of  
24 this process, but I heard that they had very  
25 little to say about what they had learned.

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1 When it was pointed out that their proposal  
2 that described the shaft breakouts that were,  
3 essentially, unchanged from the procedures that  
4 have been used on the west side resulting in  
5 two major failures, many weeks of project delay  
6 and probably millions of dollars in cost,  
7 the -- the upshot was tunneling is a risky  
8 business. They didn't indicate any change that  
9 they would make to the methodology in which  
10 they would make the machines leave the shafts.  
11 When asked about changes or improvements  
12 that they would make to the tunnel boring  
13 machine, it was a fishing expedition. We knew  
14 that they had significant problems with the  
15 mechanics on the machine, the rock pressure  
16 that ingests the cobbles and boulders and  
17 breaks them up. When asked about improvements  
18 or changes they would make to the boring  
19 machine, they saw no need or little need for  
20 improvement. Only after repeated questioning,  
21 I think, people suspected that they had a plan  
22 and that they had this, but only after repeated  
23 questioning was there a slide show thrown up on  
24 the board to show the 11-by-17 table,  
25 unintelligible to anybody in the selection

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1 process. It was purported to describe all the  
2 changes they are going to make to the tunnel  
3 boring machine, but we couldn't tell by looking  
4 at it, and they didn't bother to describe to us  
5 any of their changes that they would make.  
6 I heard several comments about, about my  
7 notation of 'fatal flaw' as I was hearing  
8 the -- their answers to the questions in the

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9 interview process. If the main bearing on the  
10 boring machine goes out and they're not at a  
11 shaft, they're in the middle of this long run;  
12 it's a fatal flaw, because there's -- you're  
13 spending months and spending millions of  
14 dollars going down and retrieving this machine.

15 This is taking notes and a very a quick  
16 discussion. I recall the discussion right now  
17 was -- was, however, if they were to time the  
18 intervention, bring this into a shaft, change  
19 the main bearings -- is that or was that in  
20 their proposal? I don't know, but I heard a  
21 fatal flaw, and I heard a potential relatively  
22 inexpensive fix to making this one tunnel  
23 boring machine work.

24 Likewise, I heard another fatal flaw that  
25 I didn't note in my notes and that was the

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1 availability of power. I heard they said at  
2 one point that there is not enough electricity,  
3 not a large enough substation in the vicinity  
4 of the construction shaft to actually power two  
5 tunnel boring machines. When -- when the  
6 electrical, or the electrical -- PGE or whoever  
7 it is in that area -- was asked, What would it  
8 take to get that much electricity here, they  
9 couldn't even answer it. You know, quite an  
10 effort to get it there. Was that a fatal flaw?  
11 I don't know. I didn't write it down.

12 Finally, to the safety, safety has been  
13 the biggest issue here and the safety memo.  
14 IH's written proposal was weak on safety, and  
15 the selection committee's numbers reflect that.  
16 This is before anybody on the selection  
17 committee saw the safety memo. It reflects  
18 that.

19 Two things from the interview -- from  
20 IHO's interview presentation on safety. The  
21 general thing -- one general thing was that  
22 safety was the safety officer's problem.  
23 Safety officer was the primary one that spoke  
24 about it, and -- and he just -- you know, he  
25 talked all about the safety program. I didn't

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1 hear any of the other major parties talking  
2 about it.

3 The other thing that I heard, this is  
4 written down in my notes of the interview

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5 process was, If it ain't broke, don't fix it.  
6 As far as I'm concerned, in the work that we're  
7 doing in CIP, you can always improve on safety.  
8 You should never be satisfied with what you did  
9 last year. You can always do better next year.  
10 That's the way BES is working; that's the way  
11 our own forces are working.  
12 I did see the safety memo. I spent 30  
13 seconds looking at it. I saw the gist of it.  
14 It was described and I saw, there is probably a  
15 quote from me, that I saw they liked one and  
16 didn't like the other, and that was probably  
17 too flippant a remark. All I was saying was  
18 that they essentially confirmed ratings that I  
19 had already given. I can honestly say the  
20 safety memo did not change my rating of their  
21 safety.  
22 To sum up, our direction, as I understood  
23 it, and I understood this to come directly from  
24 Commissioner Saltzman, was that we were to  
25 perform an open and objective procurement

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1 process. We heard it said many times, the most  
2 advantageous proposal. I am not sure I ever  
3 had this conversation with somebody, but I  
4 think that I thought at one point that -- that  
5 wouldn't it be great if there was some way that  
6 we could just continue IHO across the river --  
7 or IH across the river? They are doing a great  
8 job. It would certainly cost everybody a lot  
9 less money, but could we ever get away with  
10 that? A lot of people out there, the desire to  
11 see it opened up again, other firms being given  
12 the opportunity, I don't know whether that was  
13 ever discussed, certainly, was not what our  
14 direction was. We were to give an open and  
15 objective procurement process. We did that.  
16 IHO, unfortunately, performed so poorly in both  
17 the proposal and the interview process that  
18 they lost a project that they could easily have  
19 won.  
20 I said it in the last go around that --  
21 that they should have been strutting like  
22 peacocks because -- because a \$400 million  
23 tunneling project in the United States being on  
24 time, on budget, is unheard of. It should have  
25 been strutting like peacocks, and in an open

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1 and objective process where you are looking at  
2 their proposal, listening to the interviews,  
3 and instead of seeing the strutting like  
4 peacocks, this is what happened last time, and  
5 we are going to do better this time. Instead  
6 of hearing that, we heard, if it ain't broke,  
7 don't fix it. We heard we are going to do it  
8 the same way. Tunneling is risky. That's how  
9 ratings ended up as they were. I don't think  
10 the safety memo was the driver on this. It  
11 certainly wasn't for me.

12 **MAYOR POTTER:** What was your name, again?

13 **MR. RYAN:** Pardon me?

14 **MAYOR POTTER:** Your name?

15 **MR. RYAN:** Bill Ryan.

16 **MAYOR POTTER:** What's your position?

17 **MR. RYAN:** Chief engineer of the Bureau of  
18 Environmental Services.

19 **MR. HUSKER:** Good afternoon. My name is  
20 Mike Husker, and I am the operations manager  
21 for Hoffman general contractor, local general  
22 contractor, and I want to make a statement.

23 First off, regarding the process, I will  
24 tell the committee what I told Paul Gribbon  
25 after the selection process. As a general

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1 contractor who has been in these processes, and  
2 I've personally participated in RFQs up to \$500  
3 million projects, that I was extremely  
4 impressed by the city, by the Bureau of  
5 Environmental Services (inaudible) proposals by  
6 the level of quality of information that they  
7 put out. And it was evident on how good it was  
8 by the quality of the proposal that we  
9 received. We got three world class proposals,  
10 three world class joint ventures. It's  
11 interesting enough, also, that just a few weeks  
12 ago, I sat in on a debrief by Oregon State  
13 University's chairman up there, construction  
14 engineering department and the process that  
15 they used recently on the selection for Aperson  
16 Hall, their civil engineering building, was  
17 almost exactly like your Environmental Services  
18 selection process.

19 Regarding safety, the safety memo did not,  
20 in any way, influence my voting or my scoring  
21 on safety. I didn't look at the memo any

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22 differently than any of the other technical  
23 information. First thing, I probably looked at  
24 it a little less, because as a general  
25 contractor, I thought I was one of the more

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1 experts in the room on safety in this field.  
2 As somebody who needed more technical  
3 experience given to them, expertise given to  
4 them, on the underground tunneling portion, I  
5 was very happy that the technical  
6 representative's information was available  
7 there for all the other questions I had. So I  
8 didn't view it as out of the ordinary.  
9 I have not reviewed any of my notes since  
10 I walked out of the room that day. Jim  
11 reminded me of some of my quotes that they just  
12 provided me. I do remember specifically that  
13 during the presentation, I was actually -- my  
14 feelings went from embarrassed for them as a  
15 general contractor in their safety presentation  
16 to aggravated as a selection committee member.  
17 This is a world class project, and I just  
18 didn't feel they were addressing the concerns  
19 here. I told one of the other committee  
20 members that, frankly, I have (inaudible) out  
21 of three.  
22 It was during proposals like this, you're  
23 not coming with just, you know, it's not the  
24 norm. You are coming with what it takes to do  
25 everyday work. It takes what we call a big

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1 idea. And one of the big ideas was to  
2 (inaudible) consulting business. To me, that  
3 would be like if I went to buy a new car and  
4 the salesman told me, the salesman said, I have  
5 a great thing for you here, power windows and  
6 power seats. Everybody has been doing  
7 (inaudible) consulting visits for the last ten  
8 years. They don't even bother to put that in  
9 the proposal. I was flabbergasted at the fact  
10 that they didn't have -- for the type of work  
11 that they are doing, or -- they -- they  
12 described part of it to you. They're working  
13 under tremendous pressures at  
14 tremendous depths. This is highly  
15 sophisticated work. It takes highly  
16 sophisticated safety plans. (inaudible) a

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17 tenth of what they need to know on this. These  
18 type plans come from the experts, and they're  
19 the experts. I was really -- and that type of  
20 information was provided by the two other joint  
21 ventures that were there.

22 The other thing I was very surprised at  
23 was the lack of sophistication on OCIP plan.  
24 No one has talked about the OCIP plan here, but  
25 the OCIP, the owner-controlled insurance

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1 program. Safety is a value. We all talked  
2 about that, but it also does translate into  
3 dollars. Essentially, the city of Portland is  
4 self-insured (inaudible) program where the  
5 safety performance of the general contractor on  
6 this project does translate into dollars. It  
7 could easily, on this size project, be six  
8 figures or even seven figures either way. So  
9 it is significant, and when asked about how  
10 they managed the sum of the OCIP, it was, Well,  
11 it's the OCIP people. Well, you are the OCIP  
12 people. You have to work side by side with  
13 them. Getting workers back to work and  
14 managing (inaudible.)

15 To wrap up, Portland didn't ask for this  
16 project. It was a federal mandate. I was very  
17 impressed they are taking it on, and they are  
18 putting out a world class project. The west  
19 side project, it's an international tunneling  
20 project that's making big news. They've gotten  
21 world class proposals, and they're doing it at  
22 that level, but it does take world class  
23 safety. And IHO did not bring that.

24 **MR. COOK:** My name is Roy Cook. I am the  
25 (inaudible) manager for the Paulson Creek

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1 (phonetic) design team on the east side CSO  
2 project. (inaudible. During the (inaudible)  
3 period, and I personally found the information  
4 provided by the safety experts of some value to  
5 me in making that evaluation. I certainly have  
6 explained in my deposition exactly how I came  
7 to my score. They allow -- they gave me a way  
8 [inaudible]. And if you look at my other  
9 evaluation, I didn't make a (inaudible) to come  
10 up with the basics of the ruling points on the  
11 written proposals. Certainly, as well as

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12 introducing my score on the safety issue, I  
13 would like to point out that I also reduced my  
14 score considerably on the technical approach.  
15 After the proposals -- the proposals were  
16 evaluated, I had IH clearly in the lead by six  
17 points. Sorry, five points. It wasn't a  
18 matter of just failing in or reducing scores in  
19 the safety area; it was a combination of a  
20 reduction in score there but also in the  
21 technical approach. Bill Ryan has explained  
22 some of the issues that came up during the  
23 interview which brought about a reduction in my  
24 score.

25 **UNIDENTIFIED SPEAKER:** Members of the

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1 evaluation committee here to talk to you, I'll  
2 let you know we're about halfway through on the  
3 (inaudible) presentation. I do have two more  
4 members of the selection committee after that,  
5 plus the folks who wrote that safety memo  
6 (inaudible) members of the council here, but I  
7 want to be respectful of the time. So if you  
8 want me to cut anything out, I'll be glad to do  
9 that. You just need to let me know.

10 **MAYOR POTTER:** You have 30 minutes.

11 **MR. VAN DYKE:** So seven of the  
12 eight evaluations...

13 **MR. VAN DYKE:** Seven of the eight  
14 are here.

15 **MAYOR POTTER:** Where's the eighth?

16 **MR. VAN DYKE:** The eighth is Tuck  
17 Wilson, and I have a letter from him saying he  
18 (inaudible).

19 **UNIDENTIFIED SPEAKER:** Introduce yourself  
20 for the council.

21 **MR. SIMONSON:** I am Steve Simonson. I am  
22 employed by the Bureau of Environmental  
23 Services. I'm a supervising engineer.

24 **COMMISSIONER STEN:** Mr. Mayor, could I  
25 just ask for clarification?

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1 **MAYOR POTTER:** Yes.

2 **COMMISSIONER STEN:** Are you extending  
3 past the half-hour, or are you -- because I'd  
4 prefer not to.

5 **MAYOR POTTER:** How much time do we have  
6 left?



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7 **MS. MOORE:** There's 12:08 left on that  
8 last speaker.

9 **UNIDENTIFIED SPEAKER:** I believe it's up  
10 to each panel to manage your time, and I don't  
11 believe it's fair to, you know, even though  
12 it's our bureau, to give you more than 30  
13 unless there's council questions.

14 **MAYOR POTTER:** Keep your remarks  
15 concentrated to the issues at hand.

16 **COMMISSIONER STEN:** Obviously, if  
17 there's questions, I believe they should have  
18 as long as there's questions.

19 **MAYOR POTTER:** We're going to go to the  
20 questions after all of this.

21 **MR. SIMONSON:** I'll be concise. After the  
22 interviews, there was a period of time when --  
23 when the performance of IH was critiqued by BES  
24 staff. During that critique, I noticed several  
25 strengths and several weaknesses. One obvious

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1 weakness was safety performance. I factored  
2 all of those key factors into my ratings of the  
3 IHO proposal. Strengths, as I remember,  
4 included a strong partner and very  
5 cost-conscious contractor. Weaknesses, as I  
6 recall were -- were an addition to the poor  
7 safety performance, were lack of field  
8 engineering staff. And lack of attention to  
9 details such as the break in, break out that's  
10 already been addressed. My scores were  
11 adjusted accordingly based both on the critique  
12 and IHO's performance at the interview. It's a  
13 very close call. That's the end of my  
14 testimony.

15 **MAYOR POTTER:** Thank you.

16 **MR. HAGERMAN:** My name is Jim Hagerman. I  
17 am employed by BES as manager of rates,  
18 contracts, and financial planning, and I was a  
19 member of the selection committee. I'll try to  
20 be even more brief. My opinion on the safety  
21 score was based on the written materials, the  
22 presentation, the critique after the  
23 presentation, and not to any degree influenced  
24 by the safety memo.

25 One other thing I would say, I'm quoted as

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1 talking about the tunnel boring machine

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2 approach risk. I wrote down "risk" with a  
3 question mark behind it, because I wanted to  
4 make sure that that issue was well discussed in  
5 the company's deliberations, and it was to my  
6 satisfaction.

7 **MAYOR POTTER:** Thank you. Any  
8 follow-up questions? (inaudible)

9 **MR. VAN DYKE:** I'm going to ask  
10 Tammy to speak first, because Mr. Cadrey has  
11 already given his deposition and that's part of  
12 the record, and he can add anything he wants.

13 **MAYOR POTTER:** Please state your name for  
14 the record.

15 **MS. CLEYS:** My name is Tammy Cleys.  
16 I am the BES manager for the  
17 budget. Rather than reiterate my colleague's  
18 points, I will simply state I agree with  
19 everything they've stated as far as project  
20 concerns the team had. Very definitely, the  
21 technical experts critiquing all components of  
22 the project from public involvement to land  
23 acquisition to tunneling to safety. All of  
24 this was taken into account by the committee  
25 members using their own judgment. I feel very

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1 strongly all those people on the committee are  
2 there for expertise and used it while in taking  
3 in interviews, proposals, and the technical  
4 expertise cited by the city.

5 The safety memo, I read it in about the  
6 same 30 seconds as Bill Ryan did; it confirmed  
7 my appraisal already. The most glaring thing  
8 to me in that proposal -- or in the interview,  
9 excuse me, was two other contractors that were  
10 interviewed, Kiewit and Willamette Valley  
11 contractors, had a strong corporate safety.  
12 Everyone stood up, all the way up to the  
13 principal. It was an extremely pulling safety  
14 presentation by both contractors.  
15 Unfortunately, IH did not have the same. Their  
16 corporate sponsorship of the safety was missing  
17 from their interviews. That affected my score  
18 of the safety memo.

19 One other point, they mentioned the  
20 volunteer protection program through OSHA. I  
21 subsequently went to a presentation where an  
22 actual contractor here in the city of Portland  
23 actually was accepted and is a member of that

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24 program. Hearing about that program, very  
25 impressed. However, very disappointed to learn

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1 that my impression that I got from the  
2 interview that they were actually members,  
3 accepted members of that program, was not true.  
4 I came away with that idea finding out that  
5 that program -- they accepted an application,  
6 but they weren't true members. Had I known  
7 something else, that might have actually  
8 affected it even more. In closing, I believe  
9 the process that was the duty of the committee  
10 is to come before and make it a fair process.  
11 That's the city process, fair to all  
12 components. That's what we did; I believe we  
13 did it correctly. And I believe the council  
14 should consider that.

15 **MR. CADREY:** My name is Sal Cadrey. I am  
16 a business owner. I was one of the evaluators.  
17 As far as safety is concerned, I do have  
18 some -- some background and expertise in this.  
19 About 30 years of my work with the large  
20 companies where I had the responsibilities for  
21 safety, I had the safety people reported to me  
22 in my organization or people within; people who  
23 reported to me were responsible for it. My  
24 rating, as you will see on safety, did not  
25 change from the time when the proposal was

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1 evaluated to after the interview. The  
2 conclusion could be made that anything relating  
3 to the safety memo has no impact on it. My  
4 best recollection is that I would have seen  
5 that memo, but I did not pay any attention,  
6 because my mind was already made up about the  
7 safety problems.

8 A key item that was brought up is that  
9 there was no realization, stated realization,  
10 that improvements can be made. And that's one  
11 of the items that probably impacted me more  
12 than anything. In reality, probably, after the  
13 interview, probably, my score should have been  
14 lower than what it was.

15 **MR. VAN DYKE:** Thank you. I'm  
16 going to ask Pat Darby and Mike Reiner to talk  
17 about the safety memo. I (inaudible) time line  
18 for the material (inaudible.)

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19     **MAYOR POTTER:** Were you folks part  
20 of the evaluation committee?  
21     **UNIDENTIFIED SPEAKER:** No, we were not.  
22     **UNIDENTIFIED SPEAKER:** Part of the -- did  
23 you write the memo?  
24     **UNIDENTIFIED SPEAKER:** Yes, we did.  
25     **MAYOR POTTER:** How much time is

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1 left?  
2     **MS. MOORE:** 5:46.  
3     **UNIDENTIFIED SPEAKER:** Mayor Potter, I  
4 would like to give some bag --  
5     **MAYOR POTTER:** Please state your name for  
6 the record.  
7     **MR. REINER:** My name is Mike Reiner. I'm  
8 the risk services manager with the  
9 Environmental Services. I'm responsible for  
10 safety, risk, and owner controlled insurance on  
11 the west side CSO project. I've been managing  
12 safety and risk for the city for approximately  
13 18 years. To my right is Pat Darby, who is the  
14 construction safety manager for the west side  
15 CSO project. Pat has been with the city for  
16 about six years, and prior to that, he was an  
17 enforcement officer and consultant for Oregon  
18 OSHA for eight years.  
19 Just to give you a little background on  
20 our evaluation, the risk, and safety approach  
21 document, that now is being referred to as the  
22 safety memo, in November of last year, Paul  
23 Gribbon asked Pat and I to serve on the  
24 technical review committee, or TRC, for the  
25 east side CSP selection process. The TRC is

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1 comprised of various individuals who have  
2 expertise in different areas to assist the  
3 selection committee. They performed the same  
4 responsibilities for the west side CSO project.  
5 Paul asked us to provide feedback regarding  
6 written submissions of the three finalists and  
7 to suggest questions that might be asked by the  
8 selection committee during the oral interview.  
9 We not only look at the proposals but we  
10 also look at information in their statement of  
11 qualifications. Based on that information, we  
12 summarized the proposals, suggested questions,  
13 and analyzed the best we could the data in the

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14 proposals. We then sent a summary to Paul  
15 several weeks ahead of the interviews. Paul  
16 decided not to share with any of the TRC's the  
17 comments with the selection committee,  
18 including ours, because he wanted the selection  
19 review committee to review the proposals  
20 independently.

21 Moving onto the interviews, after the oral  
22 interviews were complete, a discussion of the  
23 joint venture presentations occurred between  
24 the technical review members and the selection  
25 committee members. There was a discussion

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1 surrounding the RFP criteria, including risk  
2 and safety, and the pros and cons of each. At  
3 that point, I asked paul if it would be okay to  
4 hand out the risk and safety analysis. Paul  
5 said okay. I made copies and handed them out  
6 to the selection committee. However, it was  
7 not clear to me, at that time, that anybody had  
8 read the safety memo. After hearing the  
9 testimony today, it was apparent that some of  
10 the selection committee members had referenced  
11 that memo.

12 In conclusion, we believe based on the  
13 information in the proposals that KBB had a  
14 better safety approach. In the interviews in  
15 which IHO said with regard to their safety  
16 program, if it ain't broke, don't fix it,  
17 ignored improvements that we wanted IHO and  
18 confirmed an early written opinion that we had  
19 with our safety document.

20 Additionally, the misrepresentation of the  
21 VPP during the interview was also concerning.  
22 We understand that we could have worded the  
23 document better, although we think that some of  
24 the arguments only amount to semantics. In the  
25 summary, I quoted more liberally from IH's

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1 proposal, sure. Could the questions have been  
2 worded differently? Of course. The bottom  
3 line is we did what we were asked to do. We  
4 gave our best professional opinion based on the  
5 information presented by each joint venture.  
6 We did it in the best interest of the city of  
7 Portland and the rate payers. In our opinion,  
8 KBB's risk and safety approach to the east side

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9 CSO was the strongest. Thank you.  
10 **MAYOR POTTER:** Do you wish to make  
11 a statement? Any other witnesses from BES?  
12 **UNIDENTIFIED SPEAKER:** No.  
13 **COMMISSIONER LEONARD:** (Inaudible.) I  
14 thought we were.  
15 **MAYOR POTTER:** We still have the  
16 IHR rebuttal witnesses, IHR closing statement,  
17 the KBB closing statement, and the BES closing  
18 statement.  
19 **UNIDENTIFIED SPEAKER:** Fair enough.  
20 **COMMISSIONER ADAMS:** Don't go anywhere.  
21 Mike Reiner. Could you maybe put those out, so  
22 we can look at them while you're testifying?  
23 And if you are going to refer to the book  
24 again, could you refer to the tab as you are  
25 making the comment?

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1 **MAYOR POTTER:** Please state your name, and  
2 you have two minutes total time.  
3 **MR. MCDONALD:** Thank you, sir. I am Jim  
4 McDonald. I'm the project manager for  
5 Impregilo-Healy, IHO joint venture. A few  
6 comments to make regarding some of the  
7 testimony I heard today. One, the last  
8 commenter, Mr. Reiner, said that they  
9 evaluated -- based their memo on information in  
10 the proposals. Well, some of the stuff isn't  
11 in the proposals. Proposals didn't contain any  
12 numbers, so they went through some of the SOQ,  
13 the statement of qualification information  
14 rather than just the proposals. This is  
15 important, because the statement of  
16 qualifications is where you determine who is  
17 qualified to bid for the job, and at that  
18 point, the five teams were being qualified to  
19 bid for the job; one was not. Then we move on  
20 to the proposal stage. If you are looking at  
21 that, why would you be satisfied with the  
22 information you got in the SOQ? KBB presented  
23 information on Kiewit only, nothing on the  
24 Bilfinger/Berger, their other partner. They  
25 showed you this OSHA 300 log. In total, they

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1 gave three OSHA 300 logs. Each one covered  
2 multiple projects while -- well, OSHA doesn't  
3 say that's what you do. If the project lasts

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4 more than a year, it has its own laws. We get  
5 18 of these things in our SOQ, 18 different  
6 logs. One in 2003, had two projects on it for  
7 this underground division only. One of them,  
8 the blue line as I understand it, is not a  
9 tunnel project. The other one is Chattahoochee  
10 tunnel. This is not actually Kiewit. This is  
11 a joint venture of the Gilbert and SA Healy  
12 company in Atlanta.

13 But these -- this OSHA log for that year,  
14 like I said earlier, accounted for 900,000 man  
15 hours, one division of the company that  
16 submitted a proposal. What happened to the  
17 other 26 million man hours? Where's the OSHA  
18 200, 300 logs? In due diligence, the city  
19 should have asked that question, and perhaps  
20 you would like to ask that question today.

21 The interview -- I heard we had a bad  
22 interview. When you look at the points, that's  
23 not exactly evident. On tab 7, there's the  
24 points. Going from the written scores to the  
25 final scores, KBB dropped 49 points,

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1 Impregilo-Healy-Obayashi dropped only 50  
2 points. All the proposers dropped in every  
3 category after the interviews. It's not real  
4 clear that the interview itself was the problem  
5 here.

6 There's no written record in any of the  
7 evaluator's comments that are saying, Boy,  
8 these guys are really terrible. It's hard to  
9 say. Number 7 on section A. It's just before  
10 that B tab.

11 **COMMISSIONER ADAMS:** So if you could  
12 just go through again what you think represents  
13 that you didn't do as bad in the interview?

14 **MR. MCDONALD:** The upper third is the  
15 written scores, KBB, IHO. The second area is  
16 the final scores. You can see on the last line  
17 before, it says both KBB. Under the KBB,  
18 there's a minus 49. That was the difference  
19 between the written score of 705 and the final  
20 score of 656. On IHO, you move farther to the  
21 right and there's a minus 50 there. That's the  
22 difference between the original written score  
23 and the final score.

24 KBB did mention our statistics on the west  
25 side; they are not good. They talk about our

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1 recordable rate. As I said earlier, it's not  
2 the entire indicator, it's just the -- of the  
3 safety program. The second page of tab 3, A-3,  
4 at the bottom, there's other things that the  
5 city tracks regularly. Our loss work day case  
6 incident rate, we're below the Oregon average.  
7 Loss frequency rate, we're 90% below the  
8 average. We have a .2 there. The average is  
9 4.3. SAIF inspections bi-weekly, we have a  
10 score of 96. The incentive plan results, we  
11 received 84% of the available incentive money  
12 for our safety program. The program is not  
13 bad.  
14 The other thing I heard from KBB is  
15 they're going to save you some money, \$20  
16 million. I still haven't heard -- and you  
17 still haven't heard how much are they going to  
18 save it from? Maybe from the \$500 million  
19 budget that BES had. Well, if that's the case,  
20 our proposal said this project will cost you  
21 \$387 million. That's \$113 million less from  
22 that budget. You need to know what the cost  
23 is.  
24 Another thing I heard from the BES folks  
25 and the evaluator committee makes me think that

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1 maybe the process is worse than I thought it  
2 was. Mr. Simonson said that IH's performance  
3 was critiqued. Mr. Ryan said -- he gave you  
4 several instances of problems on the west side  
5 CSO. Of course, he said we overcame all those  
6 promises -- all those problems. We're battling  
7 a thousand, but the problem is this proposal  
8 was not on the west side. Why was the west  
9 side project being critiqued? Why wasn't our  
10 east side program being evaluated? Mr. Cook  
11 said the memo was valuable. He used it in his  
12 scoring, and we have shown that to be true.  
13 It's only normal. It shows that these  
14 evaluators are not experts in safety. They  
15 relied on the information given to them in that  
16 memo. It was given to them by experts in  
17 safety. It's normal to rely on that  
18 information.  
19 There was a comment from a gentleman about  
20 the technical difficulty of the job. Well, why  
21 would you call the consultation out for



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22 hyperbaric work? They are not experts. The  
23 contractor is supposed to be the expert. If  
24 you read our proposal, we're the only proposer  
25 who gave, in the safety section, a detailed

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1 accounting of the hyperbaric safety program.  
2 It was given, I think, one line maybe in KBB's  
3 proposal, and I don't remember lots about it.  
4 They didn't have the in-depth approach that was  
5 given to us.

6 There was a problem with Obayashi on our  
7 team. This isn't the same team. You have to  
8 be concerned about it. SA Healy is the  
9 managing partner of IHJV on the west side. SA  
10 Healy is the managing partner of IHOJP. We  
11 have a strong joint venture. The addition of  
12 Obayashi to our team is the addition of a  
13 worldwide professional expert in soft ground  
14 tunneling. I worked for Obayashi for 15 years.  
15 I have known Chuck Loggan there for about 12,  
16 15 years now. There's no problem in the joint  
17 venture.

18 As for the VPP statement, we've  
19 misrepresented it. We didn't misrepresent it.  
20 At the time, I think about two weeks prior to  
21 the interview, our application had been  
22 accepted for the program. Within the next --  
23 within this month, you will hear the news  
24 release about the full acceptance. The VPP  
25 program is -- is -- it's reserved for the very

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1 best safety programs. As such, you have to  
2 have a -- be on a particular job site for over  
3 two years. You have to meet certain criteria.  
4 Your incident rate has to be below the  
5 averages, or you can't get accepted -- your  
6 application can't even get accepted. It took  
7 us a year to get -- to get to this point. We  
8 put in a lot of hard work on this. It's not  
9 something to be belittled and not something  
10 that people were misled on. The process was  
11 still going on. And you will hear that  
12 announcement soon.

13 There was a comment, also, let me address  
14 the, if it's not broke, don't fix. I  
15 acknowledge the -- that our safety  
16 representative said that, also acknowledged

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17 that. I want you to see that on tab A-1, what  
18 was required by the request for proposal, you  
19 can see that, that little i.i.i. on the bottom  
20 says, Proposed safety staff will be interviewed  
21 during the interview phase of the selection  
22 process. Maybe we misunderstood about the  
23 first exhibit, A-1. Maybe we misunderstood  
24 what this said, but it says to us when you get  
25 the safety and risk approach, our safety

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1 manager should be there to answer the  
2 questions, and he was there to answer the  
3 questions. It sounds like we lost points,  
4 because all the other people didn't say  
5 something about safety.  
6 Now, if it's not broke, don't fix it, I  
7 can see where you might -- where somebody might  
8 make something of that. But the fact of the  
9 matter is, it's absolutely the truth. We have  
10 a great safety program. We have a pro-active  
11 safety program. We have a partnership with  
12 Oregon OSHA just like we have a partnership  
13 with you on the west side, the CSO project.  
14 It's a very viable and living partnership.  
15 Every day, every week, we strive to make  
16 changes and improvements to the safety program.  
17 It's a living program. You don't just make a  
18 safety program and put it in a drawer. You  
19 have to work on it every day, every week, every  
20 month, and we do that. They continue to train.  
21 We have the -- KBB relied on our safety in  
22 their own proposal by stating they are going to  
23 use our experience, well trained people that  
24 they recruit from the west side.  
25 **MAYOR POTTER:** Your time is up.

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1 **MR. MCDONALD:** Thank you very much.  
2 **UNIDENTIFIED SPEAKER:** That was the  
3 rebuttal witness, and now, we have the IHO  
4 closing statement for five minutes.  
5 **MR. BARTZ:** Mr. Mayor, Dave Bartz for  
6 IHO. I wondered -- we asked when we saw this  
7 schedule -- we asked for three minutes to close  
8 after everyone had talked, because as the  
9 appellant, we're the one with the burden. We  
10 share a bigger responsibility, so we asked to  
11 have the city attorney to advise us that had

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12 been rejected. So what I'm asking at this  
13 point is, can I take some of my five minutes  
14 and hold them and have the last word?  
15 **UNIDENTIFIED SPEAKER:** Are you fine with  
16 that?  
17 **UNIDENTIFIED SPEAKER:** Sure.  
18 **MR. BARTZ:** Thank you. Appreciate your  
19 time again. David Bartz of Schwabe Williamson  
20 for Impregilo-Healy-Obayashi.  
21 Thanks for the patience. This is not  
22 about whether safety employees ought to give  
23 their opinions. Absolutely, they should.  
24 Mr. Gribbon in testimony before the purchasing  
25 board of appeals said what a great relationship

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1 IH had with the city. We expect that to be --  
2 those people to speak. When somebody reports  
3 to you, I would think you would expect it to be  
4 accurate and complete. The safety memo was  
5 neither of those. That causes severe problems  
6 for this process. It set it off course.  
7 Just now you heard Mr. Ryan, and you heard  
8 Mr. Cook talk about what a bad interview that  
9 we had, and you heard Mr. McDonald explain why  
10 there's no evidence about that objectively.  
11 What's also interesting is Mr. Cook and Mr.  
12 Ryan, their numbers are four; Mr. Cook is  
13 number 4, and Mr. Ryan is (inaudible). The  
14 point is, the scores -- they still had us first  
15 for product approach. So even though we  
16 supposedly tank the interview, we still had the  
17 best product approach. That's significant.  
18 And it's significant, because the city's  
19 attorney stood up before you a couple hours ago  
20 or an hour ago and said, These are experts;  
21 defer to the experts. Well, he mentioned the  
22 experts were tunneling and construction  
23 experts. He didn't talk about safety experts.  
24 He said "construction and tunneling," and those  
25 are the experts that chose IH as the best

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1 approach. They did it -- the written score,  
2 they did it after the interviews. And even  
3 after Mr. Ryan and Mr. Cook battered us in  
4 their testimony today, they still chose us as  
5 the best approach over KBB. We had the best  
6 approach. Most advantageous proposal, that's

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7 what they said was important.  
8 Cost, for second. How can you tell cost  
9 if nobody is going to tell you what the cost  
10 is? They told us KBB did this morning; this  
11 afternoon they had the lowest cost. How do  
12 they know? They refuse to answer that  
13 question. That exhibit in that book, not  
14 making it up, it's their word. Nobody in the  
15 evaluation committee countered that at all.  
16 They didn't have a cost. I believe that's in  
17 front of you. They didn't have a cost. They  
18 didn't want to tell you the cost, although  
19 they've done a lot of study about it. They  
20 told that. They figured out what their profit  
21 was, figured out what the schedule was but  
22 didn't tell you what the cost was. They don't  
23 know.  
24 In the KBB, Kiewit, think of that safety  
25 memo on the first page. And on the first page,

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1 it says KBB has the best proposals of all the  
2 joint ventures and that's not a fact. Even  
3 Kiewit was smart enough today not to tell you  
4 there was KBB. It was Kiewit. Mr. McDonald  
5 explained to you why you have to be very  
6 suspicious of Kiewit's approach.  
7 **MAYOR POTTER:** I don't mean to interrupt  
8 you, but I agreed to let you use the balance of  
9 your time. You are not going to get additional  
10 time.  
11 **MR. BARTZ:** I understand. I thought I had  
12 two minutes left, and that's what I am about to  
13 do.  
14 **MS. MOORE:** I gave him three minutes. I  
15 am thinking you are using the other two after  
16 everybody else.  
17 **UNIDENTIFIED SPEAKER:** Okay.  
18 **MS. MOORE:** You have got 37 left out of  
19 the three minutes.  
20 **MR. BARTZ:** Okay. 37 seconds?  
21 **MS. MOORE:** Yes.  
22 **MR. BARTZ:** Thank you very much. That's  
23 what I'll use. Thank you. There's just no  
24 facts about a bad interview. There's no facts  
25 about cost. The best product approach is the

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1 one that IHO put forward. That's what the

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2 experts told you. That's what you have to look  
3 at as most advantageous. The process was  
4 broken. Mr. Reiner said Mr. Gribbon didn't  
5 want to share the memo with the committee. He  
6 wanted the committee to make up their own mind.  
7 At the end of the process, that changed.  
8 Mr. Gribbon told you two weeks ago he did not  
9 intend that memo to go to the committee. The  
10 process was broken. Thank you for your time.

11 **MAYOR POTTER:** KBB closing statements.  
12 You have five minutes. Please state your name  
13 before you testify.

14 **DAVID HECKER:** Thank you, Mayor, members of  
15 the commission. My name is David Hecker. The  
16 process we all agreed to on this project was  
17 designed to select the most advantageous --  
18 most advantageous contractor. That's why so  
19 much information was presented. Hundreds of  
20 pages of information evaluating qualifications,  
21 plan for the project, and other information.  
22 All that voluminous information carefully was  
23 reviewed by the eight evaluators. They were  
24 independent evaluators. They were also  
25 reviewed by a over a dozen city experts. They

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1 had no stake in the selection process, and  
2 they, too, were independent.  
3 They spent thousands of person hours  
4 pouring over the materials submitted, and after  
5 all that careful review, they evaluated the  
6 proposals; KBB evaluated the best, the best and  
7 most advantageous for the city. But the review  
8 didn't stop there. The best teams was brought  
9 in for four-hour interviews. At those  
10 interviews, the evaluators were allowed to ask  
11 questions of each of the teams. Technical  
12 questions, hard questions. This was the same  
13 process used on the west side. IHO performed  
14 poorly in their interview. There's no doubt  
15 about that. We have heard testimony from a  
16 number of people that they were evasive, argued  
17 between themselves, and they did nothing to  
18 overcome the deficit they faced in the  
19 interviews.

20 As a result of all that careful review,  
21 each evaluator selected the most advantageous  
22 contractor. We were selected by six of the  
23 evaluators. Safety was just one factor

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24 considered in that selection. IHO wants to  
25 throw out safety entirely and argue that they

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1 won on the important factors. We won on  
2 personnel, and we tied on project management.  
3 The essence of their argument is that you can  
4 throw out the ones they didn't win on and then  
5 just pick them. To ignore safety is to ignore  
6 one of the largest risks to our city and the  
7 most important factor to those citizens of your  
8 city working on this important project.

9 Plus, the idea that in the process that  
10 requires the evaluation of several factors, it  
11 is totally inappropriate to ignore one of the  
12 most important ones and simply count the rest,  
13 because it is convenient to do. So that's like  
14 throwing out the third quarter of a football  
15 game and saying that we won, even though the  
16 final score of the scoreboard at the end of the  
17 fourth quarter says you didn't.

18 The process, which by the way, stands as a  
19 model and has the envy of many cities across  
20 the country, was set up to identify the most  
21 advantageous contract. KBB is by far and away  
22 the safest, has the smartest project approach  
23 and has, by far, the lowest cost to the city.  
24 And contrary to the statements that have been  
25 made, information was presented to the

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1 evaluators from which our project cost can be  
2 determined. It is significantly less than that  
3 just mentioned by IHO.

4 After all the work performed by your  
5 evaluation committee, there's simply no  
6 justification to review this matter further.  
7 They selected the safest contractor, the  
8 best -- the contractor with the best approach  
9 and lowest cost. They selected the most  
10 advantageous contract.

11 Unless you have any additional questions  
12 for us, and I hope that -- that -- I look  
13 forward to the opportunity to respond to those,  
14 I will close with simply a request that you  
15 conclude this process by awarding us the  
16 contract, the phase one of the east side  
17 project. Thank you for your time.

18 **MAYOR POTTER:** Thank you. BES, closing

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19 statement, five minutes.  
20 **MR. VAN DYKE:** Mayor, members of the  
21 council, thanks for your time today. I really  
22 appreciate it. I think what I said at the  
23 beginning remains true. This is a typical RFP  
24 process, and it was going to be decided based  
25 on who got the most points. If you look at the

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1 Impregilo's own exhibit, which in your notebook  
2 is tab 2 after the quotations from the  
3 depositions, you will see a portion of the RFP  
4 on page 19 of 20, it says, "Upon completion of  
5 the interviews, the final round of scoring will  
6 occur based on the same RFP criteria. These  
7 final scores will be used to determine the  
8 selection proposer." Nothing could be more  
9 clear.  
10 In regards to the safety memo, I really  
11 don't have anything more to add. What can I  
12 add to the statements of the very members of  
13 the evaluation committee that already testified  
14 for you here today? They say more and stronger  
15 than anything I could characterize about their  
16 testimony, and I appreciate not only their work  
17 on the committee, because many of them have  
18 volunteered their time, but I appreciate them  
19 showing up today, and again, volunteering even  
20 more time for this process.  
21 Finally, I do want to say that I am here  
22 to advocate for BES. But I am here to advocate  
23 for a fair selection process, because  
24 ultimately, that is what is important to the  
25 city. That's what's important to the public.

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1 It's important for the public to know that the  
2 process is fair. It's important not only this  
3 time but the next time, because long after  
4 these two contractors are gone, I'll be having  
5 another big protest. I'll be trying to decide  
6 another decision and give legal advice, and I  
7 always find in these bid protests, somebody  
8 likes my advice and somebody doesn't. That's  
9 what's happened here. Thank for you your time.  
10 **MAYOR POTTER:** IHO has closing of two  
11 minutes.  
12 **MR. BARTZ:** I wasn't sure. Am  
13 I supposed to move for the admission of those

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14 things, that have already been (inaudible)  
15 council without objection?  
16 **MR. AUERBACH:** I don't think so.  
17 I think everything you've given the clerk has  
18 been made part of the record.  
19 **MR. BARTZ:** Thank you.  
20 **MR. AUERBACH:** If the Mayor wants  
21 to indicate (inaudible).  
22 **MAYOR POTTER:** Proceed with your closing  
23 comments.  
24 **MR. BARTZ:** Thank you, Mr. Mayor.  
25 Mr. Reiner, who authored this memo as lead

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1 person, told you this was a matter of  
2 semantics. If you read the safety memo, it's  
3 not a matter of semantics. It's a matter of  
4 them saying that we said nothing about  
5 inspections and that isn't true. Mr. McDonald  
6 pointed out the page. Nothing about safety  
7 follow-up and training and that isn't true. So  
8 when you say none versus a lot, that's not a  
9 matter of semantics.  
10 The reliable source, there's no way for  
11 you to have any doubt that, that IH and IHO is  
12 capable and qualified, safe contractor, always  
13 working to improve. Most of us here would  
14 probably say, If it ain't broke, don't fix it.  
15 We don't mean that we have a cavalier attitude.  
16 We mean if we think we are working well, we are  
17 going to keep doing what works. And on the  
18 west side, it works. That's what you have been  
19 told. Some of you have had -- your  
20 responsibilities have included the west side  
21 for a couple of years, and you know it's been  
22 operating well.  
23 The scores we showed you in the exhibit  
24 and we talked about were all scores that were  
25 reviewed by the city, every couple of weeks,

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1 that are responsible for \$1.9 million in the  
2 city savings in the OCIP program, the insurance  
3 program. It's the program somehow that we  
4 don't manage very well, but we saved the city  
5 \$2 million. So that's the point of this. You  
6 have got a safe program. Nobody has told you  
7 it was different. But when it came time for  
8 the safety experts, who live and breathe and



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9 eat safety, according to Mr. Marriott, they  
10 didn't evaluate the other scores. They told  
11 you about one score they made up on their own  
12 and calculated on their own and inserted in  
13 this memo. And that memo was put in front of  
14 the evaluators, as we've already discussed, not  
15 according to plan. In fact, an actual  
16 180-degree irrigation in the plan. We're not  
17 going to share it with them; we'll let the  
18 committee make up their own mind. When they  
19 shared this memo, it took it off course.

20 The RFP matters to you, and the idea of  
21 changing it and adding a TBM now, negotiating  
22 with you right here, smacks just horribly of  
23 what the RFP is all about. Who is going to  
24 believe an RFP that says give us a proposal,  
25 don't just have a beauty contest. This is the

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1 best proposal, and IHO looks for the best  
2 proposal and that's the one that should be  
3 awarded. You have the authority to do this.  
4 It says you have the authority to fix a problem  
5 you find in the (inaudible.) Fix this award by  
6 providing it to the most advantageous  
7 contractor. Thank you for your time.

8 **MAYOR POTTER:** Thank you. It is now time  
9 for council discussion and deliberations. And  
10 how would you like to proceed?

11 **COMMISSIONER LEONARD:** I'd like to ask a  
12 couple questions of the authors of the safety  
13 memo.

14 **MAYOR POTTER:** Can we recall the two  
15 writers of the memo, Mike Reiner and Pat Darby?

16 **COMMISSIONER LEONARD:** The memo itself  
17 is -- you co-drafted it?

18 **MR. REINER:** That's correct.

19 **COMMISSIONER LEONARD:** On page 3, there is  
20 a section entitled under roman numeral III,  
21 Approach to Hazard Identification. Who wrote  
22 that section?

23 **MR. REINER:** I believe Pat did.

24 **COMMISSIONER LEONARD:** Pat? Under -- you  
25 haven't testified, but I am sure you have

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1 heard what I have from -- Mike Reiner said that  
2 the misrepresentation of the VPP was concerning  
3 and that is specifically IHO group,

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4 apparently -- it has been alleged -- suggested  
5 that they had a certification from OSHA that it  
6 turned out they had just applied for. And, in  
7 fact, Jim Van Dyke said that the IHO made  
8 representations regarding the safety regarding  
9 OSHA that were not true. But in this memo that  
10 I just referred you to on page 3, under  
11 "questions," the question is written by you  
12 that says that the proposal states that your  
13 program -- and I'm assuming that means IHO,  
14 correct?

15 **MR. DARBY:** That's correct.

16 **COMMISSIONER LEONARD:** The proposal states  
17 that your program will be enhanced by applying  
18 for designation as a volunteer protection  
19 program, VPP site from Oregon OSHA. That  
20 clearly says to me that, in fact, they  
21 represented in their proposal that they have  
22 applied for it. I'm concerned that -- that the  
23 representation has been made here more than  
24 once by the city staff that they said that they  
25 had it, but as it turns out, they had just

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1 applied for it, where your questioner seemed to  
2 reflect that they did, in fact, say this, that  
3 they had just applied for it.

4 **MR. REINER:** If you don't mind,  
5 Commissioner Leonard, even though Pat wrote  
6 that, I think that I can respond to your  
7 question. Even though the application was  
8 addressed in the written portion of their  
9 proposal, they also gave a presentation during  
10 the oral interviews, and the impression that  
11 was given during the oral interview process was  
12 that they had already had this VPP designation.

13 **COMMISSIONER LEONARD:** You knew different?

14 **MR. REINER:** That's correct.

15 **COMMISSIONER LEONARD:** Did you say that?  
16 Did you speak or -- or did -- did you?

17 **MR. REINER:** We were not part of  
18 the selection committee. We were in the back  
19 room. But after the interviews were done, when  
20 we had the deliberations between the technical  
21 review committee and the selection committee,  
22 Pat, during that time, explained exactly what  
23 the VPP process was.

24 **COMMISSIONER LEONARD:** Did the review  
25 committee have the application that the

1 statement was taken from?

2 **MR. REINER:** The specifics out  
3 of this document, we're not sure that the  
4 selection committee -- no.

5 **COMMISSIONER LEONARD:** Out of what  
6 document?

7 **MR. REINER:** Out of the  
8 document, the safety memo that you are  
9 referencing.

10 **COMMISSIONER LEONARD:** That's not my  
11 question. My question is you took the quote  
12 from something IHO gave you. Does the  
13 evaluation committee have that?

14 **MR. DARBY:** Yes. As I recall  
15 that was part of the proposal document. In the  
16 proposal document, IH had gone through the  
17 process of applying. As I recall, their  
18 application was accepted late in 2004, either  
19 in November or December.

20 **COMMISSIONER LEONARD:** Okay. It just --  
21 it concerns me that -- that what you have here  
22 doesn't seem to --

23 **COMMISSIONER ADAMS:** The line items that  
24 they had to fulfill.

25 **MR. DARBY:** No. At that time,

1 the application was accepted.

2 **COMMISSIONER ADAMS:** But they were not  
3 accepted into the program yet.

4 **MR. DARBY:** Right. There's an  
5 evaluation process, at which point in time,  
6 it's my understanding that -- that -- that OSHA  
7 provided them feedback for them to reach one of  
8 the levels of the VPP's program, the merit  
9 status.

10 **COMMISSIONER LEONARD:** And in the  
11 executive summary at the beginning on page one,  
12 there, of course, is some debate about -- about  
13 the -- the statements used that -- that -- the  
14 numbers used that -- that reflect the actual  
15 injury rates, and I have a few questions about  
16 that. Who is the most appropriate of you two  
17 people to ask those of?

18 **MR. REINER:** Probably Pat.

19 **COMMISSIONER LEONARD:** Pat, I was  
20 interested in looking at the summary of IHO and  
21 comparing that with -- with KBB. That -- that

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22 it almost appears as though these were  
23 pro-active statements made on behalf of KBB,  
24 almost -- in fact, I asked at the last time we  
25 had the hearing if some of these statements

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1 actually were quotes from KBB. For instance,  
2 their approach to risk and safety includes all  
3 levels of the organization, in that safety is  
4 their number one priority. Is that -- is that  
5 a structure you created yourself, or does that  
6 come from KBB?

7 **MR. DARBY:** I'm afraid I didn't author  
8 that part.

9 **COMMISSIONER LEONARD:** Good answer.  
10 [laughter]

11 **MR. REINER:** Like I mentioned in  
12 my earlier testimony is that -- is that, you  
13 know, this was the general summary, and --

14 **COMMISSIONER LEONARD:** Where did that --  
15 where did that actual construction of that  
16 sentence and actually the following, "they  
17 believe that all accidents can be prevented,  
18 and then go on." It seems like it's an unusual  
19 construction, in my experience, for a city  
20 staff.

21 **MR. REINER:** I believe that that  
22 came out of their proposal, out of the written  
23 proposal.

24 **COMMISSIONER LEONARD:** You didn't say  
25 that. This is authored as though it's a

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1 statement by you about them, not -- it's not in  
2 quotes.

3 **MR. REINER:** Well, and I want to  
4 reiterate, again, that we gave our opinion and  
5 we also polled information --

6 **COMMISSIONER LEONARD:** Why didn't you put  
7 them in quotes?

8 **MR. REINER:** I'm not sure.

9 **COMMISSIONER ADAMS:** If I could just --  
10 parenthetically, why isn't your name on this?

11 **MR. REINER:** I can respond to that one  
12 too. I realized it was brought up at the last  
13 hearing that the document that was sent to Paul  
14 was an attachment in an e-mail, and I did not  
15 think of putting it on letterhead or signing  
16 it. I thought by sending the attachment via

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17 e-mail it would be understood who it was from.  
18 **COMMISSIONER SALTZMAN:** It was an e-mail  
19 attachment?  
20 **MR. REINER:** That's correct.  
21 **COMMISSIONER ADAMS:** Can we see the  
22 e-mail?  
23 **MR. REINER:** I do not have that with me.  
24 **COMMISSIONER LEONARD:** Leonard: if I could  
25 finish up on this thinking. As we know, I

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1 forget where I'm at often.  
2 **COMMISSIONER ADAMS:** Or what you were  
3 doing.  
4 **COMMISSIONER LEONARD:** I have to keep  
5 going.  
6 You said, in the IHO portion of the memo  
7 on page 1, bullet one, you said that IHO had a  
8 6.14% U.S. injury rate, I'll call it RCIR  
9 recordable case incident rate. And then you  
10 pointed out that on the west side CSO project,  
11 however, they had a 12.35% RCIR, recordable net  
12 rate. And then for KBB, you wrote that they  
13 had a .68 injury rate. Less than 1% injury  
14 rate for RCIR; but what I was interested in was  
15 that you not only pointed out -- I thought you  
16 made the point originally you were going to  
17 compare U.S. statistics for both corporations  
18 as to their injury rate. You did that. You  
19 had the 6.14 and the .66. But then you  
20 included though, however, the Oregon rate, the  
21 project rate on the west side CSO, and did no  
22 such kind of analysis for KBB. In other words,  
23 you didn't give -- you picked out -- you did  
24 the apples-to-apples and then you did an  
25 orange-to-apples, in my opinion. Just to make

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1 sure that it wasn't lost on the reader, you  
2 reiterated again in the IHO provision, Oh, by  
3 the way, the west side CSO rate is 12.35%, to  
4 drive home the point that the rate on the  
5 project on the west side was substantially  
6 higher than the U.S. rate, whereas you start  
7 out saying, We're going to compare  
8 apples-to-apples. Can you explain why you did  
9 that?  
10 **MR. DARBY:** Well, my thought process  
11 behind providing those different rates was to

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12 put the different rates into some sort of  
13 perspective.  
14 **COMMISSIONER LEONARD:** How do you do that?  
15 I get it when you compare apples-to-apples,  
16 U.S. rate to U.S. rate. But how do you do that  
17 when you take the rate of one of the applicants  
18 and take the experience of one jobsite, when  
19 you actually acknowledge that you were going to  
20 compare national rates. Seems like it skewed  
21 the comparison.  
22 **MR. DARBY:** I felt that it was important  
23 for anyone reading this document to understand  
24 what the different experiences were for  
25 different entities based on the types of work

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1 that we do.  
2 **COMMISSIONER LEONARD:** Why wouldn't you  
3 have done that for KBB, found a similar  
4 project, say, in the South or wherever they  
5 happen to be, saying, Oh, by the way, on this  
6 particular project, KBB had a rate that was X  
7 and these folks here, IHO, had a rate that  
8 compared to that with this number.  
9 **MR. DARBY:** The data that I had available  
10 from KBB was for -- from what I understand, two  
11 projects. One of them was very similar to this  
12 operation, as has been discussed. I didn't  
13 take the rates for work done on nonsimilar  
14 types of projects.  
15 **COMMISSIONER LEONARD:** But you did have a  
16 rate for a similar project?  
17 **MR. DARBY:** No, I did not.  
18 **COMMISSIONER LEONARD:** I thought you just  
19 said that you did.  
20 **MR. DARBY:** Of the two projects that they  
21 provide data for -- they had two projects,  
22 under -- as has been previously mentioned, the  
23 Chattahoochee tunnel project which is similar  
24 in construction, although, much different in  
25 technique, but a totally underground tunnel,

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1 and the Red Line project, I frankly -- I've  
2 been through the Chattahoochee tunnel. I was  
3 able to visit that location and was familiar  
4 with it. The Red Line project, I didn't visit.  
5 **COMMISSIONER LEONARD:** My question was:  
6 Did you have injury rates for those specific

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7 projects?

8 **MR. DARBY:** No, I did not.

9 **COMMISSIONER LEONARD:** Did you ask for  
10 them?

11 **MR. DARBY:** No, I did not.

12 **COMMISSIONER LEONARD:** Did it occur to  
13 you, if you were going to use the injury rates  
14 for one project for one of the appliers, that  
15 maybe you should get a rate for the other  
16 applicant?

17 **MR. DARBY:** No, it did not.

18 **COMMISSIONER LEONARD:** Finally, and then I  
19 will turn this over to somebody else, there has  
20 been some discussion about the rates and the  
21 accuracy of the rates themselves with respect  
22 to KBB. Have you heard that?

23 **MR. DARBY:** Yes.

24 **COMMISSIONER LEONARD:** And I'm not clear  
25 about that. It sounds as though that KBB

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1 provided a rate -- tell me if I have got this  
2 right or wrong -- provided a rate that may  
3 reflect some activities of other entities,  
4 others -- other than their own. Is that a fair  
5 conclusion on my part?

6 **MR. DARBY:** I don't believe so. The data  
7 that I was provided listed their operations  
8 under the underground division, which included  
9 those two aforementioned projects, to my  
10 knowledge.

11 **COMMISSIONER LEONARD:** Were there other  
12 companies whose experiences are blended in with  
13 the KBB rate?

14 **MR. DARBY:** No. Typically, a corporation  
15 would not keep data for subcontractors, if  
16 that's what you are talking about.

17 **COMMISSIONER LEONARD:** I don't know. I  
18 just know what has been represented here, and  
19 it sounds like what I am hearing, and I  
20 understand both sides are advocating, so I'm  
21 trying to, you know, to sift through that as  
22 well. But what I'm hearing is that the -- that  
23 there's an argument that the rate itself is  
24 inaccurate for KBB because they are using other  
25 legal entities that they may be affiliated with

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1 or associated with to blend their experiences,

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2 which thus reduces the rate.

3 **MR. DARBY:** The data I calculated the rate  
4 for was given to me with the representation  
5 that it was for Kiewit's underground  
6 construction division. Did not include any  
7 other entities.

8 **COMMISSIONER LEONARD:** If somebody knows  
9 more about that, I'd like to hear about that.

10 **COMMISSIONER ADAMS:** The first paragraph  
11 of your memo says, "JV had the lowest rating  
12 for their safety program." What rating are you  
13 referring to?

14 **MR. REINER:** We had developed a matrix  
15 that had listed the eight criteria in the RFP,  
16 and we were assigned a point value. If the  
17 response was strong, we gave it a three. If it  
18 was average, we gave it a two, and if it was  
19 weak in the response, we gave it a one.

20 **COMMISSIONER ADAMS:** This was the two of  
21 your criteria?

22 **MR. REINER:** That's correct.

23 **COMMISSIONER ADAMS:** Do we have a copy  
24 of that?

25 **MR. REINER:** It should -- I can provide

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1 you with one.

2 **MR. DARBY:** If I might clarify, the eight  
3 criteria was actually the ones listed in the  
4 RFP. Wasn't our criteria, but that was in the  
5 RFP.

6 **COMMISSIONER ADAMS:** Okay. So you did  
7 your own reading based upon the criteria in the  
8 RFP? Did your memo -- your memo was first  
9 written in January, and it was given to the  
10 committee on what day?

11 **MR. REINER:** The memo was not given to the  
12 committee -- I don't remember the exact date,  
13 but it was given three weeks prior to the  
14 interviews -- or, I mean, the memo was given  
15 three weeks prior to the interviews, to Paul.  
16 The memo was not given to the selection  
17 committee until after all the interviews.

18 **COMMISSIONER ADAMS:** What day was that?

19 **MR. REINER:** January 20.

20 **COMMISSIONER ADAMS:** Okay. And what  
21 contact did you have with the selection  
22 committee members?

23 **MR. REINER:** Very little. Just, the



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24 discussion that we had right after all of the  
25 oral interviews is when the technical review

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1 committee and selection committee got together  
2 and discussed what was presented and the pros  
3 and cons of each proposal, including the risk  
4 and safety portion.

5 **COMMISSIONER ADAMS:** So you were in the  
6 room during those discussions.

7 **MR. REINER:** That's correct.

8 **COMMISSIONER ADAMS:** Did you participate  
9 in those discussions?

10 **MR. REINER:** Yes, we did.

11 **COMMISSIONER ADAMS:** Did you reference  
12 your memo?

13 **MR. REINER:** We did not, in those  
14 discussions, no.

15 **COMMISSIONER ADAMS:** Who is Christina  
16 Overbee?

17 **MR. REINER:** She works for Paul on the  
18 east side CSO project, and I believe was  
19 responsible for heading up the RFP and pulling  
20 together the selection committee. She was the  
21 point contact.

22 **COMMISSIONER ADAMS:** Okay. And looking  
23 back, based on everything you know now, I  
24 assume you sat through or have read through the  
25 record, do you stand by the accuracy of your

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1 memo?

2 **MR. REINER:** Absolutely. I mean, the  
3 evaluation of the criteria and the -- of the  
4 proposal, you know, we believe that KBB has the  
5 best safety approach. Like I mentioned to you  
6 earlier, could we have worded things  
7 differently? Yes. Could we have said things  
8 like no training versus little training or few  
9 training? Absolutely. As far as the best  
10 approach, based on the written proposal and  
11 based on what we heard in the interviews is KBB  
12 had the best approach to safety.

13 **COMMISSIONER ADAMS:** Did you go into the  
14 selection process with any particular bias?

15 **MR. REINER:** No.

16 **COMMISSIONER ADAMS:** And what sort of  
17 day-to-day or week-to-week interaction do you  
18 have with IH as part of the existing tunneling

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19 project?

20 **MR. REINER:** I have limited. Pat has  
21 daily action.

22 **COMMISSIONER ADAMS:** And do you have an  
23 observation -- do your scores of -- do your  
24 ratings, which you summarized in that first  
25 paragraph in your memo, reflect your personal

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1 experience with IH?

2 **MR. DARBY:** No. We did our very best to  
3 evaluate the documents on their own merit, not  
4 reflecting on any interactions that we had with  
5 anybody at any time.

6 **COMMISSIONER ADAMS:** Given that this is  
7 one of largest contracts in the history of the  
8 city, why didn't it occur to you to go out and  
9 try to get some outside due diligence?

10 **MR. DARBY:** There was some efforts to do  
11 that. One of the things I personally did was  
12 go and check the OSHA website. One of the  
13 criteria we had in the request for  
14 qualifications was for willful violations, so I  
15 did some looking at citation history. Other  
16 data, such as incident rates, that's somewhat  
17 proprietary information. It's not available.

18 **COMMISSIONER ADAMS:** And at various  
19 places, it occurs -- my impression is that your  
20 work is characterized as both a summary of the  
21 RFPs and due diligence. What do you  
22 characterize it as?

23 **MR. REINER:** I characterize the memo as a  
24 document that was created with reviewing the  
25 independent -- reviewing proposals

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1 independently, looking at the criteria and  
2 responses to those RFP's questions, and drawing  
3 comments and conclusions. That was the  
4 assignment that we were given as being part of  
5 the technical review committee was to review  
6 the proposals, summarize, jot down questions,  
7 prepare interview questions for the selection  
8 committee as they prepared for the interview.

9 **COMMISSIONER ADAMS:** And yourself?

10 **MR. DARBY:** As Mike said, I think that we  
11 did our very best to look at it based on their  
12 own merit.

13 **COMMISSIONER ADAMS:** So the due

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14 diligence you did was mostly limited to your  
15 own expertise and experience and not going out  
16 and doing some independent fact checking? You  
17 had limited independent fact checking of what  
18 both the RFPs claimed?

19 **MR. DARBY:** Yes.

20 **COMMISSIONER ADAMS:** Thanks.

21 **MAYOR POTTER:** I want to ask a  
22 question. Who asked you to write the memo?

23 **MR. REINER:** Nobody asked us to write the  
24 memo. We were asked to prepare comments and  
25 questions for the selection committee. Again,

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1 it was a risk and safety document and it kind  
2 of generates its own pulse as a safety memo.  
3 It was not intended to be a memo. It was  
4 intended to provide comments, questions back to  
5 the selection -- or to Gribbon to ask the  
6 selection committee as part of the interview  
7 process.

8 **MAYOR POTTER:** Let me reask you.  
9 Who asked you to write the document?

10 **MR. REINER:** Paul asked us to prepare  
11 written comments regarding the proposals and  
12 questions for the selection committee to ask  
13 during the interview.

14 **MAYOR POTTER:** And did you  
15 complete that, then, on January 6?

16 **MR. REINER:** I don't know the specific  
17 date, but it was a couple of -- three weeks --

18 **MAYOR POTTER:** There's a date on  
19 here from the e-mail, has your name at the top,  
20 and its written to Christa Overbee?

21 **MR. REINER:** I don't have that in front of  
22 me, but I would say yes.

23 **MAYOR POTTER:** Could you show that  
24 to --

25 **MR. REINER:** That's correct.

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1 **MAYOR POTTER:** And was that  
2 transmitted to her, that document?

3 **MR. REINER:** That's correct.

4 **MAYOR POTTER:** And where does that  
5 document go from there.

6 **MR. REINER:** That I'm not sure of. I am  
7 assuming that Christa forwarded all the  
8 comments from the technical review committee to

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9 Paul for consideration.  
10 **MAYOR POTTER:** I see that he's on  
11 the cc list, so he must have got a copy of  
12 this.  
13 **MR. REINER:** That would be my assumption.  
14 **MAYOR POTTER:** He (inaudible) ask  
15 you to prepare this document?  
16 **MR. REINER:** That's correct, as part of  
17 our involvement on the technical review  
18 committee.  
19 **MAYOR POTTER:** And then three  
20 weeks later, the document was given to the  
21 selection committee?  
22 **MR. REINER:** That's correct.  
23 **MAYOR POTTER:** And who gave it to  
24 the selection committee?  
25 **MR. REINER:** I gave the document to the

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1 selection committee after all of the  
2 interviews.  
3 **MAYOR POTTER:** Other questions?  
4 **COMMISSIONER LEONARD:** Why would you give  
5 it after the interviews, as opposed to before  
6 so people could ask questions from it?  
7 **MR. REINER:** Like I mentioned before,  
8 Commissioner Leonard, there was discussion  
9 about all of the responses given during the  
10 oral interviews of the safety and risk and some  
11 of the pros and cons. And at that point, I  
12 just asked Paul would it be appropriate to give  
13 the copy of the memo to the selection  
14 committee, and he said yes, and that's when I  
15 handed it out.  
16 **COMMISSIONER LEONARD:** So you had the memo  
17 before the interviews?  
18 **MR. REINER:** I had a copy of the memo in  
19 my folder here.  
20 **COMMISSIONER LEONARD:** I'm just wondering  
21 if it just occurred to you, again, that it  
22 might have been more useful if it was given  
23 before so people could look at it and say, Oh,  
24 by the way, for an example, you said that you  
25 had been certified for OSHA, but your written

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1 document says that you are applying for it, can  
2 you clarify?  
3 **MR. DARBY:** If I might add to Mike's

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4 testimony, some of the questions that were  
5 contained in the memorandum were asked. They  
6 were pulled from that document. There is a  
7 separate set of questions that was developed  
8 for the use of the selection committee.

9 **COMMISSIONER LEONARD:** Well, I guess what  
10 I am saying here is, you have here a memo that,  
11 as I have said, I have some concerns about  
12 because it would appear that some of the  
13 statements represent you, but now what we are  
14 learning is they are actual quotes from the  
15 folks that are applying. But then you actually  
16 have questions, I mean, you have -- you have an  
17 approach to hazard identification and then you  
18 have questions. It would just seem to me that  
19 you would give them to them, the panel, ahead  
20 of time so that they could ask each question.

21 **MR. REINER:** Again, Commissioner Leonard,  
22 what I mentioned before, and I am sorry if I  
23 didn't make myself clear, is that the task we  
24 were given was to look at the approaches,  
25 provide any comments, questions that we had

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1 about the proposal, and, and questions that we  
2 wanted the selection committee to ask of the  
3 interview.

4 **COMMISSIONER LEONARD:** You're clear. I  
5 understand that. That was clear. You made  
6 that clear. My question is, I guess, more  
7 about the judgement involved of having  
8 questions about what was said, waiting until  
9 everybody is done answering questions and leave  
10 the room, then you give a document to the  
11 committee that raises questions without the  
12 ability to ask questions -- those questions of  
13 the people that have applied.

14 **MR. REINER:** Well, and I hate to go back  
15 to what I mentioned before is that the document  
16 was given to Paul, and Paul, I assume, had  
17 received comments from other technical review  
18 members, and it was his decision not to give --

19 **COMMISSIONER LEONARD:** Is this a question,  
20 then, of Paul better?

21 **MR. REINER:** Probably so.

22 **UNIDENTIFIED SPEAKER:** Fair enough.

23 **MAYOR POTTER:** I just wanted to  
24 ask one final question. And that is, one of  
25 the BES witnesses and also the person that sat

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1 on the selection -- he was on the selection  
2 committee, Steve Simonson, said that the IHO  
3 performance was critiqued by the BES staff.  
4 Were you part of that critiquing?

5 **MR. REINER:** I'm not sure what he was  
6 referring to with regards to that critiquing.  
7 I don't know whether it was in reference to the  
8 discussion that we had after the interviews or  
9 not.

10 **COMMISSIONER ADAMS:** Were you  
11 involved in the discussions after the  
12 interviews?

13 **MR. REINER:** Yes, I was.

14 **COMMISSIONER ADAMS:** Okay. And was  
15 Paul?

16 **MR. REINER:** Yes.

17 **COMMISSIONER ADAMS:** Was Dean Marriott?

18 **MR. REINER:** I don't believe so, no.

19 **COMMISSIONER ADAMS:** Okay. And to your  
20 knowledge, did anyone have this memo besides  
21 Paul?

22 **MR. REINER:** Prior to the interviews?

23 **COMMISSIONER ADAMS:** Right.

24 **MR. REINER:** That's correct, nobody else.

25 **COMMISSIONER ADAMS:** How many people in

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1 the room discussing -- having the  
2 after-discussion, more or less?

3 **MR. REINER:** There was probably, what,  
4 eight on the selection committee and probably  
5 another 10 to 15 that were standing around the  
6 room.

7 **COMMISSIONER ADAMS:** And do you recall,  
8 as part of your perspective -- part of the  
9 perspectives that you offered, were they  
10 consistent with this memo?

11 **MR. REINER:** I am not sure I am following  
12 your question.

13 **COMMISSIONER ADAMS:** The pluses and  
14 minuses, the strengths and weak attributes as  
15 you saw them and as memorialized in this memo,  
16 were those points of reference consistent with  
17 how you conducted yourself in the -- in the  
18 after-discussions?

19 **MR. REINER:** Yes.

20 **MAYOR POTTER:** Further questions of these  
21 two?

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22 **UNIDENTIFIED SPEAKER:** Thank you.

23 **MAYOR POTTER:** Who would you like to hear  
24 from next?

25 **COMMISSIONER LEONARD:** At some point I

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1 would like to hear from Paul.

2 **MAYOR POTTER:** Paul and Dean here? Could  
3 you please come forward, both.

4 **COMMISSIONER LEONARD:** Paul, you heard the  
5 questions, and could you respond to why this --  
6 this memo, which has legitimate questions  
7 drafted within it, would not have been handed  
8 out before the interviews, so the questions  
9 could have been asked of the applicants.

10 **MR. GRIBBON:** The way the process was  
11 being brought, what we did was, once the  
12 selection committee had met on December 15, we  
13 short-listed the three firms for interviews. I  
14 had Christa Overbee send out an e-mail to the  
15 TRC.

16 **COMMISSIONER ADAMS:** TRC?

17 **MR. GRIBBON:** To the technical review  
18 committee, back-up committee. I sent the  
19 e-mail out to the selection committee. What we  
20 said in those e-mails was, Please review the  
21 remaining three proposals. Provide any  
22 interview questions or comments regarding each  
23 of these proposals. In the case of the  
24 technical review committee, was before Monday,  
25 January 10. Any questions you provide will be

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1 helpful to the selection committee in  
2 formulating a list of questions for the  
3 interviews.

4 What we did not want to do was have  
5 individual technical review committee members,  
6 and individual selection committee members  
7 talking among themselves prior to the process  
8 being complete. So when I got a copy of the  
9 memo and Christa also got a copy of the memo,  
10 we looked at the questions that were on that  
11 memo and we used those questions as part of  
12 putting the whole package together.

13 **COMMISSIONER LEONARD:** Did you include in  
14 the questions the point that I brought up here  
15 that seems contrary to what BES and the city  
16 attorney have testified to, that in the

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17 application, IHO has made it clear that they  
18 are applying for designation as a VPP, as  
19 opposed to actually having it? Did you have  
20 that as a question?

21 **MR. GRIBBON:** In the proposal, it was  
22 clear to me that they were applying for VPP.  
23 In the presentation, it was clear to me that  
24 they had --

25 **COMMISSIONER LEONARD:** I understand that.

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1 I understand that. My question is, did -- you  
2 said you took your questions to them.

3 **MR. GRIBBON:** Correct.

4 **COMMISSIONER LEONARD:** Did you ask that  
5 question?

6 **MR. GRIBBON:** No, because it wasn't a  
7 concern at the time the interviews were held.  
8 Didn't become a concern until after.

9 **COMMISSIONER LEONARD:** But you knew that  
10 -- you knew that in their application they  
11 had -- they had said that they were just  
12 applying?

13 **MR. GRIBBON:** In their proposal, that's  
14 what it said. That's correct.

15 **COMMISSIONER LEONARD:** The proposal, I'm  
16 sorry. But then you heard them say that they  
17 had it.

18 **MR. GRIBBON:** I read it in the powerpoint  
19 presentation.

20 **COMMISSIONER LEONARD:** Okay. But you  
21 didn't ask them, Can you explain why you said  
22 you have it when your proposal says you're just  
23 applying?

24 **MR. GRIBBON:** Because during the course of  
25 the interview, when I heard them say that they

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1 had been accepted, I took that as fact that  
2 they had been accepted. I read it right in the  
3 powerpoint. It says WSCSO contractor. First  
4 tunnel contract in U.S. to be accepted for VPP.  
5 I took that on what they said. No, I didn't  
6 question about that.

7 **UNIDENTIFIED SPEAKER:** I don't have a copy  
8 of the matrix that was put together by Pat and  
9 Mike. If I do, it's buried in this paperwork  
10 somewhere.

11 **UNIDENTIFIED SPEAKER:** Who saw -- who saw



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12 Mike and Pat's work prior to the selection  
13 committee meeting?

14 **MR. GRIBBON:** Myself and Christa Overbee.

15 **UNIDENTIFIED SPEAKER:** So at what point  
16 does the technical committee -- so you sent it  
17 out to the technical committee for response? I  
18 want to make sure that I understand that.

19 **MR. GRIBBON:** Sent what out to the  
20 technical committee for response?

21 **UNIDENTIFIED SPEAKER:** Their draft memo.

22 **MR. GRIBBON:** No.

23 **UNIDENTIFIED SPEAKER:** Okay. What we had  
24 was the technical committee --

25 **MR. GRIBBON:** Once we had three

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1 short-listed firms, we asked everyone on the  
2 selection committee and technical review  
3 committee to review the proposals and provide  
4 us with comments and questions in preparation  
5 for it.

6 **UNIDENTIFIED SPEAKER:** Okay. And when you  
7 got this, did you read their memo?

8 **MR. GRIBBON:** I did.

9 **COMMISSIONER ADAMS:** Okay. And did you  
10 -- your assumption of the quality of the work,  
11 did it include -- did you think it was just a  
12 summation of the proposals, or did you  
13 recognize that it included some unique  
14 evaluations? And did you think or assume that  
15 it included outside due diligence as well?

16 **MR. GRIBBON:** I read it, and it seemed to  
17 be a combination of what they read in the  
18 proposals, because a lot of the verbiage in the  
19 memo was similar to what I had read in the  
20 proposals, and it was their review and their  
21 opinions based on what they had read in the  
22 proposals. At the time, we were using that  
23 document to develop questions, so no, I didn't  
24 specifically question them on how much work  
25 they had done in the preparation.

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1 **MAYOR POTTER:** Let me ask you a  
2 question. This is for both of you. At our  
3 last hearing, I thought I asked both of you if  
4 you knew the source of the memo. And I thought  
5 you said no. No?

6 **MR. GRIBBON:** No, I think I used two words

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7 I shouldn't have used. I said, "I believe it  
8 was Pat Darby and Mike Reiner." I should have  
9 just flatly said it was Pat Darby and Mike  
10 Reiner.

11 **MAYOR POTTER:** And when I asked  
12 you did you know, then you weren't sure? Or  
13 you were sure?

14 **MR. GRIBBON:** No, the only reason I said I  
15 believe is because they may have had more  
16 people contributing to it, as far as I knew. I  
17 didn't specifically question them on who had  
18 contributed to it. But since that time, I've  
19 been told it was just the two of them.

20 **MAYOR POTTER:** Is this process  
21 identical to the one that was used for the west  
22 side selection?

23 **MR. GRIBBON:** Yes, it is. The only  
24 difference would be in that the -- there wasn't  
25 any additional -- nothing was handed out, I

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1 guess, during the west side deliberations. And  
2 that would probably be the only difference.  
3 Everything else is basically identical.

4 **MAYOR POTTER:** Did the BES staff  
5 critique on the west side proposal as well?

6 **MR. GRIBBON:** I have heard that. There  
7 was an awful lot of discussion going on. There  
8 were questions about -- we asked, in the RFP,  
9 questions about what do you think the 10 most  
10 significant challenges are. I think I was  
11 probably questioned on what some of the  
12 challenges we had on the west side were. But  
13 in all honesty, there was so much discussion  
14 about so many different criteria from so many  
15 people that part of it was looking at what we  
16 had -- what we submitted in the proposal and  
17 what was heard in the interviews versus what  
18 our experience was.

19 **MR. VAN DYKE:** On the west side?

20 **MR. GRIBBON:** That's correct, including  
21 the experience on the west side.

22 **MR. MARRIOTT:** Since you  
23 participated in both west side deliberations  
24 and east side deliberations, Mayor, help me out  
25 here, but I think what you are asking is: Was

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1 the process, essentially, the same?

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2     **MAYOR POTTER:** Yes, that was my original  
3 question.

4     **MR. GRIBBON:** I'm sorry.

5     **MAYOR POTTER:** I think that your response  
6 was that perhaps you didn't hand out the same  
7 documentation to the selection committee after  
8 the interviews?

9     **MR. GRIBBON:** Yes, because we did -- the  
10 process was the same. We had everyone submit  
11 comments and questions based on the review of  
12 the proposal prior to the interviews to help us  
13 prepare for the interviews. So we are sure  
14 that we had a full list of questions. They  
15 were 4-hour interviews. There was a lot at  
16 stake. We didn't want any -- I didn't want any  
17 dead time. I wanted to be able to fill the  
18 whole four hours.

19     **MAYOR POTTER:** Who developed the  
20 process for the -- the entire selection  
21 process? Who set it up?

22     **MR. GRIBBON:** Basically it was set up on  
23 the west side, myself, along with the Bureau of  
24 Purchases.

25     **MAYOR POTTER:** East side?

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1     **MR. GRIBBON:** Basically it was the same  
2 process that was set with the east side, so we  
3 worked with Commissioner Saltzman to say this  
4 is the same process we're going to use and we  
5 also worked with purchasing to put it together.

6     **MAYOR POTTER:** Is that process  
7 anywhere in this documentation? Was it written  
8 up as to, Here are the steps we are going to  
9 take?

10     **MR. GRIBBON:** Yes. I had a memo prepared  
11 for Commissioner Saltzman.

12     **MAYOR POTTER:** Is that in this  
13 documentation that we have?

14     **MR. GRIBBON:** I don't know if it is. I  
15 know I provided it to the city attorney, but I  
16 don't know what you have.

17     **MAYOR POTTER:** And does the  
18 process include the steps that were actually  
19 taken in terms of the BES staff coming in to  
20 critique -- the only one that I am aware of,  
21 they critiqued IHO. Did they also critique  
22 Kiewit?

23     **MR. GRIBBON:** Yes, we had people who were

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24 on the Trenner/Bonno job in Puerto Rico, which  
25 was the job that Kiewit was on, that talked

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1 about that. We also had Dr. Greg Corbin, who  
2 is an international tunnelling consultant, and  
3 he talked about the experience with both  
4 contractors.

5 **COMMISSIONER ADAMS:** Dean, you were  
6 quoted in the paper as talking about treating  
7 this memo as a reference check or something,  
8 something to that effect. But we have come to  
9 learn from the testimony that there was  
10 extremely limited due diligence as part of  
11 this, and more of a summation of the proposals.  
12 So does that reflect a change in your  
13 understanding of what this memo represents?

14 **MR. MARRIOTT:** Mayor, Commissioners, for  
15 the record, Dean Marriott, Environmental  
16 Services Director.

17 My view is that we asked, as Paul just  
18 mentioned, a host of experts, some in-house  
19 experts, some on retainer to us, available --

20 **COMMISSIONER ADAMS:** I am talking about  
21 just these two writers.

22 **MR. MARRIOTT:** I'm trying to answer your  
23 question. Their input in this process was  
24 mixed in and part of the deliberations, just as  
25 the outside experts were.

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1 **COMMISSIONER ADAMS:** I understand, but I  
2 thought the reference to the earlier comments  
3 were particular to this memo, represented as  
4 due diligence.

5 **MR. MARRIOTT:** I'm sorry if there's been  
6 confusion about that. What I was referring to  
7 was this process is part of the deliberation  
8 you would go through similar to a job interview  
9 analysis.

10 **COMMISSIONER LEONARD:** Actually, I did  
11 want to follow up on that. Does it concern,  
12 you some of the questions I have asked, where  
13 we have learned that the statements were  
14 actually taken from the proposals without  
15 quotes and would make it appear, to those of us  
16 reading the memo now, that it was actually  
17 staff saying what appeared to be very positive  
18 things about one of the bidders, actually,

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19 quite the opposite with the other? There are  
20 statements -- I don't know if you heard this,  
21 but it was a very glowing statement, but they  
22 actually just were taken from the company  
23 without quotes. Does that concern you at all  
24 that people could be misled into thinking that  
25 the staff was actually describing the company

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1 that way as opposed to this company describing  
2 itself?

3 **MR. MARRIOTT:** Commissioner, I think you  
4 heard the staff indicate that they would not  
5 have written this that way had they not  
6 believed it. What they were doing, I think, is  
7 taking a shorthand approach to summarizing  
8 their views that they have to agree with by  
9 extracting sentences from the proposals to  
10 highlight those.

11 **COMMISSIONER LEONARD:** So they believed  
12 that their -- "their" meaning KBB, their  
13 approach to risk and safety includes all levels  
14 of the organization, and the safety is the  
15 number one priority? They understood the  
16 company well enough to be able to make that  
17 statement as a stand-alone statement that  
18 reflected their training and experience?

19 **MR. MARRIOTT:** Well, the authors are here,  
20 but that's what I understand their view is.

21 **COMMISSIONER LEONARD:** And you're able to  
22 say to me you're comfortable with that?

23 **MR. MARRIOTT:** Yes, sir, I think that they  
24 have indicated that they do use a poor choice  
25 of words and semantics. I don't know whether

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1 they would include putting quotation marks  
2 about that. I think were they to do it again,  
3 they probably should do that, yes, sir.

4 **MR. GRIBBON:** Can I add to that,  
5 Commissioner? This discussion of this didn't  
6 occur until after all the interviews were done.  
7 I think it was in my observation, one of the  
8 things that separated the contractors was  
9 Kiewit had corporate officers there who made a  
10 speech about safety. It wasn't just a safety  
11 manager. I think that's what impressed  
12 everybody was they confirmed that during the  
13 interview. It's what separated -- one of the

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14 things that separated them.

15 **COMMISSIONER ADAMS:** There, I guess, the  
16 obvious question is, the numbers looked good,  
17 the product seems to be acceptable, based on my  
18 understanding of your view of IH, but I also  
19 know that there are business relationships  
20 there, that's true, but there's also bad blood  
21 on a more interpersonal level. Is there bad  
22 blood between the relationship between the city  
23 and IH, even though the numbers look good?

24 **MR. GRIBBON:** There has never  
25 been, up to this point. In all honesty, this

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1 is my (inaudible) this is one of the most  
2 enjoyable construction jobs I have done.

3 **COMMISSIONER ADAMS:** And in terms of  
4 ratepayer efficacy questions, there seems to be  
5 confusion, and maybe it's just me, that we have  
6 a solid number from one respondent, but don't  
7 have a solid number from the other respondent.  
8 But the other respondent said, I don't know  
9 where to look anymore, that they indeed did  
10 have a solid number. Could somebody give us  
11 the solid numbers?

12 **MR. GRIBBON:** Specifically did not ask for  
13 solid reimbursable numbers during our RFP  
14 because they wouldn't mean very much.

15 **COMMISSIONER ADAMS:** But they seem to be  
16 willing to put them out there. So maybe we'll  
17 ask whoever the right person is. This side is  
18 shaking their head. That must be the right  
19 side. If I could ask Paul.

20 **COMMISSIONER SALTZMAN:** We should ask  
21 Kiewit that question.

22 **MR. MARRIOTT:** If I could ask Paul  
23 to explain why he just made that statement.  
24 The project has not yet been finally designed.  
25 So to expect someone to come in here and pledge

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1 that they will build this project for X, I  
2 think is a little unrealistic because we don't  
3 have a final design. So that's what gives us  
4 pause.

5 **MR. GRIBBON:** It was stated that the  
6 estimate was given to us. It was \$113 million  
7 less than the city's estimate. That's actually  
8 slightly misleading. The city's estimate at  
9 the 30% design phase, was about \$385.5 million.

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10 Knowing we were only at the 30% design stage,  
11 they put a contingency on top of that of 25%.  
12 That adds about another \$90 million or so, and  
13 brings it up to about \$482 million. So for the  
14 sake of the RFP, we just rounded it up to \$500  
15 million so they knew about what sized job they  
16 were talking about. But if you actually look  
17 at the two estimates, they are almost  
18 identical. The only difference is we're adding  
19 contingencies.

20 If we look at the estimate that IH  
21 provided in the interview, it says right at the  
22 bottom, "Reimbursable costs does not include  
23 any contingency." It's not their job to do  
24 that. It's our job to do that, so there is no  
25 \$113 million difference. It doesn't exist.

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1 **COMMISSIONER ADAMS:** And the \$113  
2 million difference is between which two points?

3 **MR. GRIBBON:** I think that the point was  
4 made that IH's cost is \$113 million less than  
5 the city's budget.

6 **COMMISSIONER ADAMS:** I see.

7 **COMMISSIONER SALTZMAN:** Because they don't  
8 add contingencies.

9 **MR. GRIBBON:** They don't add  
10 contingencies. It's not their job to do that.  
11 It's our job to do that.

12 **COMMISSIONER SALTZMAN:** I also thought we  
13 heard Kiewit say they could do it for a lower  
14 cost. I am assuming that they were lower than  
15 \$385 million?

16 **MR. GRIBBON:** Their proposal included one  
17 machine, IHO's proposal included two machines,  
18 so they were looking at it --

19 **COMMISSIONER SALTZMAN:** That's the sole  
20 basis of the lower cost then, is the one  
21 machine?

22 **MR. GRIBBON:** You would have to ask them.  
23 I am not advocating either side here, I'm just  
24 talking about the process.

25 **COMMISSIONER SALTZMAN:** I will ask another

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1 question.

2 **COMMISSIONER ADAMS:** The selection  
3 committee also -- I mean the KBB lost 24  
4 points, from what I can tell, lost 24 points

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5 between the preliminary and the final scores  
6 and on the project approach and fee, where IHO  
7 lost 25 points in the same, between preliminary  
8 and final scores on risk and safety approach,  
9 and we heard discussion of the TBM as a  
10 potential reason for the concern of the  
11 selection committee. Are you satisfied with  
12 the apparent higher risk, or would you just  
13 dispute that there's a higher risk for going  
14 with the single tunnel boring machine?

15 **MR. GRIBBON:** There are -- in my opinion,  
16 there are schedule advantages for going with  
17 two machines, without a doubt. I think that  
18 everyone would tell you that there are schedule  
19 advantages. You have to weigh the risk of the  
20 schedule against the cost of the second  
21 machine. It was mentioned that under one  
22 machine, if the bearing goes out, you are in  
23 trouble. We only have one machine on the west  
24 side job right now. If the bearing goes out on  
25 that machine, we're going to be digging a shaft

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1 in the middle of Front Avenue. You are always  
2 faced with that problem. It's a matter of  
3 balancing how much you are willing to pay. A  
4 risk. It's a tough decision to make in this  
5 type of hearing. That's why we went through  
6 the process that we did.

7 **COMMISSIONER SALTZMAN:** But there are two  
8 tunnel boring machines on the west side.  
9 Correct?

10 **MR. GRIBBON:** Yes. One is gone. But  
11 there were two.

12 **COMMISSIONER ADAMS:** There were two?  
13 There were two? Didn't you say there was one?

14 **MR. GRIBBON:** No, I said there is only one  
15 now. If the bearing goes out on the one that  
16 we have now you (inaudible) the shaft to get  
17 it.

18 **COMMISSIONER ADAMS:** Those dangling  
19 modifiers. Any other questions?

20 **COMMISSIONER LEONARD:** I had questions for  
21 Kiewit.

22 **MAYOR POTTER:** Yes.

23 **COMMISSIONER LEONARD:** Maybe a question  
24 for IH, and probably a question for Bill Ryan.

25 **MAYOR POTTER:** So who would you



1 like to have first?

2 **COMMISSIONER LEONARD:** Kiewit.

3 **COMMISSIONER SALTZMAN:** So is it Mr. Corey?

4 **MR. COREY:** Yes.

5 **COMMISSIONER SALTZMAN:** I believe you said  
6 that your project would be ahead of schedule  
7 and at lowest cost. Were you referring to the  
8 cost element? Were you referring to lower than  
9 the \$385 million figure that IHO --

10 **MR. COREY:** That's total cost, total  
11 project cost.

12 **COMMISSIONER SALTZMAN:** So not factoring  
13 out contingency, you're saying the lowest total  
14 project cost including the fee and the  
15 reimbursable?

16 **MR. COREY:** That's correct.

17 **COMMISSIONER SALTZMAN:** Is that only by  
18 virtue of the one tunnel boring machine?

19 **MR. COREY:** Within some of the other  
20 things our company brings to the table with it,  
21 the safety that we talked about. You've heard  
22 the savings already, with our safety record,  
23 we'll give you more of a safety --

24 **COMMISSIONER SALTZMAN:** Although your  
25 savings are about the same as what's been

1 realized by IHO on the west side already. \$1  
2 to \$2 million in the OCIP program.

3 **MR. COREY:** It was developed by man hours.  
4 It was the production that we made at the start  
5 of the proposal.

6 **MR. MARIUCCI:** Commissioner, if I could  
7 add? Bill Mariucci. I think what you could  
8 look at on the safety is, our record being  
9 significantly lower than IHO's on the east side  
10 translates into more cost savings on the east  
11 side. On the point on the TBM, yes. A portion  
12 of that is identified to the 20 million chart.  
13 But there are, like Tom says, there are others  
14 and there were others listed. Actually, that  
15 was a section in the proposal of the proposed  
16 cost savings.

17 **COMMISSIONER SALTZMAN:** I heard the  
18 gentleman, I think from Bilfinger, say you  
19 would only procure an additional cutter head if  
20 you determined it was necessary. How long does  
21 it take, when you decide it's necessary, how

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22 long does it take to get an additional cutter  
23 head produced in Germany and shipped over and  
24 installed? Is that a long time?  
25 **MR. QUARRY:** The key

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1 manufacturer I talked to gave me a range of  
2 could be anywhere from three to six months.  
3 Depending on how busy the factories are and  
4 things like that. In all likelihood, I would  
5 say that four months is probably a pretty good  
6 number to look at.  
7 **MR. MARRIUCCI:** And if I could add,  
8 what our plan would be is to get to a point in  
9 a shaft, as was mentioned, and inspect the  
10 cutter head at that point in time. And if it  
11 looks like it's necessary to procure the second  
12 cutter head, which is significantly less than  
13 buying a whole other machine, because that is  
14 one of the primary parts, is that we would  
15 procure it at significantly reduced cost than  
16 buying a new machine. As we're finishing the  
17 tunnel to the following shaft, would be the  
18 time it would take to fabricate the cutter  
19 head. So in essence, no lost time on the  
20 overall project schedule.  
21 **COMMISSIONER SALTZMAN:** Those are my  
22 questions for you.  
23 **COMMISSIONER ADAMS:** I can't help but  
24 ask the question. Is it Mr. Hecker?  
25 **MR. HECKER:** Yes, Hecker.

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1 **COMMISSIONER ADAMS:** I got the  
2 impression from your opening comments that you  
3 don't view us as qualified to make this  
4 decision.  
5 **MR. HECKER:** Not at all, Commissioner. I  
6 think if you have the opportunity and the  
7 inclination to go through all the information,  
8 the evaluation committee, you would absolutely  
9 be sitting in the same shoes that they sat in  
10 when they made their decision. Simply a  
11 question of expediency, and that was the intent  
12 of my comment.  
13 **COMMISSIONER ADAMS:** And in terms of  
14 your client's safety record, the folks on the  
15 other side of the room have stated that -- that  
16 you have offered up just a slice of your

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17 overall safety record. I wanted to give you a  
18 chance to respond to that.  
19 **MR. MARRIUCCI:** Thank you. I think I'll  
20 address Commissioner Leonard's question for you  
21 on an answer subsequent to this discussion  
22 before. In front of me is our statement of  
23 qualifications document. And included in that  
24 are basically just two pieces of information on  
25 our safety record. The first one is the chart

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1 that we put up earlier. The chart that says  
2 Kiewit is a Kiewit company safety records. And  
3 the statement that was made prior that there  
4 are no numbers, I believe I thought that I  
5 heard that there's no record for the 27 million  
6 man hours relative to the Kiewit company, is  
7 not correct, because in our statement of  
8 qualifications, that exact chart is the Kiewit  
9 company.  
10 In addition to that, right below the  
11 chart, there is our record for our underground  
12 district chart, the chart Tony's putting up.  
13 We believed that it was relevant to put in the  
14 underground district because this is an  
15 underground tunneling project. So we thought  
16 that that was a good comparison between this  
17 work that our company can accomplish, and those  
18 numbers are actually in here. And one point  
19 that I would make, for our underground district  
20 in the year 2004, which is not on that chart,  
21 where our company rate was .76, our underground  
22 division was .38. Our underground division has  
23 not had a loss time accident in over two years.  
24 So whether it is our corporate record or our  
25 district record in the underground business, it

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1 is the programs that we've talked about briefly  
2 that yielded the results. Those would be the  
3 programs, whether it's a joint venture project  
4 or a sole Kiewit project, it's a Kiewit manned  
5 joint venture. Those will be the programs  
6 implemented, executed on the job.  
7 (Tape changes.)  
8 **COMMISSIONER ADAMS:** How much weight  
9 would you advise us to give -- on one hand, we  
10 have a contractor who has done tunneling in our  
11 city, who has experienced the actual conditions

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12 and has the rates, as, let's say, noted,  
13 assuming that's correct, versus your record,  
14 which is in a different place, different  
15 conditions?

16 **MR. MARRIUCCI:** That's a fair  
17 question.

18 **COMMISSIONER ADAMS:** Thank God.

19 **MR. MARRIUCCI:** We have a partner,  
20 Bilfinger/Berger, who will be a participant in  
21 the project. To reiterate what Cristof  
22 indicated earlier, they are one of the world's,  
23 if not the world's leading slurry tunneling  
24 contractors. And what they will bring to this  
25 job, in addition to what the city will bring --

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1 don't leave your staff out of the equation --  
2 of the knowledge from the west side project  
3 that will come to the east side project, and  
4 paired with Bilfinger/Berger's worldwide  
5 experience, that's a pretty powerful  
6 combination. You will get different ideas.  
7 You will get improved ideas. Different ways of  
8 doing things. Those are articulated in the  
9 proposal. That's why we believe that we won.

10 **COMMISSIONER SALTZMAN:** Question or two  
11 for Mr. Bartz. Mr. Bartz, we didn't ask you how much  
12 you would charge us. We're not going to let you get  
13 away with that.

14

15 **MR. BARTZ:** The lowest number.

16 **COMMISSIONER ADAMS:** What's the price?

17 **MR. MARRIUCCI:** Well, a lot of  
18 discussion, correct, on this matter, and this  
19 is one of our first opportunities (inaudible).  
20 We respect the process the city put forth. We  
21 respect the phase 1 pre-construction services,  
22 the ability to work with the city staff, finish  
23 the design, do a constructability analysis.  
24 All the things that the west side project had  
25 the opportunity to do. The process on the west

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1 side yielded significant cost savings over  
2 anything that can be articulated right now.  
3 The city's benefit and IH's, they got that  
4 chance. We get that chance, you will see the  
5 same thing.

6 One thing that we did do is, using the RFP

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7 documents, which are a 30% design -- frankly,  
8 IH admitted in their own proposal of virtually  
9 no specifications, incomplete scope -- we did  
10 put together a preliminary cost test. At the  
11 point of the interview, in respect of the  
12 process, we just felt -- and I think we said  
13 this before, it's a bit unreliable and  
14 premature. We did not want to mislead anyone.

15 **COMMISSIONER ADAMS:** Your disclaimers  
16 are very well noted.

17 **MR. MARRIUCCI:** Now, let me give you -- so, in  
18 our notes -- and it's a bit incorrect in the  
19 statements that we have heard that the record  
20 says that we never gave a number, there is a  
21 number. One of the evaluators knows, which  
22 Dave Hecker has here --

23 **MR. HECKER:** I just note this  
24 was a document put into the process by IHO as  
25 part of the appeal, and was Exhibit 14. It's

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1 the notes of the evaluator number 6, who was  
2 making notes based on the interview comments.  
3 Just for ease of reference, I have copies of  
4 that. I would like to hand it out with the  
5 mayor's permission.

6 **MAYOR POTTER:** Give them to the council  
7 clerk.

8 **MR. BARTZ:** And Commissioner Adams, that  
9 document will answer your question.

10 **COMMISSIONER ADAMS:** As long as the number  
11 comes out of the lips on your face, that will  
12 be okay with me.

13 **MR. MARIUCCI:** Yes, sir. You will see on the  
14 document it says \$322 million.

15 **COMMISSIONER SALTZMAN:** Thank you.  
16 Mr. Bartz, Mr. McDonald, I just have a couple  
17 of quick questions. I believe in your opening  
18 comments you said that the KBB proposal was  
19 nonresponsive with respect to project approach.

20 **MR. BARTZ:** Yes.

21 **COMMISSIONER SALTZMAN:** Why is that?

22 **MR. BARTZ:** The reason is  
23 you've got a city council rule, city ordinance  
24 that says you shouldn't engage a contractor  
25 that would expose the city to imprudent risk or

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1 would be an imprudent contract. We think right

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2 now when they refuse to give you a cost,  
3 because I hear that under the pressure of all  
4 this, they are telling you the cost, in our  
5 Exhibit E of the document, it says, We don't  
6 want to tell you. That's what it says. So,  
7 that's imprudent for you to enter into a  
8 contract.

9 **COMMISSIONER ADAMS:** What document was  
10 that?

11 **MR. BARTZ:** It's almost towards  
12 the end, Commissioner. It's under tab E, about  
13 the fourth page under tab E.

14 **COMMISSIONER SALTZMAN:** Okay. Actually,  
15 your basis -- your statement, in other words,  
16 that it's not responsive is based more on the  
17 cost.

18 **MR. BARTZ:** There's three  
19 things. The one boring machine versus two --  
20 no, it's the cost and the schedule. The  
21 schedule has two elements to it. One, they're  
22 assuming a rate that is twice as good as  
23 anybody has ever accomplished, and two, they're  
24 proposing one tunnel boring machine, which  
25 exposes the city to tremendous risk. Our folks

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1 can answer the specifics of the question and  
2 explain why they analyzed the cost benefit  
3 analysis and found it could save you money and  
4 reduce your risk. So that's what the exposure  
5 is. So it's cost, not giving you a cost, and  
6 it's schedule, assuming it at a rate that can't  
7 be achieved. Impossible. And two, using the  
8 tunnel boring machine approach that exposes you  
9 to tremendous risk.

10 **COMMISSIONER SALTZMAN:** On the tunnel  
11 advance rate, we did see a board that showed  
12 three proposers' rates, and they were all -- I  
13 didn't see a differential of twice -- one was  
14 like 39 feet a day, you were like 42 feet a  
15 day, or something.

16 (Indiscernable cross-talk.)

17 **UNIDENTIFIED SPEAKER:** I'm just saying, if  
18 the board I saw, if that board is accurate,  
19 there was not a factor of the two differential  
20 on the tunnel advance rates, between your  
21 proposal and theirs. So what is your tunnel  
22 advance rate?

23 **MAYOR POTTER:** Identify your name.

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24 **MR. PAQUAT?:** My name is  
25 [inaudible]. I am the project director for IH

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1 and (inaudible) IHO. There are different types  
2 of soils to be crossed. And certain soils like  
3 gravel or (inaudible) are particularly  
4 difficult. In those soils, the rate of our  
5 advance rate for (inaudible) is 28 feet a day.  
6 The advance rate for (inaudible) would be 51.  
7 Which would be (inaudible) 4,000 feet out of 30  
8 feet. If you equate that in the total tunnel,  
9 we would do it a little different. But on the  
10 schedule (inaudible.)

11 **COMMISSIONER SALTZMAN:** So an estimated  
12 4,000 feet of the length of the project would  
13 be the most difficult? You had 28 for the day  
14 advance rate and they had 51.

15 **MR. PAQUAT:** Right. And those  
16 are at the very end of the first leg, so in a  
17 position which if you have trouble there, there  
18 is little time to recover.

19 **COMMISSIONER SALTZMAN:** I wanted to ask  
20 Mr. Bartz, my last question of IHO. It says on  
21 the very last page of the request for --

22 **MR. BARTZ:** Excuse me,  
23 Commissioner, there was one other element of  
24 non-responsiveness. It's uniquely a legal  
25 issue, so that's why it's there. We put this

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1 in the materials, and I'll show you this. This  
2 is a fixed fee. And the essential point is the  
3 fixed fee they offered you had language,  
4 additional language on it that said, "And no  
5 other," with language the city has stricken.  
6 And said we don't want to see that language.  
7 KBB put it in. So the question is, there's  
8 going to be a fight you'll have down the road  
9 if you stay with KBB if they tell you the cost  
10 that's incurred wasn't in our fixed fee, so we  
11 don't owe it, you owe it, you, the city owes  
12 it. IHO submitted a compliant fixed fee. KBB  
13 did not.

14 **COMMISSIONER ADAMS:** Can you summarize  
15 the importance of the distinction in your mind?

16 **MR. BARTZ:** Well, inclusive or  
17 exclusive?

18 **COMMISSIONER ADAMS:** Of what?

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19 **MR. BARTZ:** Of the fixed fee.  
20 Whether the (inaudible) if you're got their  
21 (inaudible) if you've got their (inaudible)  
22 their \$3.5 million cost as higher than their  
23 fixed fee. Whether it includes everything, or  
24 whether it includes only the things that are  
25 specified, and they said, It doesn't include

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1 anything else. And what they, the city, said  
2 was, When you bid the fixed fee, you wanted to  
3 include everything. So we want you to make it  
4 inclusive. We made it an exclusive fixed fee  
5 that even though it was inclusive of as \$3  
6 million more -- \$2 million less than your fixed  
7 fee, they made it exclusive, saying "it's only  
8 these costs and no others," quote, and no  
9 other. And that was language the city  
10 specifically struck.

11 **COMMISSIONER ADAMS:** What's your  
12 apple-to-apple fee compared to their 300 --  
13 322? Although, I think that they might have  
14 said \$122 million?

15 **MR. HECKER:** I apologize for  
16 interrupting, but this is an issue we didn't  
17 get an opportunity to address head on, and I  
18 would respectfully suggest we have a strong  
19 response to what was just stated, and if you're  
20 interested in hearing it, we'd be anxious to  
21 (inaudible).

22 **COMMISSIONER STEN:** Sure. Mayor, can I  
23 ask you a point of order?

24 **MAYOR POTTER:** Yes.

25 **COMMISSIONER STEN:** I guess it's more

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1 for you in terms of you and Harry Algrad's  
2 initial instructions. I certainly recognize  
3 the council has the right to ask any question  
4 they want, but I'm struggling to find how a lot  
5 of these questions are on point with the two  
6 issues we asked to have a hearing on.  
7 (inaudible)

8 **COMMISSIONER SALTZMAN:** I can answer. We  
9 were told to be prepared to discuss two things,  
10 project approach/fee, 55 point maximum score,  
11 and risk and safety approach, 10 point maximum  
12 score, and I'm sticking to those two  
13 categories.



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14     **MR. PAQUAT:** So in order to  
15 achieve the most advantageous proposal, in our  
16 proposal, we had several options. We went down  
17 to -- we used the field (inaudible). We have  
18 quantified them, and as a result of that  
19 exercise we came up with what we thought -- we  
20 think is the most advantageous proposal. Our  
21 cost is clearly indicated on the table. This  
22 is 387.  
23     **MAYOR POTTER:** 387?  
24     **MR. PAQUAT:** 387, inclusive.  
25     **COMMISSIONER SALTZMAN:** Thanks. I

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1 interrupted your question. I think it was for  
2 Mr. Bartz. The very last page of the RFP, in  
3 underline, says, The exercise of judgment is,  
4 by the evaluators in scoring the proposals, is  
5 not grounds for appeal, unless the protester  
6 can show a clear inconsistency in the way the  
7 proposals were evaluated. So what is your  
8 basis of the appeal, in terms of the clear  
9 inconsistency and the way that they were  
10 evaluated?  
11     **MR. BARTZ:** After the interviews were over  
12 with, Mr. Gribbon changed the process by his  
13 own admission and allowed the injection of a  
14 safety issue that was wrong. It was  
15 incomplete, it was inaccurate, a sales pitch  
16 for one of the proposers. That's what you  
17 heard today. That's what's wrong about the  
18 process. Then the question is, can they prove  
19 it matters? We proved that it matters because  
20 Mr. Cook took five points away from us because  
21 of the safety memo and the discussion of those  
22 offers. We only lost by nine points. Mr. Ryan  
23 took away five points. Now he says the memo  
24 didn't matter. You have to evaluate that for  
25 yourself. What are they going to tell you

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1 today? They marched a whole group of people in  
2 here to tell you everything's fine. They've  
3 been protecting the process since the  
4 purchasing officer told you the safety memo  
5 means nothing, yet he never asked what  
6 happened, how it happened.  
7     So it's not a matter of judgment. It's a  
8 process that the city provided that was unfair

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9 to IHO. They did not provide a level playing  
10 field, but even in the evaluation process  
11 afterwards, they asked him to, you know, to  
12 talk about things in that memo that  
13 even Mr. Gribbon said wasn't the process we  
14 used on the west side.

15 **COMMISSIONER SALTZMAN:** So if the memo has  
16 been introduced to the evaluation committee,  
17 and they had a chance to look at it before they  
18 would have the interviews, you would have been  
19 okay?

20 **MR. BARTZ:** I'd have a tougher case in  
21 front of you to talk about that, because we  
22 couldn't have showed that it was unfair and an  
23 inappropriate process. People should be  
24 allowed -- at that point, hopefully, we would  
25 have had a chance to explain why, you know,

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1 they have the very best safety program from top  
2 to bottom. We could explain that we do too.  
3 We are not talking about a safety program  
4 that's failing and falling apart and not a  
5 commitment of management. That's why we have  
6 the senior people here. The point is, it's a  
7 broken process. Not the -- not the judgment  
8 used by the evaluators.

9 **COMMISSIONER STEN:** Can I ask a follow-up  
10 question? Mr. Bartz, I want to get a little  
11 more sense -- you used a pretty strong term  
12 that the memo was a sales pitch. That implies  
13 that the authors are salesman, which says,  
14 essentially, that they are acting in an  
15 unethical behavior of trying to steer the  
16 contract towards -- away from the client. What  
17 evidence do you have of that?

18 **MR. BARTZ:** In December, Commissioner  
19 Sten, Mr. Reiner wrote questions, and one of  
20 the questions he wrote was, says, KBB has a  
21 world class safety program. What's wrong with  
22 yours, essentially. He called it "world  
23 class." It was his own words. He hadn't had  
24 an interview. He hadn't had any follow-up. He  
25 had made his own judgment about 'world class'

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1 that had nothing to do with information that  
2 was in the proposals, so that's why it turned  
3 into a sales piece.

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4     **COMMISSIONER STEN:** I mean -- but again,  
5 that's not what I asked you. I understand your  
6 argument on why you think it was misleading.  
7 What I don't understand is, how you conclude  
8 that these -- I worked with Mike Reiner for a  
9 long time, and frankly, the idea that he's  
10 unethical offends me, and I think you need to  
11 back that up a little more than you found --

12     **MR. BARTZ:** Sure. I'll do that,  
13 Commissioner Sten, right now. Mr. Reiner made  
14 a big deal about the fact that he said this is  
15 absolutely accurate. That's what he told you.  
16 Here in his deposition, (inaudible) Mr. Reiner,  
17 and I don't mean no offense to him. I'm sure  
18 he -- we don't have any evidence of a motive.  
19 And that isn't the point. The point is, did we  
20 get a complete process, and the answer is no.  
21 So here's the answer to your question. Okay.  
22     "So from your perspective, the document  
23 you created with Mr. Darby is accurate?"  
24     Answer: "Based on, you know, our  
25 independent analysis, I believe it reflects the

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1 overall -- what's the right word? Reflects the  
2 overall evaluation of the proposal."

3     "Okay, so it's accurate? That is a yes or  
4 no question.

5     I would say, you know, the overall, you  
6 know, would be accurate to the best of our  
7 ability and judgment that we believe  
8 (inaudible) safety and health of (inaudible) we  
9 believe would be responsive to the proposals."

10     **COMMISSIONER STEN:** Mr. Bartz, with all  
11 due respect, you've proven just in your  
12 response to me that you are a very aggressive  
13 and strong attorney. If you expect me to take  
14 one question out of a deposition when you are  
15 going after him and show that as motive of  
16 unethical intent and behavior, you have got to  
17 do better. How do you know that Mr. Reiner  
18 wanted your client to lose? Because that is  
19 what you are alleging, and it's a very strong  
20 charge.

21     **MR. BARTZ:** I'm not arguing that he's  
22 unethical. We talked about words like, do we  
23 tell you he's trying to deceive? We don't have  
24 any motive at all.

25     **COMMISSIONER STEN:** But you said it was a

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1 sales pitch. Salesman have -- you are very  
2 careful with your words. Salesman have  
3 specific motives, which is to sell a product,  
4 and you implied with that word that Mike Reiner  
5 was trying to sell a product, which was your  
6 client losing, and you want to -- you back that  
7 up, if you can make that point.

8 **MR. BARTZ:** My wife was a salesperson for  
9 20-some years, Mr. Sten, and I don't think that  
10 there is anything unethical about what she  
11 does. The point is --

12 **COMMISSIONER STEN:** It is unethical for  
13 the safety manager for BES to sell one firm  
14 over another with that, and that's what that  
15 says he did. I want you to either retract that  
16 or back it up.

17 **MR. BARTZ:** I'll back it up. Mr. Marriott  
18 said, going forward, they should have used  
19 quotes. That's what he said to you just now.  
20 When he said the KBB has the best safety  
21 program, they should have used quotes. That's  
22 sales. They didn't use quotes. Mr. Cook told  
23 you he relied on his safety guys. He didn't  
24 put any quotes.

25 **COMMISSIONER STEN:** I understand your

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1 answer. Are you saying that the gentleman, the  
2 citizen that served on this panel from Hoffman  
3 Construction was dishonest today?

4 **MR. BARTZ:** No, not at all.

5 **COMMISSIONER STEN:** He said it did not  
6 affect his opinion, and he called your client's  
7 performance in the interview embarrassing.  
8 How -- and you are telling me that I should  
9 assume that he was -- that he's not telling the  
10 truth because really, it was a safety memo that  
11 gave him that opinion. This is a respected  
12 professional. Why would he do that, in your  
13 opinion?

14 **MR. BARTZ:** I'm sure he -- I don't have a  
15 motive. He made his evaluation. The point is  
16 we fell nine points short. It's virtually a  
17 tie, and we lost 25 points because of safety,  
18 and it's shown in a memo that came in after  
19 everything was over that the memo was not  
20 accurate. That had an impact. That's all we  
21 are saying. You didn't give us a fair shot.

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22 I'm not saying that --

23 **COMMISSIONER STEN:** You just said a minute  
24 ago that despite the fact that he said it  
25 didn't affect him, I should judge for myself

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1 whether it did. So, in effect, you are saying  
2 that what he told me wasn't true.

3 **MR. BARTZ:** No, because again, I'm not  
4 talking about the evaluator's judgment. At  
5 least there's Mr. Ryan and Mr. Cook took off 10  
6 points, and they read the safety memo, and the  
7 safety memo was inaccurate. We lost by nine  
8 points. I don't have to go after the whole  
9 panel. We don't have to analyze the whole  
10 panel.

11 **COMMISSIONER STEN:** I am just trying to  
12 get you to address -- I found that the  
13 testimony -- and if you could help me put it  
14 into context, of a professional construction  
15 executive who is here on his own time serving  
16 the citizens of Portland saying that your  
17 safety interview was embarrassing, to undercut  
18 the idea that the only thing that happened that  
19 hurt you on the safety points was the memo. So  
20 help me with that.

21 **MR. BARTZ:** Sure. I appreciate that. If  
22 you look at the objective information about the  
23 post-interview scores, we didn't do any worse  
24 than KBB, and yet everyone is telling us we had  
25 almost a fistfight that broke out, that we had

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1 a terrible safety report that we didn't -- even  
2 though we were batting 1,000, Mr. Reiner  
3 criticized us because we hadn't proposed  
4 changes to you. That's what he told you just  
5 now. All that sounds very confusing to me.  
6 We're in trouble because we didn't brag about  
7 being 1,000%, strutting like peacocks, I think  
8 he said, but at the same time, we should have  
9 suggested changes on a product we are doing  
10 1,000%. So I'm not here to challenge each one  
11 of the evaluators. We're really pleased that  
12 Mr. Custer and his company supports the fact  
13 that we got to -- did a good job.

14 What we're concerned about is the city  
15 didn't provide the level playing field, a  
16 positive process. Mr. Gribbon admitted he

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17 didn't want to do this memo. He didn't want to  
18 distribute it to everybody. It got distributed  
19 to everybody at the last minute. It had an  
20 impact, and what we are saying is with that  
21 impact, you, the city, shouldn't lose the  
22 chance for the most advantageous proposal.  
23 That's what we are talking about because the  
24 evaluation committee, those same people,  
25 Mr. Custer, the group you were proud of and

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1 thought they did well today, they consistently  
2 chose IHO as the best approach. 55%. And  
3 we're thinking you shouldn't --  
4 **COMMISSIONER STEN:** I think I'm being very  
5 generous in the range I'm giving you to answer  
6 the question. Thank you.

7 **MR. BARTZ:** Thank you.

8 **COMMISSIONER ADAMS:** Do you think -- if I  
9 could just follow-up with your question,  
10 Commissioner. Do you think that -- do you have  
11 any reason to believe -- do you have any reason  
12 to believe that the authors of that memo are  
13 biased against you?

14 **MR. BARTZ:** I don't have any evidence in  
15 the record, Mr. Adams. The process speaks for  
16 itself.

17 **COMMISSIONER ADAMS:** Do you believe that  
18 their statements -- do you believe that their  
19 statements are inaccurate?

20 **MR. BARTZ:** Yes. We have shown that the  
21 facts recited in the memo are not accurate. I  
22 can be specific if you want us to.

23 **COMMISSIONER LEONARD:** I'm curious, at  
24 some point, somebody explaining the numbers  
25 that have been characterized from KBB as not

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1 being representative of the true experience,  
2 injury experience. I have not followed  
3 precisely that point, and I need to be very  
4 concise because I'm growing impatient. We  
5 don't need to go over a lot of new ground, but  
6 if you can focus on that.

7 **MR. JIM MCDONALD:** The statement of  
8 qualifications required each respective  
9 proposer to submit the OSHA 300 logs. OSHA 300  
10 log usually has -- it always has an average  
11 number of people on a job site, man hours,

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12 three or four categories of injury, whether  
13 it's a reportable injury, injury with days away  
14 from work, or a lost workday case without days  
15 away from work. From this information, you can  
16 do the simple math process where you take the  
17 number of incidents times 200,000, divide it by  
18 the man hours, and that gives you the weighted  
19 rates based on 2,000 man hours per year.

20 In this case, OSHA also requires that each  
21 jobsite with the duration over a year is  
22 treated as a separate establishment. It  
23 requires its own OSHA 300 log. Most tunnel  
24 jobs fall in that category. In fact, most  
25 large construction jobs fall into that

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1 category. So, accordingly, if you have an OSHA  
2 300 log from the underground district, that's  
3 okay if the projects are less than a year in  
4 duration, and they belong in that division.  
5 But if each one has got its own -- should have  
6 its own records. Kiewit is a large company.  
7 They didn't say -- the SOQ didn't say just  
8 submit the tunnel contracts. They asked for  
9 your man hours and they gave them 27 million.  
10 They asked for OSHA 300 logs and they gave OSHA  
11 300 logs for only 900,000.

12 **COMMISSIONER LEONARD:** Tell me what that  
13 means in terms of the rate.

14 **MR. MCDONALD:** I will address the  
15 industry standard rate too. This OSHA  
16 publicist and federal OSHA and Oregon OSHA have  
17 different rates for general -- all construction  
18 is one rate. And then they break -- which is  
19 the rate presented in KBB's chart. But general  
20 construction is also broke down to residential  
21 construction, it has its own rate. Heavy  
22 construction has its own rate. Sewer  
23 construction has its own rate. And electrical  
24 construction has its own.

25 **COMMISSIONER LEONARD:** I am trying to get

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1 to the -- the number here is less than 1% that  
2 they show for --

3 **MR. MCDONALD:** They took the --  
4 that was -- the number of incidents on the OSHA  
5 300 log for that year, 2003, with the two jobs,  
6 times 200,000 divided by the almost 900,000.

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7     **COMMISSIONER LEONARD:** And you are  
8 suggesting that that's inaccurate because?  
9     **MR. MCDONALD:** I didn't say it was  
10 inaccurate, I just said it wasn't the full  
11 picture. They showed that their company had 27  
12 million man hours, but didn't have the OSHA 300  
13 logs for all those other projects, all that  
14 other work so that you could determine what the  
15 company rate was. You couldn't verify the  
16 rate, except for the underground division.  
17     **MR. BARTZ:** Commissioner, based  
18 on that question you were trying to ask Mr.  
19 Darby, on page 1, Exhibit 19, under the KBB  
20 part, it said the JV safety record is among the  
21 best in the underground industry. The point  
22 that we have been trying to make is it's JV.  
23 KBB has no safety record. What KBB put in  
24 their proposal was Kiewit's safety that states  
25 that it's six times best. And the authors

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1 translated that to the whole JV. That's one of  
2 the problems.  
3     **COMMISSIONER LEONARD:** Maybe I missed that  
4 distinction, but explain to me the differences  
5 between those two entities.  
6     **MR. BARTZ:** What this memo  
7 tells somebody, in the first page, is that, is  
8 that KBB has just this phenomenal safety record  
9 for an entity that's never operated before  
10 based on the strength of one division of  
11 Kiewit. That's the point. They took the work  
12 --  
13     **COMMISSIONER ADAMS:** They would argue that  
14 the division was their underground tunneling  
15 district division, so --  
16     **MR. BARTZ:** That might be  
17 accurate, Mr. Adams, but the problem then  
18 becomes is they apply it to the whole JV.  
19 They're saying this whole --  
20     **COMMISSIONER ADAMS:** Memo writers do?  
21     **MAYOR POTTER:** The memo writers do.  
22 That's the problem. I thought I heard you ask  
23 Mr. Darby that --  
24     **COMMISSIONER ADAMS:** Yes.  
25     **MAYOR POTTER:** I thought I heard one of

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1 the KBB folks say that the Kiewit rules were



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2 going to be applied to the entire consortium.

3 Is that true?

4 **MR. BARTZ:** We have problems  
5 with the Kiewit program, Mayor Potter. I mean,  
6 the FBI is investigating things --

7 (Indiscernable cross-talk.)

8 **MR. BARTZ:** It's in the papers.  
9 I am only saying what I read in the papers.

10 **MAYOR POTTER:** Let's have a bit of  
11 order here, folks. If anybody wishes to talk,  
12 could you go out into the hallway? Thank you.

13 **COMMISSIONER ADAMS:** The other question,  
14 were any of you in the room for the  
15 presentation to the selection committee?

16 **MR. PAQUAT:** Yeah.

17 **COMMISSIONER ADAMS:** What kind of  
18 dispute did you get into with somebody else?  
19 It's rare that we hear about people on the same  
20 side of a response get into a fight. You did  
21 not get into a fight?

22 **MR. PAQUAT:** If Mr. Loggan can  
23 come here, (inaudible) the reason I raise  
24 this -- we were explaining that in our west  
25 side experience, we were not successful in

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1 obtaining quotes from Japanese manufacturers.  
2 It was very difficult. Mr. Loggan interjected,  
3 as he works for a Japanese company, he was  
4 successful to obtain quotes from Japanese  
5 manufacturers for another type of machine which  
6 they were proposing. That was the extent of  
7 it.

8 **COMMISSIONER ADAMS:** The reason I'm  
9 raising this, for those listening, is because  
10 it appears to have had some impact, in terms of  
11 your credibility as a team, on the selection  
12 committee. Would you like to answer my  
13 question?

14 **UNIDENTIFIED SPEAKER:** I concur with what  
15 he said. There was no dispute. We forcefully  
16 tried to make it clear to the review committee  
17 that we had the ability as a venture, combined,  
18 to get quotes from all TBM manufacturers, and  
19 as I was listening to our presentation, it  
20 didn't appear clear to me that that was coming  
21 across. So I pointed that out. That was it.  
22 There was no argument.

23 **COMMISSIONER ADAMS:** And do you all

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24 dispute -- or you were there, the two of you  
25 were there, right? Three of you were there. I

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1 want to give you a chance here. Don't take a  
2 lot of time in answering, if you would. Do you  
3 dispute you did poorly on the safety portion of  
4 the presentation because your representative  
5 earlier tried to explain why you did poorly,  
6 and so do you feel you did poorly?  
7 **MR. MCDONALD:** We didn't --  
8 Commissioner Adams, we didn't leave the  
9 interview room feeling like we had done a poor  
10 job. Our safety manager answered the questions  
11 as required by the RFP. We didn't have that  
12 feeling.

13 **COMMISSIONER ADAMS:** Thank you.

14 **MR. PAQUAT:** (Inaudible) our  
15 safety manager being the one responding to the  
16 safety questions, because in the request for  
17 proposal, it was required that the personnel  
18 for safety was interviewed that day.  
19 (inaudible).

20 **COMMISSIONER ADAMS:** You don't have any  
21 reason to believe, based on your interview --  
22 or do you have any reason to believe, based on  
23 your time in the room with the selection  
24 committee, that they were hostile to you? No?  
25 Okay. Thanks.

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1 **MAYOR POTTER:** Any further questions?

2 **COMMISSIONER SALTZMAN:** I'd ask Bill Ryan.

3 **MAYOR POTTER:** Will Bill Ryan please come  
4 back?

5 **COMMISSIONER SALTZMAN:** I'm asking you  
6 because A) you were on the evaluation  
7 committee, but also you're the chief engineer  
8 for BES. And through your notes, apparently,  
9 you did have concerns about the risk of one  
10 tunnel boring machine versus two. Are you --  
11 is your concern about that risk --

12 **MR. RYAN:** Yes, I am concerned about that  
13 risk. I think it would be unwise not to be  
14 concerned about that risk. Do I think that's a  
15 risk that cannot be addressed technically by  
16 the design team and contractor, no. I think it  
17 can be addressed.

18 **COMMISSIONER LEONARD:** I actually missed

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19 the question.

20 **COMMISSIONER SALTZMAN:** Was the risk of one  
21 tunnel boring machine versus two.

22 **COMMISSIONER LEONARD:** Okay, thanks.

23 **COMMISSIONER SALTZMAN:** So you feel that's  
24 an issue that can be dealt with? It sounds to  
25 me like it's a fundamental issue. Either you

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1 have two machines or one machine, and probably  
2 inherently more risk to having one machine,  
3 especially -- well, I mean, only if it breaks  
4 down at the wrong spot. So you feel that can  
5 be --

6 **MR. RYAN:** I feel that that can be  
7 addressed. When you think about what's typical  
8 is that actually -- it's more typical to have  
9 the single tunnel boring machine associated  
10 with the single project, of course, depending  
11 on the size. But as was stated earlier, right  
12 now we have the single tunnel boring machine  
13 operating. There is not a fallback machine or  
14 anything else. Any time that you have a tunnel  
15 boring machine that has a long distance in the  
16 ground -- and I'm not a tunneling expert, let  
17 me say that. But what I understand is that any  
18 time we have the tunnel boring machine spending  
19 a long time on the ground, particularly  
20 difficult ground conditions like this, you have  
21 to be concerned about failure of certain  
22 aspects of the TBM. So that's a risk. It's a  
23 risk that I trust the design engineers and the  
24 contractor working together to address.

25 **COMMISSIONER SALTZMAN:** The other question

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1 I wanted to ask you was about the tunnel  
2 advance rates. Did that issue come up in the  
3 evaluation discussion or interviews?

4 **MR. RYAN:** Certainly it did. There was  
5 discussion of the tunnel advance rates. I  
6 think that there was some concern regarding  
7 KBB's rate for this higher for material (sic)  
8 that we felt was more difficult rather than  
9 less difficult. Again, it's an issue that, in  
10 design phase, in the layout of the location of  
11 the shafts, and the maintenance of the machine,  
12 we -- I'm not sure that we even discussed it to  
13 this extent, but I would feel that that is

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14 something that is the purpose of the design and  
15 contractor partnership during this  
16 pre-construction period. Those are the exact  
17 kind of issues that they are working out.

18 **COMMISSIONER SALTZMAN:** So, we could have  
19 an advance rate that's, perhaps, more in line  
20 with IH's real-time experience. 28 feet a day  
21 versus 51. Reliance on one tunnel boring  
22 machine and still make this project come in on  
23 time under budget, under -- subject to  
24 appropriate risk analysis.

25 **MR. RYAN:** I haven't done an analysis to

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1 see what the 4,000 feet out of the 30,000 feet  
2 or whatever the numbers are, what that impacts.  
3 What I understood was that their high advance  
4 rate was on a relatively small portion of the  
5 project, and that was a concern. There are  
6 other issues that I see daily. I see every  
7 week, I see the productivity of the IH machine,  
8 and lately it seems to be making 67 to 70 feet  
9 a day, and the advance rate in the KBB, I think  
10 we heard, was the average of 42. So there's  
11 reason for optimism that they may even be  
12 overconservative in their advance rate. And as  
13 well as IH is in their presentation.

14 **COMMISSIONER SALTZMAN:** Thank you.

15 **COMMISSIONER ADAMS:** They were going to  
16 -- they were going to reply on price. Can you  
17 explain why you all screamed?

18 **MR. MARIUCCI:** That's the short  
19 version.

20 **COMMISSIONER ADAMS:** The short version.  
21 We're in the lightening round now of Jeopardy.

22 **MR. MARIUCCI:** I tell you, we -- Bill  
23 Mariucci, Bilfinger/Berger. We have stated on  
24 numerous occasions, we did not qualify our  
25 fixed fee. We heard this many times now. The

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1 purchasing agent ruled on this issue. The  
2 board of appeals ruled on this issue.

3 **COMMISSIONER ADAMS:** So your fee of  
4 \$322.5 is apples-to-apples to 385?

5 **COMMISSIONER SALTZMAN:** It's a fee of 61 --

6 **MR. MARIUCCI:** On the fee, it is the  
7 difference between our fee of 64.5 million and  
8 IHO's, I believe, of around 61.3. And our 64.5

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9 is rock solid, for the construction services  
10 phase II contract.

11 **COMMISSIONER ADAMS:** And then the  
12 overall cost?

13 **MR. MARIUCCI:** The overall cost at this  
14 time is \$322 million.

15 **COMMISSIONER ADAMS:** And to the  
16 extent -- I know you are going to answer with a  
17 disclaimer so I will give you one in the  
18 question. To the best of your knowledge, is  
19 that apples-to-apples with the 385?

20 **MR. MARIUCCI:** Yes, sir.

21 **COMMISSIONER SALTZMAN:** Why did everybody  
22 scream over there at one point?

23 **MR. MARIUCCI:** I apologize. I was one of  
24 the contributors to that. We thought it was  
25 inappropriate, and maybe Dave could address it.

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1 **MAYOR POTTER:** Could you please take a  
2 seat and identify yourself.

3 **MR. HECKER:** David Hecker. The issue was  
4 well beyond the scope of what this hearing was  
5 to be about, for one thing.

6 **COMMISSIONER ADAMS:** I didn't really  
7 hear it anyway.

8 **MR. HECKER:** We felt as though it was out  
9 of place, and inappropriate. There's a time  
10 and a place to deal with that issue another  
11 time.

12 **MAYOR POTTER:** That issue is not  
13 taken into consideration at this hearing.

14 **COMMISSIONER ADAMS:** Why did these  
15 boards go up?

16 **MR. MARIUCCI:** Well, I thought  
17 that perhaps you would want to talk about the  
18 fixed fee of 64.5, and if you can take our word  
19 that that number is rock solid, you don't need  
20 to go any further.

21 **MAYOR POTTER:** The total cost  
22 including your fee is how much, again?

23 **MR. MARIUCCI:** Our estimate right  
24 now is \$322 million.

25 **MAYOR POTTER:** From IHO, the one

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1 on there, that's inclusive of all cost is  
2 387,500?

3 **COMMISSIONER LEONARD:** Yes. But one has

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4 one boring machine and the other has two, and  
5 what I am hearing is that may account for the  
6 difference.

7 **MR. MARIUCCI:** That would be a  
8 piece of the difference. Just so you know, the  
9 64.5 million fee is --

10 **COMMISSIONER ADAMS:** That is because of  
11 it.

12 **MR. MARIUCCI:** Exactly. the \$64.5  
13 million dollar fee is included in our \$322.

14 **MAYOR POTTER:** They indicated that  
15 if -- one machine, they could cut the time by  
16 six months; with two, would be 12 months. So I  
17 assume that with all the other associated costs  
18 with keeping the construction site going, the  
19 extra six months, that would account for much  
20 of the cost.

21 **UNIDENTIFIED SPEAKER:** That's exactly  
22 right.

23 **COMMISSIONER ADAMS:** And if you are  
24 wrong, how is the city protected?

25 **MR. MARIUCCI:** There are a number

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1 of ways, and I think that Cristof hit on a few.  
2 Right off the bat, again, we believe our  
3 production rates are reasonable. We have six  
4 months of -- call it "flow" in our schedule  
5 with the one TBM and our overall average  
6 rate --

7 **COMMISSIONER ADAMS:** Please don't  
8 (inaudible) ground. I'm talking about  
9 contractually. How do you protect our  
10 interests?

11 **MR. MARIUCCI:** Contractually,  
12 there are liquidated damages on this project.  
13 To the extent that the contractor, or any  
14 contractor exceeds the time that is negotiated  
15 in terms of the completion date, the city has  
16 liquidated damages.

17 **COMMISSIONER LEONARD:** The question is not  
18 on time, it's on cost. Don't you get paid as a  
19 percentage of what the cost is?

20 **MR. MARIUCCI:** No, sir. Our --

21 **COMMISSIONER LEONARD:** Jim? Could you  
22 please come up, identify yourself.

23 **UNIDENTIFIED SPEAKER:** Do you have a mic  
24 here?

25 **MR. VAN DYKE:** City attorney's office. I

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1 just want the council to know that I am one of  
2 the main drafters of the west side contract.  
3 I'm one of the main drafters of the east side  
4 contract. I'm very aware of how we pay our  
5 contractors. This basically is with a fixed  
6 fee. It's a time and materials' contract for  
7 reasonable expenses. Okay.

8 **COMMISSIONER LEONARD:** So there's no  
9 guarantee.

10 **MR. VAN DYKE:** There is no guarantee of  
11 387. There is no guarantee of 322.

12 **COMMISSIONER LEONARD:** Be very specific.  
13 We were given the number of 322. Mr. Adams  
14 asked what assurances do we have, basically,  
15 that it will remain at 322. What you are  
16 saying is we don't have any assurance.

17 **MR. VAN DYKE:** I don't think you have any  
18 assurance.

19 **COMMISSIONER LEONARD:** Or recourse. If  
20 its 400 million, it's 400 million.

21 **MR. VAN DYKE:** If there are reasonable  
22 costs, the costs will rise, no matter, yes.

23 **COMMISSIONER ADAMS:** The fee stays the  
24 same.

25 **MR. VAN DYKE:** The fee stays the same.

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1 **COMMISSIONER ADAMS:** 64.5 versus 61.

2 **MR. VAN DYKE:** Correct.

3 **MAYOR POTTER:** Any other questions?  
4 Thank you.

5 Does council wish to hear any other, or  
6 ask questions of any other people?

7 **COMMISSIONER ADAMS:** I do. Because so  
8 much of this boils down to the selection  
9 committee, I feel like I need to ask a few more  
10 questions of them.

11 **MR. AUERBACH:** All of them? There  
12 are seven members and three chairs. Did you  
13 want to pick some of these out?

14 **COMMISSIONER ADAMS:** How about, how  
15 about the three in the front row?

16 **UNIDENTIFIED SPEAKER:** Six in the front  
17 row? Just why don't three of you come up.

18 **MAYOR POTTER:** When you speak, please  
19 state your name for the record.

20 **MR. RYAN:** Bill Ryan.

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21 **MR. CUSTER:** Mike Custer.

22 **MR. COOK:** Roy Cook.

23 **COMMISSIONER ADAMS:** Do you agree with  
24 the characterization of IHO that there is a  
25 correction during the presentation, or do you

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1 agree more with the characterization from  
2 somebody else that it was more of a (inaudible)  
3 And did that have a bearing on your scoring of  
4 either project approach or safety?

5 **MR. COOK:** If we talk about the  
6 disagreement, some may -- it has a bearing as  
7 far as I was concerned, inasmuch as I've been  
8 through the west side experience, talking with  
9 the (inaudible) we had, in fact, contacted the  
10 Japanese TBM vendors, and we had input from  
11 them, and they did decline to bid on the  
12 machines. So I was aware of the history, but I  
13 was surprised that the Obayashi part of the  
14 joint venture weren't aware of the previous  
15 history. So that certainly had some bearing as  
16 far as the lesson learned.

17 **COMMISSIONER ADAMS:** So the local  
18 representative didn't appear to you to have  
19 knowledge of the previous experience on the  
20 west side?

21 **MR. COOK:** The Obayashi part of the  
22 venture didn't realize the (inaudible).

23 **COMMISSIONER LEONARD:** That wasn't the  
24 question, more was it a disagreement, or were  
25 they ready to duke it out?

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1 **MR. COOK:** I thought it was an (inaudible)  
2 confrontation, from what I saw.

3 **COMMISSIONER LEONARD:** Thanks.

4 **COMMISSIONER ADAMS:** We are going to try  
5 to do this really fast because council and  
6 everyone in the audience is getting tired, but  
7 this is up to 400 million, 500 million  
8 contract. So I ask everyone to hang in there.

9 **MR. HESTER:** I took it as a  
10 correction, and it was obvious who had somewhat  
11 of a, I thought, different opinion, but it  
12 didn't really affect my decision too much. I  
13 weighed heavily on listening the other people  
14 that knew more about the tunnelling, boring  
15 machine procurement process. And after



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16 discussion later on, it seemed to be a  
17 nonissue.

18 **COMMISSIONER ADAMS:** And you talked  
19 about that, right? Do you want to answer it  
20 again? Do you want to answer it again?

21 **MR. RYAN:** Just that what I  
22 really responded to is the events of the -- of  
23 the discussion back and forth. It appeared to  
24 me that there was a very, very -- it appeared  
25 to me there was a very, very large relationship

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1 issue there right under the surface.

2 **COMMISSIONER ADAMS:** And then the other  
3 lightning round question that probably has more  
4 bearing in my mind: If the memo from the city,  
5 and assuming you knew it was from the city, A);  
6 B) if you knew it was from the city that made  
7 just the opposite points, would it have changed  
8 your mind about how you ended up scoring these  
9 respondents?

10 **MR. COOK:** Are you suggesting, then,  
11 looking at what was spoken in the interview  
12 rather than (inaudible)

13 **COMMISSIONER ADAMS:** I guess I have to  
14 ask just based on the memo. Did you think it  
15 was from the city?

16 **MR. COOK:** I did think it was from the  
17 city.

18 **COMMISSIONER ADAMS:** And if it had made  
19 sort of the converse points, if you can review  
20 it in your mind, the converse points about the  
21 respondents, would it have changed your opinion  
22 or changed anything about the dialogue?

23 **MR. COOK:** Are you suggesting that if it  
24 had suggested that Kiewit had been a poorer  
25 safety record?

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1 **COMMISSIONER ADAMS:** Correct.

2 **MR. COOK:** I probably would have marked  
3 them down (inaudible).

4 **COMMISSIONER ADAMS:** You probably would  
5 have what?

6 **MR. COOK:** I would have marked them down.  
7 I would use the information that I got.

8 **MR. HESTER:** If the memo would  
9 have stated the opposite of what it did, I  
10 would have had a lot of discussion, because

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11 when I read the memo, it basically reconfirmed  
12 everything that I saw, everything that I read.  
13 So, if it would have stated something  
14 different, I would have had a whole lot more  
15 discussions with the writers, similarly to if I  
16 had discussions with other technical  
17 representatives in there that I didn't  
18 understand or seemed contrary to my opinion.  
19 But as it was stated, it didn't really strike  
20 me.

21 **MR. RYAN:** I agree that if it  
22 had been the opposite, it would have elicited a  
23 lot of questions in my mind because my mind was  
24 pretty well made up based on the proposal and  
25 the interview responses. So if I got something

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1 from staff, technical experts saying that its  
2 different than I understood, I certainly would  
3 have asked a lot.

4 **MAYOR POTTER:** Mr. Cook, I think  
5 you're the only one of the folks testifying on  
6 the committee, the selection committee, that  
7 said that that memo influenced your change in  
8 your vote on the safety aspect. Is that right?

9 **MR. COOK:** I think what I'm really trying  
10 to say is it gave me a basis for quantifying  
11 all my (inaudible). I heard the same comments  
12 during the interview, and because of those  
13 comments and what was discussed over the -- by  
14 the technical review committee there, it gave  
15 me a basis of changing my score.

16 **MAYOR POTTER:** Did anything change  
17 your mind in terms of that memo, as far as it  
18 being a factual memo? Would you have voted  
19 differently after hearing what you heard today  
20 on the safety aspects? Understanding that that  
21 memo was recapturing primarily statements from  
22 the two parties involved in this?

23 **MR. COOK:** I don't believe I would change  
24 it substantially, no.

25 **MAYOR POTTER:** Any other questions? Any

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1 other questions? Thank you.

2 Does the council wish to ask any further  
3 questions?

4 **COMMISSIONER ADAMS:** Well, if anyone on  
5 the selection committee feels differently than

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6 what you heard, then I would like to hear from  
7 you, or you feel the need to respond.

8 **MAYOR POTTER:** Please state your name.

9 **MR. SIMONSON:** My name is Steve Simonson,  
10 and I'll respond to -- if it's all right, I'll  
11 respond to the questions you already  
12 answered -- asked.

13 **MAYOR POTTER:** Sure.

14 **MR. SIMONSON:** The first question was  
15 pertaining to the discussion of the team  
16 members Obayashi versus Impregilo. It happened  
17 so fast that I didn't immediately pick up on it  
18 that a significant difference of opinion was  
19 expressed. I think more importantly,  
20 Obayashi's part in the interviews was  
21 minuscule. That caused me to question what is  
22 their in the joint venture? They are a  
23 significant player in the tunnel construction.  
24 Really, very little was made of their  
25 participation in the interview, very small part

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1 of the interview.

2 **COMMISSIONER ADAMS:** If the memo made  
3 the opposite points that it did, would it have  
4 changed your way you conducted yourself or your  
5 opinion?

6 **MR. SIMONSON:** I can't quite answer that  
7 question because I was more struck by Pat  
8 Darby's statement about too many people going  
9 home hurt on the west side project. That  
10 influenced my ordering of the ranking in the  
11 safety category.

12 **COMMISSIONER ADAMS:** Thanks.

13 **MAYOR POTTER:** You mentioned in  
14 your testimony earlier, Mr. Simonson, that  
15 IHO's performance was critiqued by the BES  
16 staff?

17 **MR. SIMONSON:** It was a discussion that  
18 was held to evaluate all the proposers by the  
19 experts in the technical review committee. I  
20 was not -- I was probably not as clear as I  
21 should have been.

22 **MAYOR POTTER:** So that -- both KBB  
23 and the other proposal, they were all critiqued  
24 by the staff?

25 **MR. SIMONSON:** Yes.

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1     **MAYOR POTTER:** Okay. Thank you.

2     **COMMISSIONER LEONARD:** Just the comment  
3 you made about Mike Darby saying that too many  
4 people went home hurt on the west side, what  
5 was that based on?

6     **MR. SIMONSON:** Based on the incidents and  
7 the experience there. From what I saw in the  
8 memo, it was still substantially less than the  
9 statewide rate, the OSHA rate. I don't think  
10 that I can speak to that.

11    **UNIDENTIFIED SPEAKER:** Okay.

12    **COMMISSIONER LEONARD:** The comment, did it  
13 influence you?

14    **MR. SIMONSON:** Yes.

15    **MAYOR POTTER:** Any further questions? Any  
16 further questions? Harry, could you please  
17 inform the council what our options are at this  
18 point?

19    **MR. AUERBACH:** You have two basic options at  
20 this point. Depending on which of those you  
21 choose, you may have other choices to make.  
22 The basic work is whether to uphold the  
23 decision of the purchasing agent and the  
24 contract board of appeals and uphold notice of  
25 intent to award the contract to KBB, or to

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1 overturn that. If you decide to overturn it,  
2 then you will have to decide what remedy --  
3 what you are going to do about getting a  
4 contractor for the project, and we can talk  
5 about some of those options. I don't know if  
6 you want me to run through those or -- and when  
7 I say you can do them, whatever you do in this  
8 hearing, somebody is likely to challenge, and  
9 each of the options available to you carries  
10 some element of risk to it. Some are greater  
11 than others, and I can try to address those if  
12 you have questions about them.

13    **COMMISSIONER ADAMS:** I do.

14    **MR. AUERBACH:** Okay.

15    **COMMISSIONER ADAMS:** I've never been  
16 through one of these.

17    **MR. AUERBACH:** Well, few of us have. So if  
18 you decide to overturn the purchasing director,  
19 you can either direct a reevaluation of the  
20 proposals and you can either direct that this  
21 be done -- try to get the same selection  
22 committee to do it again, or you can direct the

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23 formation of another selection committee. You  
24 can use the same criteria and weights or, if  
25 you feel that -- or you can theoretically

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1 direct other criteria and weights, although I'm  
2 not sure that -- that there is a basis that's  
3 been presented in the hearing for doing that  
4 particular option.

5 And you have to decide whether to just  
6 limit the reevaluation to these top two  
7 proposers, or whether to reevaluate all of  
8 them. Or, you could do none of those and  
9 simply reject all proposals and start over. Or  
10 there is an option to direct the purchasing  
11 agent to return with that notice to proceed to  
12 IHO on an ordinance, to award the contract.

13 IHO is taking the position that you can  
14 do, and KBB has taken the position you can't  
15 do, and I think our advice would be that that's  
16 probably the riskiest options.

17 **COMMISSIONER LEONARD:** Well, I'll start  
18 this off. I'm uncomfortable with the last  
19 option. Very. I don't think anybody  
20 intentionally did anything wrong. Commissioner  
21 Adams has said a number of times here tonight  
22 this is a half a billion dollars project and I  
23 am frankly disappointed at the process. I  
24 certainly don't intend to offend anybody, but I  
25 have a higher expectation out of our staff than

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1 what's revealed in this process. Some of the  
2 language used, some of the things said. I  
3 don't consider it to be improper. I do  
4 consider it to be sloppy, and I don't  
5 appreciate having to sit here and have to deal  
6 with the results of that.

7 I do think that the people that were --  
8 I'm impressed with everybody who came up and  
9 testified as part of the review process, I  
10 think that they were doing their earnest best  
11 with the information that they had, and I'm  
12 confident that, given the opportunity to look  
13 at the top two companies again, that for  
14 hearing who I have heard, I am confident that  
15 they can do it well. So that's kind of where  
16 I'm at.

17 **COMMISSIONER ADAMS:** Are we just giving

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18 our, sort of, thoughts?

19 **UNIDENTIFIED SPEAKER:** I don't know.

20 **MAYOR POTTER:** We do have to come  
21 up with an option.

22 **COMMISSIONER LEONARD:** I guess my  
23 suggestion is that we let the committee have a  
24 whack at the top two contenders again. That we  
25 start over with some, hopefully some specific

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1 instructions from the mayor to the bureau head  
2 about the process.

3 **COMMISSIONER ADAMS:** Is that in the form  
4 of a motion?

5 **COMMISSIONER LEONARD:** Could be.

6 **MAYOR POTTER:** Discussion first?

7 **COMMISSIONER STEN:** I guess I'm prepared  
8 to jump in. This is an unfortunate situation.  
9 I have had the chance to go through the tunnel,  
10 followed it closely, not as a commissioner in  
11 charge, but as a very interested party. I  
12 think IHO has done a terrific job. And I also  
13 am very pleased that this competition is this  
14 close, because that's what serves the  
15 ratepayers ultimately is tough competition to  
16 get these things.

17 That being said, I'm prepared to deny the  
18 appeal for the following reasons. I don't see  
19 any evidence that the process was not followed  
20 fairly. There's nothing wrong with the  
21 decision to show the memo, as long as the memo  
22 is, you know, is not somehow unfairly biasing  
23 the process. And although I thought they made  
24 a valiant effort to argue that it was, I find  
25 it hard to overcome the evidence -- I don't see

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1 any evidence our safety officers, who I do  
2 know, whether they were sloppy in the choice of  
3 language or not, they are not sloppy on the  
4 job. I have worked with these people as the  
5 commissioner in charge. I know their  
6 capabilities, and I'm willing to put my  
7 reputation on saying that. These are serious  
8 people, and I don't believe they are sloppy  
9 about safety.

10 Buttrressing my argument, having listened  
11 today, is the vehemence with which  
12 professionals on the selection committee shared

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13 that view and said, you know, it -- the reason  
14 it didn't influence me that much, to some  
15 extent, with one exception, which was a major  
16 one, and when something is scored this closely,  
17 there's no doubt, was because it lined up  
18 exactly with what I saw.  
19 So, to me, we've asked citizens to work  
20 hard. I don't see how we could ask the same  
21 citizens, after sitting through this five-hour  
22 process, to go back in and take a clean look.  
23 I think that if I lose on this, I would  
24 strongly urge that the council -- figure out  
25 some way to empanel new people, because I just

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1 don't think you can ask them to make the same  
2 decision a second time, particularly after this  
3 kind of piece.  
4 Also, I would add, from my point of view,  
5 and again, you know, I don't have any -- I  
6 don't know the companies. I know IHO did a  
7 good job, but KBB won on the written scores.  
8 They won by about the same amount after the  
9 interviews. So, you know, the argument that  
10 both dropped by about the same amount also  
11 leads to the fact that it was very a close race  
12 all along, and in both of the -- KBB prevailed.  
13 I also -- I think the argument that kept  
14 coming from IHO, what I should really do is  
15 focus on the project approach, which is 55% of  
16 the scoring, just doesn't hold up. I mean,  
17 that's 55% of the approach. So if you win  
18 that, you win the 55% and you move forward.  
19 So, I just think that that's a poor argument.  
20 So, I guess that that's where I am. I do  
21 -- and then I guess the other thing that's  
22 compelling to me is that the process argument  
23 rests almost solely on the argument that the  
24 memo came in after the interview. IHO's  
25 attorneys have been very good. I'm very

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1 impressed with his arguments. I can see that  
2 had that memo come ahead of time, he would have  
3 no argument. I don't think the process was  
4 legally violated by it coming in afterward, but  
5 it's hard to understand how if it came in  
6 beforehand, he wouldn't have done worse. You  
7 can construct an argument that says, Oh, I

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8 could have rebutted those things, but as long  
9 as the city's experts stand by their analysis,  
10 if that analysis is presented on the front end,  
11 it's going to hold up even harder.

12 And I didn't hear any compelling evidence  
13 that they gained in the numbers. There's  
14 arguments you should have done this sample or  
15 that sample, but I saw earnest people that were  
16 doing their best to find decent samples and  
17 that's all that we can ask of our people. They  
18 certainly should have put that phrase in  
19 quotes, but I just can't conclude that that  
20 particular memo -- I think it's a place that a  
21 really terrific bidder who came in by a short  
22 amount was able to land a legal argument. I  
23 think that that's was it was. So I'm going to  
24 vote to deny the appeal.  
25 **UNIDENTIFIED SPEAKER:** Do you care to make

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1 a motion, and is there a second?  
2 **COMMISSIONER SALTZMAN:** As the  
3 commissioner in charge of the bureau at the  
4 time that the RFP and -- was promulgated and  
5 the RFP selection committee appointed, I know  
6 that we strive at great lengths to make sure  
7 that, on behalf of the rate payers, that we did  
8 get competition for the east side big pipe.  
9 Because I know that a lot of firms probably  
10 concluded that Impregilo/Healy had the inside  
11 track and would, therefore, be reluctant to  
12 submit proposals because it takes a lot of  
13 time, effort, and money to submit and prepare a  
14 proposal of this magnitude.  
15 So I feel that the process was a fair one.  
16 I feel it's been buttressed more by the  
17 testimony I have heard from the members of the  
18 evaluation committee, and it does -- in many  
19 respects, I was as shocked as anyone at the  
20 outcome of the evaluation. Impregilo/Healy has  
21 done a great job on the west side. And I don't  
22 deny that. I was as surprised as anyone, but I  
23 do think that the process has been a fair one.  
24 And although it's a nine-point differential out  
25 of 800 points or so, you know, we all run for

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1 office and sometimes we win races that are  
2 decided by margins that are as thin as that



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3 too, win or lose. And I believe that the  
4 process has been a fair one, and I would also  
5 vote to deny the appeal.

6 **MAYOR POTTER:** I was not -- having  
7 never dug any tunnels in my life, I can only go  
8 by looking at the process and see if the  
9 process was, as Commissioner Saltzman directed,  
10 to be open and objective. I have to agree with  
11 Commissioner Leonard that I think the process  
12 was sloppy. I felt that when the two folks  
13 were directed to write a memo, that they  
14 thought there were going to be questions that  
15 it would be taken from there and given to the  
16 selection committee, but instead, the entire  
17 memo went to the selection committee. I don't  
18 think that that was a wise decision.

19 It seems as if -- and the construction of  
20 the memo, itself, could have been -- since some  
21 of the folks -- Roy Cook said that he -- he  
22 referred to them as the BES safety experts --  
23 that the memo influenced him to a degree. But  
24 I can't, in all honesty, conclude that there  
25 was anything that was either not open or not

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1 objective. I think that that does not preclude  
2 discussions with BES about future contracts and  
3 purchases. So I would affirm that purchasing  
4 director and direct that an ordinance award  
5 the pre-construction contract to KBB.

6 **COMMISSIONER LEONARD:** Doesn't matter what  
7 you think.

8 **MAYOR POTTER:** Excuse me?

9 **COMMISSIONER LEONARD:** (Inaudible) Well,  
10 I mean, it's three to two -- four to one.

11 **COMMISSIONER ADAMS:** Well, they're  
12 really going to listen to what I have to say  
13 now, Commissioner.

14 I don't think that  
15 there was enough outside due diligence by the  
16 staff people who know how to ask the right  
17 questions. I don't think that there was enough  
18 due diligence by the staff people that knew how  
19 to ask the right questions in terms of  
20 reference checks or other experience. At least  
21 it wasn't presented to me in the presentation.

22 I do think that it's significant that IHO  
23 was basically outcompeted on the issue of  
24 safety, and that your competitor brought in the

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25 top management and you understood that portion

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1 of the process to include -- to be something  
2 else, the operational safety person. I make  
3 those kinds of sort of misjudgments all the  
4 time and you pay the price for that, to a  
5 certain degree.  
6 I think -- I don't think that the -- I  
7 think whatever bearing the memo had on the  
8 decision-making of the committee, it was small  
9 and around the edges, because I think by that  
10 point, they had already had a significant  
11 impression about your safety presentation. And  
12 I think that the staff concern about safety, at  
13 least I haven't heard evidence that it went  
14 over a line, in my mind, to be a bias. And  
15 then I had no sense that the selection  
16 committee had any unnecessary or any inherent  
17 bias or hostility towards IH as well. So, I  
18 don't find myself -- I don't find that -- at  
19 the same time I believe that KBB was responsive  
20 in a very similar way to IH. I don't see a big  
21 disparity there in terms of that claim, and I  
22 feel like the criteria was followed to an  
23 appropriate degree. So, although my position  
24 doesn't matter any more, I would deny the  
25 appeal.

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1 **COMMISSIONER STEN:** I would move to  
2 deny the appeal.  
3 **COMMISSIONER ADAMS:** Second.  
4 **MR. AUERBACH:** Do you want to add  
5 to that to direct the purchasing agent to come  
6 back with a contract?  
7 **MAYOR POTTER:** Yes. This would be  
8 to affirm the purchasing director and direct that he  
9 return with an ordinance to award the  
10 pre-construction contract to KBB.  
11 **COMMISSIONER STEN:** I take that as a  
12 friendly amendment, so moved.  
13 **COMMISSIONER ADAMS:** So seconded.  
14 **MAYOR POTTER:** We'll vote on the  
15 amendment.  
16 **MR. AUERBACH:** On the whole thing.  
17 **MAYOR POTTER:** On the whole thing.  
18 Okay. On the whole thing.  
19 **MS. MOORE:** Adams?

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20 **COMMISSIONER ADAMS:** Aye.  
21 **MS. MOORE:** Leonard?  
22 **COMMISSIONER LEONARD:** No.  
23 **MS. MOORE:** Saltzman?  
24 **COMMISSIONER SALTZMAN:** Aye.  
25 **MS. MOORE:** Sten?

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1 **COMMISSIONER STEN:** Aye.  
2 **MS. MOORE:** Potter?  
3 **MAYOR POTTER:** Aye.  
4 The council meeting is concluded. We're  
5 adjourned until next week.

At 7:22 p.m., Council adjourned.