



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF JANUARY, 2002 AT 9:30 A.M.

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

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

Commissioner Saltzman arrived at 9:32 a.m.

On a Y-4 roll call; the Consent Agenda was adopted.

		Disposition:
75	TIME CERTAIN: 9:30 AM – Adopt the recommendations contained within the Tacoma Main Street Plan (Resolution introduced by Commissioner Hales) Motion to accept the recommendations: Moved by Commissioner Hales and seconded by Commissioner Saltzman. (Y-5)	36052
CONSENT AGENDA – NO DISCUSSION		
76	Vacate a portion of SE Haig Street east of the Southern Pacific Railroad at SE 18th Avenue (Second Reading Agenda 55; Ordinance by Order of Council C-9996) (Y-4)	176208
Mayor Vera Katz		
*77	Authorize an Estoppel Certificate and Agreement with Bank of the West regarding leased space at 721 NW 9th Avenue (Ordinance) (Y-4)	176209
*78	Authorize a Memorandum of Understanding with Legacy Health System for property exchange, zone change and comprehensive plan amendment (Ordinance) (Y-4)	176210
*79	Pay claim of Swastika Devi McDonough (Ordinance) (Y-4)	176211

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<p>*80 Authorize extension of Security Agreement for Floyd Light Project (Ordinance) (Y-4)</p>	<p align="center">176212</p>
<p>81 Accept an Intergovernmental Agreement between the Clackamas County Sheriff's Office and the Portland Police Bureau to provide the Sheriff's Office with access to the Portland Police Data System (Second Reading Agenda 59) (Y-4)</p>	<p align="center">176213</p>
<p align="center">Commissioner Charlie Hales</p>	
<p>*82 Authorize the continuance of negotiations for the purchase of real property and easements required for construction of the SE Foster Road at SE 162nd Avenue Project, authorize the City Attorney to commence condemnation proceedings, if necessary, and to obtain early possession (Ordinance) (Y-4)</p>	<p align="center">176214</p>
<p align="center">Commissioner Dan Saltzman</p>	
<p>*83 Authorize an Intergovernmental Agreement between the Bureau of Environmental Services Downspout Disconnection Program and the Northwest Service Academy Metro Center EnviroCorps and provide for payment, Project No. 6567 (Ordinance) (Y-4)</p>	<p align="center">176215</p>
<p align="center">Commissioner Erik Sten</p>	
<p>*84 Contract with the U.S. Environmental Protection Agency, for \$90,077 in order to fund a Loaned Federal Executive and provide for payment (Ordinance) (Y-4)</p>	<p align="center">176216</p>
<p>*85 Amend agreement with Community Energy Project, increase contract by \$5,000 to coordinate and administer the High Energy Particulate Accumulator lending program and provide for payment (Ordinance; amend Agreement No. 33344) (Y-4)</p>	<p align="center">176217</p>
<p>*86 Agreement with the Housing Authority of Portland for \$80,000 for paint stabilization in the Tenant-based Section 8 program and provide for payment (Ordinance) (Y-4)</p>	<p align="center">176218</p>
<p>*87 Authorize a \$99,838 contract with Economic and Engineering Services, Inc. for professional services on behalf of the Regional Water Providers Consortium to complete a source analysis for the update of the Regional Water Supply Plan (Ordinance) (Y-4)</p>	<p align="center">176219</p>

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REGULAR AGENDA

Mayor Vera Katz

<p>*88 Authorize a Requirements Contract for Network Equipment and Services with Graybar, Inc. for the Integrated Regional Network Enterprise Project (Ordinance) (Y-5)</p>	<p>176220</p>
<p>89 Amend contract with Davis, Hibbitts & McCaig, Inc. for professional surveying of City households to provide information to be utilized by the City Council in developing the FY 2002-03 Budget (Second Reading Agenda 68; amend Contract No. 33986) (Y-5)</p>	<p>176221</p>

At 10:24 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF JANUARY, 2002 AT 2:00 P.M.

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

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

<p>90 TIME CERTAIN: 2:00 PM – Appeal of Pleasant Valley Neighborhood Association against Hearings Officer’s decision to approve the application of Joe Hughes and Gary Mengis, on an environmental violation review and Title 33 adjustment review at 15803 SE Bybee Drive (Hearing; LUR 01-00402 EV AD)</p> <p>Motion to make a tentative decision to uphold the Hearings Officer's decision, with a condition of approval requiring a performance guarantee and three years to ensure plantings have been established: Moved by Commissioner Hales and seconded by Commissioner Francesconi.</p> <p>(Y-5)</p>	<p>Disposition:</p> <p>TENTATIVELY UPHOLD HEARINGS OFFICER'S DECISION WITH CONDITIONS; PREPARE FINDINGS FOR FEBRUARY 6, 2002 AT 2:00 PM</p>
REGULAR AGENDA	
<p>91 Tentatively deny the appeal of Rose Marie Opp of the application by Bureau of Parks and Recreation for a conditional use review with adjustments for the East Portland Community Center (Findings; Previous Agenda 51; LUR 96-00430 CU AD)</p> <p>Motion to adopt the findings as revised: Moved by Commissioner Hales and seconded by Commissioner Francesconi.</p> <p>(Y-5)</p>	<p>FINDINGS ADOPTED</p>

At 3:00 p.m., Council recessed.

JANUARY 24, 2002

RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS 24TH DAY OF JANUARY, 2002 AT 2:00 P.M.

THOSE PRESENT WERE: Commissioner Sten, Presiding; Commissioners
Francesconi, Hales and Saltzman, 4.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Frank
Hudson, Deputy City Attorney; and there was no Sergeant at Arms.

Commissioner Hales arrived at 2:10 p.m.

<p>92 TIME CERTAIN: 2:00 PM - Appeal of Sprint Spectrum, L.P., applicant, against the Hearings Officer's decision to deny a conditional use and design review application for a radio frequency facility at 4512 SW Kelly Avenue (Hearing; LUR 01-00499 CU DZ)</p> <p>Motion to overturn the Hearings Officer's decision and approve the application: Moved by Commissioner Hales and seconded by Commissioner Saltzman.</p> <p>(Y-3; N-1, Francesconi)</p>	<p>Disposition:</p> <p>TENTATIVELY GRANT THE APPEAL AND OVERTURN HEARING OFFICER'S DECISION; PREPARE FINDINGS FOR FEBRUARY 6, 2002 AT 2PM</p>
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At 3:00 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland

By Karla Moore-Love
Clerk of the Council

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

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Closed Caption Transcript of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

JANUARY 23, 2002 9:30AM

Katz: The council will come to order. Karla, please call the roll. [roll call]

Katz: All right. Let's take the consent agenda items. Anybody want to take any consent agenda items off the list? Anybody in the audience want to take a consent agenda item off the list? If not, roll call on consent agenda.

Francesconi: Aye. **Hales:** Aye. **Sten:** Aye.

Katz: Mayor votes aye. [gavel pounded] all right. Time certain.

Item 75.

Katz: All right. Commissioner Hales, did you want to open this up?

Hales: While rich comes up and gets ready to start the presentation, I think this is another example of the city working really effectively with the neighborhood. I think everybody recalls the sellwood neighborhood plan that involved some of the people that we'll hear from this morning, an example of the planning bureau really doing great work with the neighborhood that has a clear idea of what they want their neighborhood to be, and what they want to change in order to get there. And our staff and pdot has been able to carry on that good working partnership that the planning bureau created in working with this neighborhood. So we really have another success story here in terms of a high level of consensus not completely universal, but high level of consensus about the plan that you're going to hear about and that again really came from community leadership that will -- in the form of the sellwood-moreland neighborhood association and others that we'll hear from today as well from staff. Rich is here with a presentation.

Katz: Okay. Why don't we start with the presentation then.

Rich Newlands, Office of Transportation Planning Division: Good morning, i'm rich, from the office of transportation planning division. The purpose of the tacoma main street plan is to carry out the policy directives. All of these policy documents envision southeast tacoma street between the sellwood bridge and 17th avenue as a more mixed use neighborhood oriented and multimodal main street. The reality is tacoma street currently functions more as a regional through route for commuters. Thanks to its connections to the sellwood bridge. Every weekday over 30,000 cars travel over the bridge. Built in 1925, the bridge was designed to carry only half that volume. Likewise, tacoma street was never designed to function as a major arterial. Before the bridge, tacoma was a local residential street with 12-foot sidewalks on street parking and two travel lanes. Anticipation of a new four-lane bridge, tacoma was reconstructed in 1960s to increase the number of peak hour travel lanes. This came at the expense of its sidewalks, which are now only eight feet wide, peak period on-street parking. The result is tacoma street functions almost exclusively as a through traffic street, yet it runs right through the middle of the neighborhood, only sparingly providing for local access needs by any mode. Today the sellwood bridge is still only two lanes wide. Via the decisions made as a result of the bridge crossing study, will remain so when built. The neighborhood plan, adopted in 1998, has clarified the land use -- while the south willamette bridge crossing study has clarified the role of tacoma street within the regional transportation system. Therefore it is time to rescale the design of tacoma street. To better match, better balance its local access needs with regional mobility, match its multimodal policy objectives, and to better

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support land use policy objectives of the surrounding community and the region 2040 plan. To do this, there are three primary objectives the plan is intended to achieve. First, support neighborhood oriented mixed use development envisioned by the region plan and the sellwood moreland neighborhood plan. Currently commercial activities focused around its intersections with 13th and 17th avenues. Tacoma street has the potential to build east and west of these nodes to create a more vital interconnected main street environment. The key issue to address is on-street parking supply. Currently park assisting not allowed on tacoma street between the bridge and 17th avenue for two hours during the morning and evening peak periods. On-street parking is considered a key component in supporting neighborhood scale, main street-type development. Second, improve the pedestrian environment. A safe comfortable and convenient pedestrian environment is fundamental in supporting both neighborhood development and neighborhood livability. At eight feet, the sidewalks were substandard, too narrow to add street trees. The lack of parking during peak periods means there's no buffering between pedestrians and traffic. Crossing tacoma is difficult and dangerous. This is particularly true of the area between the bridge and 11th avenue where there are no protected crossings for pedestrians yet traffic volumes and speeds are highest. Third, protect neighborhood livability. A major issue is cut through traffic. Currently cut-through traffic moving to and from the bridge affects livability of the residential streets that sit around tacoma street. At the same time, four traffic lanes and speeding on tacoma itself create a significant barrier between the north and south sides of the neighborhood. To address these issues, the office of transportation received a growth -- transportation growth management planning grant from the state in 1999. Over a 14-month period a citizens advisory committee made up of local residents, business owners and members of the neighborhood association worked with staff to develop this plan. Additional public input was provided through, and a mail survey, in which 700 responded to, two public open houses, two presentations to the neighborhood association, and significant additional outreach by the s.m.i.l.e. Transportation committee and local residents. The plan development process looked at a wide range of alternatives to support the project objectives. After careful evaluation, the citizens advisory committee and staff recommends a preferred alternative that contains the following elements -- the recommendations basic framework is a new street cross-section within the existing curb-to-curb right of way. The new section reduces the number of travel lanes during peak periods to match its connections at both end of the study area. The sellwood bridge and tacoma east of 17th avenue. The proposed cross-section consists of one travel lane in each direction with a center turn lane. This can be achieved relatively simply and cheaply by restriping the street. The new cross-section is intended to calm speeds and blend in better with the neighborhood. More importantly, new cross-section also creates the space needed to address other key project objectives. 24-hour on-street parking will be returned to the street in as many locations as possible to support existing businesses and new development. Approximately 70 new peak period spaces will be created. No longer will tacoma street be without on-street parking when it is needed the most. Removing the peak period restrictions is also intended to improve parking supply during off peak hours. To improve the safety and comfort of crossing the street, curb extensions and pedestrian median refuges are proposed. This simulation shows a proposed median pedestrian crossing refuge near the bridge head at sixth avenue. Again, this is a very high traffic volume area that is currently without any means for safe pedestrian crossings to a number of important nearby pedestrian destinations. The median will also serve as a gateway marking the entrance into sellwood and reminder to drivers they are leaving the highway and entering into a neighborhood. Additional median refuges for pedestrian crossings are proposed at 9th and 21st avenues. To restore the original sidewalk width and allow for standard amenities such as trees, the plan proposes widening the sidewalks back to 12 feet as redevelopment occurs. This is the city's design standards for streets designated as city walkways. The impacts on the transportation system capacity of the recommended cross-section

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have always been a concern of the planned development process. However, the recommended design limits these impacts for the following reasons. First of all, proposed cross-section is essentially scaled to the streets that feed tacoma street. The sellwood bridge at the west end, and tacoma street east of 17th avenue. Both of which only have two travel lanes. These portals meter the maximum volume of traffic entering onto tacoma street during the peak periods. The capacity on tacoma is controlled by the intersections in the study area at 13th and 17th avenues. These are the two main capacity constraints not the number of travel lanes in between. Because the plan recommends continued use of peak parking restrictions within the approaches to these intersections, which provide additional peak period capacity when it is needed, overall system capacity is largely preserved. However, even under no -- certain local streets adjacent to tacoma will continue to experience cut-through traffic problems. This is because intersection volumes are currently at or near capacity. The plan recommends speed bumps on southeast spokane and umatilla streets which parallel tacoma street to discourage cut-through traffic, the speed bumps are consistent with the bicycle boulevard concept proposed by the city's bicycle master plan. In summary, the tacoma main street plan addresses long-standing neighborhood livability issues within the context of our regional growth management objectives. This is achieved through rebalancing the allocation of public right of way to serve a broader range of transportation and land use needs. The plan is consistent with and carries forward a long series of local and regional policy decisions specific to tacoma street. The plan is the result of many years of work envisioned by the sellwood neighborhood. And many, many months of deliberation and commitment by the plan citizen advisory committee. The plan also has the support of the neighborhood association, and the surrounding community, as demonstrated by a strong majority responses received over the course of the plan development process. Staff urges city council's support as well. Thank you.

Katz: Thank you. Are you finished?

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

Katz: Okay. Karla? Public testimony?

Katz: Come on up.

Kevin Downing: Good morning, my name is kevin downing, I live on southeast 21st, many blocks away from tacoma street, and i'm president of the neighborhood association. That was a great presentation that rich did, it's really been a pleasure working with him on this project. But i'd like to say too that what we could have been talking about today is the Multnomah sellwood express way. If we think back to the freeway plan for the vision for the city of Portland in the early 1960s, there was a network of freeways and express ways connecting the entire city, promising to break up neighborhoods. One of them was a Multnomah-sellwood expressway which would have run north of tacoma street and connected with i-5 and run off to the west side and connected somewhere on the east side. Instead of that, we're looking at this plan here today, which is actually dealing with traffic and streets in a different manner. That's what I wanted to bring your attention to. In many cases in the city traffic is listed as the number 1 concern. There are concerns about what kind of precedent that will be established by adopting this kind of plan, which actually returns the street to other values other than just traffic. I would only recommend that other communities follow our lead as well. We've -- as you'll hear today, we've only been working on this project for 15 to 20 years. We've done our homework on this in many other steps in the past we've worked with the city to redesignate the street, we've worked with the city as well as with metro in terms of making sure the sellwood bridge is scaled to the neighborhood as well, we've also worked with you in terms of adopting neighborhood plan, which incorporates many of the values within the metro 2040 growth plan and puts them in the ground in place within the neighborhood. And what this tacoma main street plan does, it helps support that -- all those efforts and brings it to life. The number 1 word we -- that was talked about most in the citizens advisory committee was "trade-offs." given that trying

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to balance all the use that's tacoma street could handle, we really couldn't fit those all in, so there are trade-offs. What this plan represents is an adjustment between all of those values, so that right now it's a corridor for places -- it's a place for people in cars, and we're looking to restore the balance for people and other uses as well, for people to shop, walk along it and otherwise cross the street. This plan we think brings the best balance of all of those issues to mind. We've also done outreach to the community in many ways through -- as rich had said, through open houses and meetings, and it's been impressive the amount of support people have given to this. Even when we've said there's still a possibility they'll be -- there will be significant traffic demands on this street, people in the neighborhood recognized that tacoma street is such a problem and the value represented by this plan is so important for them, that they are willing to endorse some of that impact. But nonetheless, we're willing through this phasing process with the city that the plan is going through, to be able to work with the city to make sure that we address problems as best we can that come up as we incorporate this. It's amazing to me that continued support this plan has developed among the neighborhood. I've come before you on a number of other issues related to tacoma street. The electronic billboard, worked with you to a certain extent on the sellwood bridge issues, as well as to some extent with the elks landing office build. And to a certain extend this plan if we adopt this today is a cap stone to my neighborhood involvement as it were, but we're not done yet. Another one of the things that's impressed me about this project is the possibility of this plan has made other -- has energized other people in the neighborhood to come forward and making other parts possible. Ultimately one of our goals is to redevelopment along tacoma street and we've now begun discussions within the neighborhood from people that have come forward to develop what we're calling a sellwood-moreland economic development commission which will be a neighborhood business partnership to look to see how -- what we can do to make -- to make the business community healthy and vital part of the neighborhood and to encourage redevelopment along tacoma street. That has been made possible by the promise of this tacoma main street plan. So what we're about here today is place making. It's really part of Portland's heritage. We can look at harbor drive and the mt. Hood freeway, both of which I think people characterize as being decisions that were no. But they were decisions for yes. And they were decisions to say yes to a place and we can look at the result of those decisions and what we have made, what we have in place as a result of those decisions and I think what we're doing on tacoma street ranks up there as - - the same par with those past decisions we've made. This is a significant step. So I would like to ask that you join with the board and the residents of sellwood-moreland in saying yes to the community and removing the barrier that is tacoma street now and making -- and knitting tacoma back into the fabric of the neighborhood. Thank you very much.

Katz: Thank you. Kevin, what are you doing now, these days? Just out of curiosity.

Downing: Actually I could be talking with you -- I work at deq, and I do air quality planning. I could be back to you on other professional issues.

Katz: I'm sure you will be. Thank you.

Austin Pritchard: My name is austin pritchard, i'm also a resident, at 1636 southeast marion, which following his analogy, or expanding on it, I suppose would be considered the east berlin section, and there's a berlin wall, which is tacoma street, then there's west berlin. This past saturday myself and several others from this neighborhood gathered together with richard newlands, also from pdot, and collected comments on the main street plan. This was done at new seasons grocery store, it was a very cold afternoon, and i'd like to point that out because the 22 comments that we received were done at the suffering of some very cold fingers since it was done outside. Okay. These comments have been submitted to the council. They're in your hands, knowing you wouldn't have a chance to review them prior to this session, I am going to take the liberty of summarizing them briefly for you. We received a total of 22 comments. Actually, that probably represents more

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than 22 people, because several of these were done by pairs, spouses, et cetera. 19 of these comments were from residents. One was from a local business owner, I point out, this is important, who expressed support and particular concern about on-street parking availability and pedestrian safety. Two of the comments were from folks outside the neighborhood, so most of them were obviously from the neighborhood. The two comments outside were split, one supported, and one did not. The one that did not support it suggested that we leave tacoma street with four lanes all the time. And I think it's interesting that this person indicated that they lived in marylhurst, or near there, so it wasn't in the neighborhood. Overall, the comments were extremely supportive. We had 21 clearly expressing support for the main street -- preferred main street plan alternative. There was only one comment, which I already suggested, or mentioned, that suggested we leave tacoma street with four lanes. Some of the concerns expressed included the following -- division -- diversion of traffic, packing in the side streets. Pedestrian safety, bicycle safety, and bicycle movements, traffic movements at 13th and 17th, as rich has already pointed out, these are the main intersections, as you well know, and of course speeding on tacoma and the side streets. And I would just like to end by saying when I moved here at the end of the sellwood neighborhood about 71/2 years ago, the first thing I noted was this enormous barrier between the north and side sides of the neighborhood. Since that time if anything it's become worse. That's one of the things that got me involved in working with the neighborhood and the transportation committee. I strongly urge you, please, to pass this plan. Thank you very much.

Katz: Thank you. Go ahead.

Mark Perepelitza: My name is mark, i've been a resident of sellwood for nine years. I live at 1933 southeast umatilla street, and i've been involved with the neighborhood association in various ways that entire time, including most recently as a member of the cac on this project, also involved with the neighborhood plan. I'm an architect and work for richard brown architects and worked on the new seasons market on tacoma street. I'm also a father, pedestrian, and bicyclist, so I have kind of quote a wide range of perspectives on this. I first of all would like to thank the city for listening. I appreciate the transportation department taking this project on, and approaching it as a main street, which is appropriate for tacoma street. I think that helps lead us to the appropriate solutions. I'd like to ask that city council adopt this plan. It's been thoughtfully considered by the city agencies, by the neighbors, it's consistent with our neighborhood plan, it -- like kevin said, it finds the right balance between meeting traffic needs, it provides better on-street parking, most of -- more permanent on-street parking, it supports positive pedestrian environment, which is important for safety, redevelopment, and just general quality of life, livability of the neighborhood. The plan also addresses traffic division on adjacent streets. We may need to go further than that in the future, but at least that is a part of this plan. I think that phase one can and should be implemented immediately. The cost is very modest, and it's a good solution, and it's feasible. I'd also like to ask city council to continue the support of the bicycle boulevards on spokane and umatilla streets. That's an important part of this transportation corridor, and we realize that bicycles were not appropriate, would not fit onto tacoma street itself, and it seems best for them to work on those two streets. In doing that, that will also help address some of the traffic calming concerns that might -- may be worsened by some additional diversion from this project. I'd also like to encourage the city council to support future steps. Initially I think we're looking at phase one, but obviously that's just the first phase, and we need to go beyond that to the second phase, which makes this more permanent after the plan has been monitored and fine-tuned, so that it can be a positive, permanent solution. Finally, i'd just like to ask the city council to continue listening, as you well know, the city is a dynamic thing and it's constantly changing. I think this has been a wonderful step in the right direction, and to continue addressing these issues as they come up and fine-tune, modifying them. Thank you.

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Katz: Thank you. Karla?

Katz: Somebody start.

Peter Hainley: My name is peter, I live at 1125 southeast spokane. I've been a resident of the neighborhood for 40 years. I've served on the citizens advisory committee for this project, i've also been advisor to the bureau -- budget advisory committee for department of transportation for pdot, also s.m.i.l.e. Treasurer and transportation chair prior to that. So I was in on some of the early discussions related to the mcloughlin neighborhood program. I opposed this plan when it came before the cac, and there were a number of reasons. I felt that the impacts to the surrounding neighborhoods was heavier than I think we could support. I've subsequently changed my decision, and i'm now supporting it with the caveat that it will be reviewed after the initial first phase goes through, and that the impacts for the diversion are not too serious. And I think in trying to value or try to estimate what serious cut-through traffic is is going to be difficult, but we'll keep in touch with pdot to let item know. One of the other things that changed my mind was the addition of speed bumps onto spokane street. Certainly speed bumps are not a traffic mitigation device, they're a traffic calming device, so whether or not that's an appropriate device for spokane street and for tenino street, I would probably say not. I would advocate for stronger type of mitigation devices. The tacoma street project is actually a mitigation project. It is going to allow more pedestrians and other activities to take place on that street. At the expense of some of those activities that might take place on some of the surrounding streets. So while we're trading off, I think we need to watch carefully what's going to happen on those surrounding streets and evaluate whether or not this is what we really want. Another one of the changes that was made was some elimination of parking on 13th to allow right-turn movement onto tacoma westbound. I met with -- I didn't meet with, richard had contacted some of the business owners to talk about the removal of this parking, and they seemed at least the two he talked to seemed okay with it, and I think that will help keep some of that diversion off spokane street. That was another one of the things that happened towards the end of this process that certainly convinced me that this was a good project, and since the majority of the neighborhood supports it, I will put my support behind it too. But I also want to make sure that we have some exit strategy out of this if it doesn't go right. I also think one of the other things we didn't evaluate fully was whether or not signalization at 13th and 17th could accomplish any improved traffic movements. And I think the cost factor was a big reason why we didn't look at traffic signalization. So I would encourage your support of this proposal, but also acknowledge that there are some things that need to be looked at. Thank you.

Katz: Thank you.

Lee Leighton: Good morning, madam mayor and commissioners. I'm lee leighton, I live on southeast 17th avenue, it's a pleasure to be before you again. I wholeheartedly support the proposal that's before you. This has been a very difficult design context, given the conditions on tacoma, the staff, and I want to give queued osu to the transportation staff and in particular rich for an excellent public involvement process for this project. The initial technical results evaluating the traffic flow impacts of the neighborhoods initial preferences were not encouraging, but the staff worked very hard to creatively adapt design solutions to comport well with what the neighborhood's preferences are, and I think that has been the source of a good solution overall. You heard the result described to you that is a long-term plan that can go into the capital improvement cycle as well as immediate implementation steps I hope you'll find a way to do straightforwardly. I want to say a few words about why this is possible. There was mention of the mcloughlin neighborhood's project, and this is part after long stream of implementation efforts following from that. The disposition of the south bridge study at metro, where the conclusion was that the sellwood bridge should not be expanded to have four travel lanes, and should remain a two-lane facility, was a big win. And then subsequent regional policy decisions at metro's advisory committee on transportation, where charlie Hales took

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the lead and stuck his neck out for us and said it's really important that this -- that regional decisions be made about the quality of place and the people who live there and not just moving cars. And it's important I think to recall that jpac made an historic decision to step back from simply counting cars and think about the places where people live, and that resulted in the downgrading of the designation of tacoma in the regional transportation system plan from an arterial status to something that can now accommodate this main street treatment. It's a very critical step, and i'm sorry if i'm stealing your thunder, charlie, but I wanted to really acknowledge that because it's why we're able to have this hearing today. The work in the neighborhood has sort of finished the process of coming to something that we all feel we can live with, but I feel it's very critical for the city to act now to adopt the plan and move forward with the implementation steps that are before you, because of the regional significance of the opportunity that's before us today. Thank you very much.

Jack Wagnon: Good morning, council, my name is jack, I live at 1433 southeast malden. I realize that as elected officials to govern our city you all see the ups and downs of making policy and having to make decisions. I want to underscore some of commissioner Hales' early comments. This is an example of government and the community working together and being successful. The tacoma street plan has very just basic pragmatic solutions to two big issues -- it's unsafe, and it's unsightly. So I want to strongly encourage you all to consider a lot of hard work that's gone into from the citizens and from the commissioners, from the council's office, to come up with solution that's are going to help mitigate traffic. The question -- so I want to represent today, what does the plan do once we change the look and the feel of tacoma street, and solve some of the safety issues, we have an opportunity to revitalize a corridor and create a whole new commerce area. I come to you as a citizen. I'm not a property owner on that street, and i'm not a commercial developer. But what I am interested in is seeing the community of sellwood maintain its historic feel, and bring in the kinds of businesses that the citizens are interested in. Avoiding big box development, and so this plan represents basically a catalyst for the next step. The next evolutionary step, if you will, in the sellwood-moreland area, from a commerce standpoint. I represent the early grass-roots activities from a variety of residence that have gotten together to talk about, let's organize ourselves collectively under a citizens group, and let's create a bridge between commercial development, commercial enterprise, and the needs of the community, the citizens within the sellwood area, to do plan development from a business standpoint. So there's a wonderful opportunity down the road once we get past safety and aesthetic issues on tacoma street. So tacoma street plan in the eyes of the sellwood community, has a long-term opportunity to impact, and strongly I want to encourage you all to consider the -- beyond what it does to traffic, and what it does to the look, but what it does to helping the sellwood--moreland community grow as a vital marketplace. I appreciate your time. Thanks.

Katz: Thank you.

Katz: Is there anybody else in the audience that wants to testify? Come on up.

*******:** Good morning. I'm a little intimidated being alone.

Katz: You're going to be joined in a minute.

Paul Notti: My name is paul, I live on 1553 southeast spokane street. Right down the street from the community center. As a father of two young children, we have lived in sellwood for almost four years, and one of the biggest things that concerns us is traffic safety and the ability to walk to and from things like the park, which is just ten blocks away, the community center, new seasons market, which is on tacoma street, due to increased speed and a lot of cars moving very quickly. As a resident who likes to use pedestrians and children that are small and not very well seen by cars, speeding is a big concern of mine, especially on tacoma street and spokane street. The cut-through traffic is very fast and dangerous, especially in the morning commute. I am committed and a supporter of the tacoma street main street plan because it addresses a lot of issues, including

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livability, and safety. And revitalization that a lot of people have just spoken about. And I also am deeply committed to the plan's implementation of speed bumps and vigilance toward the spokane street, especially, because that's where I live, to make sure that cut-through traffic doesn't become an even worse hazard. I think that the continued support of the city and the vision of the tacoma street main street as well as just the organizations in sellwood working together will continue to make this a revitalized and more vibrant neighborhood. It is already a wonderful place to live, and with these steps it will only get better. So I -- as a resident, I throw my support behind it.

Katz: Thank you.

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

Katz: Somebody grab a mike. Okay.

Dennis Petz: My name is dennis, I live at 637 southeast st. Andrews drive, which is the southern end of sellwood, and i've been a resident there for about 15 years, and Portland all my life. I first want to commend rich for a great plan and an orchestrating all the people. You've done a great job. I -- my comments are very simple. I think it's a well thought-out plan, I think it's the right plan at the right time for the neighborhood, and it gets all my support, and I hope it gets yours.

Katz: Thank you.

Loren J. Waxman: I'm lauren waxman, and I live at 2746 southeast 26th, actually in the clinton neighborhood. But i'm a long-time sellwood resident, and I lived there for 15 years up until about three months ago. I'm also a developer in that neighborhood, and i've been working on a building which is a mixed-use neighborhood friendly building that houses the new neighborhood library, it's got 16 condominiums, i'm happy to report it's almost done.

Katz: I was going to say, when is the ribbon cut something.

*******:** I think it's the 22nd of february.

Katz: Okay.

Waxman: So we're planning. Anyway, I think i'm here today sort of to cast that eye, look through the lens that maybe a developer would. Having said that, it's also interesting to me because I literally look back and these are the streets that for the last 15 years I sort of lived, played, and worked in. Having said all of that, i'm going to read my letter here into the record, which I think you have here before you. A few comments and thoughts afterwards, and any questions. Today southeast tacoma street is about the automobile. Every morning and every evening the cars on tacoma tell the story of a society created, built and dominated by cars. Commuters rush from affordable homes in outlying communities to family wage jobs that are often past the other end of town. The tacoma street plan before the council today embodies the ideal of a community that serves itself with a magic mix of housing, job services and entertainment that strive to keep people out of their cars. While regional transportation jobs and housing issues are complex, they require a solution that is once regional and local. Public policy that encourage balance, pedestrian friendly communities in Portland, and our suburban neighbors, lessons -- lessens our reliance on the automobile. It's for these reasons that i'll urge the council to adopt the recommendations contained within the tacoma main street plan. This plan is about people getting out of their cars, this plan is about a local main street servicing its neighborhood. And this plan is about building livable communities. As a long-time sellwood-moreland neighbor and developer, I hope to cast my eye anew at the opportunity to build upon this public investment and perhaps take my own chances on this bold courageous envision of southeast tacoma. And I have one additional comment. I want to build on the fact I know this just one step in tacoma, but further challenging the neighborhood and the council to look forward and I want to just plant this little seed that I just think, can we get some funding for some kind of alternative study to find out how we can fund a residential streetcar line that maybe connects woodstock and johns landing via west moreland and sellwood? That would

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help I think not only buy these -- tie these neighborhoods together, building upon this plan, but it could potentially tie with my optimistic view of our north-south transportation we'll see.

Katz: Thank you. Anybody else? Come on up.

April Bertelson: Hello, members of council, madam mayor. I'm happy to be back up here speaking to you again on this project.

Katz: Do you want to identify yourself.

Bertelson: April i'm, a resident of 290 single family southeast alder. I'm a previous resident of the sellwood neighborhood. I am a previous staff assistant to this project, and I followed it from the beginning until about october. I urge you to adopt this plan. For a number of reasons. One, as having been a resident of the neighborhood, a cyclist and a pedestrian, and a transit rider, crossing that street is a challenge. If there are any doubts in your mind about the adoption of this project, I first encourage to you go try crossing the street in the morning, in the afternoon, and in the evening. As a staff assistant, I was out there doing a lot of field work, and it -- there is something to address here. There is a problem. I've crossed many streets, but there's something to be addressed out there. The process itself was --

Francesconi: Most members of the council have tried to do exactly that, i'll just bet.

Bertelson: Okay. The process itself, planning process, was an excellent learning experience as well, and you heard from many cac members, and neighborhood representatives who spoke today of the process, and I really want to second that. And also, I want to bring out that you did not hear opposition today. I think that's an important point.

Katz: Thank you.

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

Katz: Okay, everybody. I'll take a motion to accept the recommendations.

Francesconi: I have one question of staff. I'm sorry.

Katz: I'm sorry. Come on up.

Francesconi: Maybe two. The second phase, when do you think we can get to it? I know the money situation --

Newlands: It's all a matter of budget.

Francesconi: Is there any plan on the second phase?

Newlands: Not at the moment. We feel we can do the first phase within our existing budget, and have the striping down on the street this summer. Second phase is continued search for funds.

Hales: The first maze is literally mostly paint.

Francesconi: The last question, are you confident -- there will be some displacement according to the report, at least. Are you confident we can handle that so the neighbors in adjoining streets --

Newlands: I'm confident the neighborhood feels there's a greater net benefit in terms of making the street more pedestrian friendly. And encouraging more business development through on-street parking. So in that sense the trade-off appears worth it. There's currently a cut-through traffic problem that the neighborhood has been living with for many years, adding to that problem a little bit seems to be greatly outweighed by being able to feel that the street is now part of their community, not something that divides it.

Francesconi: Okay. Thank you.

Saltzman: I had a question too.

Katz: Go ahead.

Saltzman: I noticed in one of the letters that they were also asking for a no truck signs, or knew through trucks on umatilla street. Was that accepted?

Newlands: That is not part of the report. A separate issue we really didn't look at.

Saltzman: They cited that as the major source of intrusion into their neighborhood, getting -- cutting down umatilla to get onto tacoma street, avoiding the 13th street --

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Newlands: Right. There is one problem right now, left turns are not allowed westbound on tacoma on to 13th avenue. There is some industrial activity at the very end of the street. This causes trucks to infiltrate into the neighborhood. It would be great to provide left-turn access on 13th, but the capacity constraint issue makes that very difficult. So we're continuing the existing condition of no left turns at 13th westbound.

Saltzman: Great. I suppose was 15 years enough time to hash out all those concerns? Sounds like it. There's nobody opposed to it.

Katz: I think I heard 20. All right. Motion?

Hales: Yes.

Katz: Move to -- commissioner Hales moves to accept the recommendations.

Saltzman: Second.

Katz: Roll call.

Francesconi: From the berlin wall to a main street, from supporting the automobile to supporting people, and it took a lot of effort. It was nice that lee recognized commissioner Hales for setting the table that allowed it to happen, and he deserves that. But it's a tribute to the staff to making it happen, but it's a tribute to the residents and businesses for coming together. I have walked this area during -- in fact I think it was right at 5:30 as we were -- I was meeting with some businesses after having walked. I was touring the business district just several months ago, so we met at that starbucks right on the other side of tacoma, right during rush hour. Anyway, it is a barrier. It's also a barrier for the businesses to the south of tacoma that don't get the spillover traffic. And it really hurts them economically. And they were asking for some advice about how to get across the street.

But I think it's what you've done here. So that combination of a vital business district, the parks, the schools, those are the things that anchor the neighborhood for you folks. And this plan really does a good step in that direction. Now we have to figure out how to fund to it make it real. That diagram, this drawing of what the future could look like, is a lot different than that street that I saw that day that you have to live with. So thank you for all your leadership. Aye.

Hales: Well, I don't have a lot to add, but I want to reinforce some of the comments we heard today. Actually, we get the pleasure sometimes at this council of having hearings like this where there has been agreement, and all it, or most of it is positive, and I think there's a danger we might just have kind after warm feeling and move on. And I want to pause for a minute, because there are maybe three lessons here that we should remember and try to practice in the future. Actually two of them are for us and the others are for the neighborhoods. The first is that this council, as lee and others recounted, really did take a controversial stand when we said to the region that we really want neighborhood livability to trump regional traffic flow. And you know, we probably should -- back east in cities where they had civil war battles, they put up little monuments to say, this battle happened here, and we should probably do that in the war between the citizenry and the automobile in Portland, put up one in waterfront park, and one where the mt. Hood freeway would have gone, and where the laurelhurst freeway would have gone, but we ought to put one on the new two-lane sellwood bridge or on tacoma street and remember that this really is the place where at a time where in the rest of the region, below the level of the big light rail projects and the big freeway projects, most of what's going on in arterials in the region is taking two-lane roads and making them into five-lane monstrosities with sidewalks and sound walls. That's the typical arterial project in the region. Unfortunately. This project is completely different, where we're saying, no, we're going the other way, we're going to support the neighborhood's character and reduce the convenience of living in happy valley and working in Washington county. And that is historic, and it shouldn't be the last time that that balance tilts that way. So we should remember that we took that stand and that it worked and that over the long run it's going to make a much better region and place because of it. The second lesson is that sort of by dumb luck, both here and hollywood, we're able to fairly

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quickly follow a good land use planning process with a good transportation planning process. In hollywood we've got the same opportunity now that the state has approved the money for the conversion of sandy boulevard from 1960s traffic engineering to 1990s and beyond neighborhood planning. So we're going to be able to do there what we've done here. So we ought to try to do that. We ought to try to make sure that our capital facilities planning process, whether it's transportation or parks, is as well connected by design as it was by happenstance in this case, with the neighborhood planning process. The third lesson is really this neighborhood has been so relentlessly opportunistic and positive in their approach. I've had the opportunity to work with this neighborhood on a wide variety of things, whether it was the renovation to the sellwood pool, to lauren's project, which is now it looks easy, but it was a superfund site and the first mixed use building in a very long time and the first library on the ground floor -- the first everything, and that was another win for this neighborhood. I think it's the only neighborhood in Portland that has the word "improvement" in its name. And that's fitting, because this neighborhood has a habit of looking for ways to make positive things happen. And I wish we could clone that, because I think your approach gets things done and really puts pressure on us to find the ways and means to accomplish your plans, because you've done such good work. So those three lessons I hope about how if we take a stand in favor of neighborhoods in the region, that works, really how land use planning and transportation planning works so well together, and then thirdly, if the neighborhood really has a clear idea where it wants to go and is willing to partner up, whether it's with our staff or with a developer, they can do great things. And they've gotten to this idea of an economic development agency -- effort on their own and I think it's wonderful. I just want to say to rich and our staff, bravo. Well done. This is another great example of the collaborative ability of competent professionals in our staff with people in the neighborhoods, and I just think it's been a first class piece of work. Thank you. Aye.

Saltzman: It's hard for me to imagine tacoma street anything other than a four-lane freeway, so -- but I do look forward to seeing that new vision in action. This is a great first step, and I think this first step will have a lot of profound impacts, and we need to monitor those impacts and review them as we move into phase two. And I just want to also say that when we finally do get around to replacing that sellwood bridge, I hope we won't lose sight of the idea after bicycle crossing as well. Aye.

Sten: This is a very easy project to vote for at this point. Although it's been 15 years in the making. I just want to I think it's mostly been said, but commend commissioner Hales and the team at transportation and very much the neighborhood activists, businesses. It's unique, but pretty exciting to see the developers and the neighborhood activists see eye-to-high on how to move forward. Now of course the other thing we tend to do is aside from maybe think these things happen easily because it's a nice presentation when people come in, is that they actually get implemented once we pass a plan. Obviously we've got our work to do to get this thing fully implemented, and it's a tough budget times, but this is really exciting and you've certainly got my commitment to try and help commissioner Hales figure out how to get this done. Aye.

Katz: Congratulations, everybody. I got a call yesterday from the charlotte news, many of you know we're usually compared with charlotte as well as we're compared with austin and seattle and some other cities, and he was writing a story about how Portland does it, and I told him one of the things that's the most important is that we made a decision long time ago that land use is tied very closely to transportation. And that for us, the pedestrian and the citizens are more important than the car. He gulped at that because that was a rather knew notion in charlotte, and for some reason the citizens in this gentle southern town didn't quite understand that a four-lane freeway running through the town or around the town was something that they honored, and couldn't even think about how doing things differently. So commissioner Hales, you're right, neighborhood livability

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trumps regional traffic, congratulations to you, to the citizens, and i'd love to have an opportunity to talk to the group that's developing the neighborhood business economic commission. That's a pretty heavy term, but that's all right. You've got big dreams. Unfortunately with the shilo inn court decision at least at this time, there's not much that anybody can do. But you know, i'm an optimist and the future is going to look bright down the road, and when you're ready I hope we can help as well. Aye. [gavel pounded] all right. Let's get on to the regular calendar. Item 88.

Item 88.

Katz: Come on up.

Nancy Jesuale: Good morning. I'm nancy, communications director, comnet director. The ordinance before you authorizes the city to enter into a contract with graybar electric incorporated, whose really in this -- who's in this project, the ernie project, acting as a distributor of network equipment that we need to implement the ernie, and primarily a carrier class switch that will be manufactured and installed by lieu sent. So this was done with a competitive bid. We had several proposals, an evaluation team looked at it as well as our expert consultants and ultimately we got a very good offer from graybar, and I recommend executing the contract.

Katz: Questions by the council? Did anybody want to testify? Roll call.

Francesconi: Good work, nancy. I wasn't sure we did competitive bidding anymore. That's good too. Aye. [laughter]

Hales: Aye. **Saltzman:** Aye. **Sten:** Aye.

Katz: Mayor votes aye. [gavel pounded] nancy, good work. Thank you. 89.

Item 89.

Katz: Roll call.

Francesconi: Aye. **Hales:** Aye. **Saltzman:** No. **Sten:** Aye.

Katz: Mayor votes aye. [gavel pounded] thank you, everybody. We stand adjourned until 2 o'clock.

At 10:24 a.m., Council recessed.

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2:00 PM

Kathryn Beaumont, City Attorney: Good afternoon. Before we begin I have a few announcements. The order of testimony and a few hearing guidelines. This is an on the record hearing. This means that you have to limit your testimony to material and issues in the record. That also means that during the hearing you can only talk about the issues, testimony, exhibits and other evidence that were presented at the earlier hearing before the hearings officer. You can't bring up anything new. This is designed only to decide if the hearings officer made the correct decision based on the evidence presented to the hearings officer. If you start to talk about new issues or try to present new evidence, you may be interrupt and reminded you must limit your testimony to the record. In terms of the order of testimony, we'll begin with a staff report by jessica wilcox of the office of planning and development review for approximately ten minutes. Following the staff report the city council will hear from interested persons in the following order. The appellant will go first and we'll have -- will have ten minutes to present the appellant's case. Following that, the persons who support the appeal will go next. Each person will have three minutes to speak to the council. The applicant will have 15 minutes to address the city council and rebut the appellant's presentation. After the applicant, the council will hear from any other persons who oppose the appeal. Finally, the appellant will have five minutes to rebut the presentation of the opponents of the appeal. The council may then close the hearing and deliberate. After the council has concluded its deliberations, the council will take a vote on the appeal. If the vote is a tentative vote the council will asset future date for the adoption of findings and a final vote on the appeal. If the council takes a final vote today, that will conclude the matter before the council. Finally, some guidelines for the hearing. Again, a reminder, this is an on the record hearing. It is not an evidentiary or de novo hearing. This means you must limit your remarks to arguments based on the record compiled by the hearings officer. Opdr staff and I will be listening carefully to your argument. If it strays, I may interrupt and remind you that you must limit your argument to issues and evidence in the record. If your argument includes new evidence or issues the council will not consider it and it will be rejected in the city council's final decision. If you believe someone who addressed the city council today improperly presented new evidence or presented a legal argument that relies on evidence 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 the council's consideration of that issue. That concludes the statements I need to make.

Katz: Thank you.

Francesconi: Those cracks about lawyers, she didn't mean them about you. She loves her lawyer. It's the other lawyers.

Katz: I just wanted to know how long this thing would go on the. The lawyers were here, they could probably go on for a long time. All right. Let's get down to work. Declaration of conflicts of interest by the council members? Declaration of ex parte contacts by council members? Anybody in the audience wanting to question our nonresponse? None, then let's start with the staff report and what is your name?

Jessica Wilcox, Planner, Office of Planning and Development Review: Jessica wilcox.

Katz: This is jessica's first visit with us.

Hales: But no pressure. [laughter]

Katz: Be kind.

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Wilcox: Mayor Katz, commissioners, my name is Jessica Wilcox, I'm with the office of planning and development review. The case before you is an appeal of the hearings officer's decision by the Pleasant Valley Neighborhood Association. The purpose of the application was to receive approval for the remediation of unpermitted activities in the overlay zone. The applicant placed soil on two properties. Lot 55 where the applicant was in the process of constructing a house, and the other lot was the adjacent open space tract owned by the homeowners association. There is no erosion control installed at the site. Native plants were removed or damaged during the fill activities. As -- the applicant did not meet development standards, the approval criteria must be met. This approval criteria includes two major items. One of them is that remediation must be done in the same areas of violation, the other one is that the remediation plan must demonstrate that there's no permanent loss of resource at the site, there's a significant improvement of at least one function of value and there will be a minimal loss of resource and function until the full remediation program is established. Because the applicant removed trees and did not install erosion control, two adjustments were also required. These were to the general development standards for the Johnson Creek Basin Plan District, and site development standards for the South Subdistrict. This is the zoning map. The site is an R10 C, indicated in red. The open space tract is outlined in yellow. Both of these lots are located in the South Subdistrict of the Johnson Creek Basin Plan District. This is the site plan of lot 55, it is indicated in blue. The open space tract is indicated in green and is located north and east. The site is relatively flat starting at Southeast Bybee Drive, but slopes down to the east towards the open space tract. The environmental conservation overlay zone is shown in red. The first 20 feet of this zone is called the transition area. This line represents the resource area which is 25 feet beyond the outer limit of the environmental conservation overlay zone. The development is a resource area which is in this area back here, is subject to more restrictive standards than in the transition area. This shading indicates the location of fill. As you can see, it extended into the open space tract. This is a 2,000 -- 2000 aerial photo of the site, the overlay zone is shown in red, lot 55 is shown in yellow and the open space tract is north and east of the lot and is shown as being heavily forested. The purpose of this slide is to show that vegetation was present before the lot was developed. This shading shows the approximate location of the fill. This is a site photograph looking southeast. At the time this photograph was taken, the house was being constructed. This photograph shows erosion control over the fill and it's low -- its location to the open space tract, which is in these areas. This is north and this is east. Those are also located in the environmental conservation overlay zone. This photograph is looking northwest. I've shown the approximate location of the environmental conservation overlay zone. It shows the extent of fill in the open space tract which was on this side. This is looking at the east property line, this shows impacts on native vegetation. This is a slide looking northwest, the photo shows that fill encroached 9 1/2 feet into the resource area. And this photo is again looking towards the open space tract. This is a photograph taken in June of 2000. The other photographs were taken in March and February. This house is completed now and sold, but the permit has not been final. Again, this is just a quick review of the same site plan as previously shown. The hearings officer denied the environmental violation because the applicant's remediation plan did not meet the criteria. Instead, the hearings officer approved the staff modified remediation plan and the two adjustments to the Johnson Creek Plan District. Because they met the approval criteria. So the hearings officer approved the environmental violation review with condition of approval. The primary conditions include that remediation of all disturbed areas no later than April 30th, 2002, and to obtain a site development permit for the installation of erosion control and the installation of plantings and to monitor and maintain the site from five years from the planting date. The appeal

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by the pleasant valley neighborhood association states the decision violated approval criteria 33.430.250.e because there's no impact evaluation for the dirt in the transition area and no mitigation was approved. This concludes my presentation. I am happy to answer questions.

Katz: Questions of staff? Okay. Let's hear from the appellant.

Linda Bauer, Pleasant Valley Neighborhood Association: Linda bauer, pleasant valley neighborhood association for myself and the neighborhood association. While performance guarantees are currently optional under 33.430.260, performance guarantees should clearly be a part of lur 01-00402 edad conditions of approval. If mr. Hughes fails to comply with the conditions of approval as they are now written, the responsibility of doing the mitigation would fall to the injured party, which in this case is the homeowners association. In this case, mr. Hughes appears to have taken advantage of the lack and inconsistent enforcement of environmental codes and policies. He has not only shown an inference to property lines and the destruction of native vegetation within that environmental conservation zone, he failed to acquire the necessary permits in environmental -- and environmental review prior to doing work in the conservation zone. He then continued construction on the site of the violation after the april 9th deadline for filing the environmental violation review, contrary to his agreement with the city. It has been a year since the violation occurred -- almost a year. A year next month -- since the violation occurred, and yet damage still scars the land. Mr. Hughes' complexity was aided by inspectors who continued to approve work contrary to the agreement made at the preapp. To the best of my knowledge mr. Hughes has never sought approval or acquired permit for the 60-foot addition to his house, nor has the city required any amendments to the approved site plan. Mr. Hughes has allowed the house to be occupied without receiving a final plumbing permit, a final electrical permit, a final health and safety permit, in fact, mr. Hughes has no final permits for the new house and yet the house has -- and the city hasn't taken any action. Although they know there are people living there without any final permits. At duke heights, mr. Hughes already has additional environmental violations, similar to those in this case. Part of mr. Hughes's justification is that none of the other developers are complying with the environmental rules and regulations. Mr. Hughes's argument has a certain amount of validity since we find violations on almost a daily basis. The number of frequency and occasionally the severity of these violations support the belief that developers enjoy an unwritten exemption. At a time when lots of money and effort is being focused on restoring lost habitat and preserving the environment, the damage caused by developers is costly and discouraging. In this case and many others like it, and around hawthorn ridge developments, this case and many others like hawthorne ridge, contradict the statement in the opdr scan that there's no evidence that Portland suffers widespread or severe environmental violations that can be directly linked to individual projects. Although the city says this new scan done by opdr, the environmental enforcement needs some work, they also claim that no major damage has been done. This ignores the newspaper headlines, deq finds developer its highest amount, or, deq buries gravel, or, construction site shut down urged due to erosion, or, deq gives california developer a week to clean up erosion at a subdivision. The fines resulting from only three site visits from deq in a period of three years, in that same three-year period, the city of Portland visited the site approximately once per week and never found any violations. We ask that you look very carefully at the scan recommendations when they become available, and that you require a performance guarantee in the conditions of approval for the mitigation required by this violation. Thank you. Questions?

Katz: Thank you. Questions? Linda, we ought to hire you to walk around or run around the area.

*******:** I do it anyway. Why should you hire me when you can get it for free? [laughter]

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Katz: I've heard that one before. All right. Anybody else in support of the appellant? Come on up.

Gary Mengis, President Hawthorne Ridge Neighborhood Association: Good afternoon. I'm gary mengis, president of the hawthorne ridge neighborhood association. I guess I would be in favor of this performance bond. Obviously if joe hughes does not revegetate this in that time frame, it appears from the documentation i've read that it falls back on the homeowners association, that liability. So I would be in favor of that. My only wonderment is, I think -- I also attended the hearings meeting, and why this wasn't done at that time, linda had brought this up at that meeting. I don't think we would be here right now if what she had asked for at that time, a performance monitor, something of that nature, would have done -- been required at that time. It might have been valuable. Thank you.

Katz: Thank you. Anybody else? For the appellant? All right. The opposition to the appeal? Come on up.

Joe Hughes: Hi, i'm joe hughes, the builder. I reside at 16078 southeast flavel drive this. Is my first time, so --

Katz: You're in a bad position.

Hughes: Very nervous. A couple quick comments. First of all, the 60 feet has been properly permitted, and if it was checked through the city of Portland they would find that out. It was part of what they required me to do prior to letting me continue with the house being built, so those fees were paid, and they were properly done. It is true there's a homeowner in the home. He's been given full notice that the house was not finaled. One thing I have not done at all is lied to my customer. He's taken that position to go ahead and move into the home, based on the fact it did not have a final. I have been given by the city of Portland the ability to get a temporary final if I were to get a signature which I have no problem with, with the homeowners and also with hawthorne ridge subdivision. I was unable to obtain that signature because mr. Bush, who was basically acting in behalf of hawthorne ridge, no longer had an interest. All the properties were sold there, so therefore he wasn't willing to get involved. So it kind of put a curb and my ability to get the signature. He wasn't willing to do it. The other situation is, I have complied with jessica wilcox and all her needs through this process. I paid all the fees when they were supposed to be paid, I attended every single meeting without fail. I produced documents. The only comment that has any validity is the fact that I did not have the -- all the completed information, and jessica basically -- I felt I did -- jessica asked if I would provide some extra material. Again, that was why the city of Portland allowed me to continue constructing the home, because I was living up to my agreement. Getting on to the violation part of it, I have contested all along that center line concept, which is a license and bonded survey company for the state of Oregon, has the true and accurate location of the stock piles. They use the same equipment, same survey equipment used to survey homes, roads, and all other important bodies and masses throughout our state. They also use the monuments that are located in the asphalt street in front of the property. They use these because there is no way to move these pins. They're stationery in the asphalt street. The city of Portland has based all their measurements off a wooden -- off a wooden stake, not a monument, using a tape measure. The pictures today reflected that. Merely a tape measure laying on the ground against a pile of dirt with no monument to give you any basis of what they were gauging their nine-foot dimension on. I produced a letter from center line quoting the city code for property monuments. Wooden stakes is not accepted in our code. They are too easy to move. The city has contended I did not have erosion control measures in place. All the pictures you saw today had erosion control. And if there were true, why would I have called for than erosion control inspection? That is when

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this violation was discovered by the erosion control inspector. And all the pictures that i've seen in evidence reflect this. If it were true about the erosion not being present, I still feel the location of the stockpiles are extremely relevant. The mitigation plan is based on total area disturbed, and it's far less than what they are saying it is. I actually had -- there's documents in there and I have documents in front of me that have center line's work done on it, and then also where we've actually overlaid it onto lot 55 to show that the stockpiles were in the transition zone. They never actually were in the resource center according to center line's calculations. Again, based on survey equipment, lasers, you know, very up-to-date and what we use now, again, to document homes and roads and all kinds of important situations. Again, I do have a letter from center line concepts stating the Oregon code 92.060, in which they use the metal monuments, stakes bored into the ground very deep, with a yellow cap on them. There was not one visible down in that lower corner, so it was clear why the city of Portland didn't use it, because it wasn't there. Again, center line concepts went to another extreme by coming up to the street, bybee road, and taking all their measurements from that road all the way down and then again plotting it onto this paper. The only other point I would state is the city of Portland required me to do this as part of me being able to continue my construction of the home. It cost me \$150 to do this, and it was completely dismissed. It was thrown out. Again, apparently a tape measure by an erosion control inspector and/or an environmental inspector has more validity than center line concepts. And I do believe that if it was put into effect, where the dirt piles are, that it wouldn't have been a class 3 violation, because again, it would have been in the transition zone, not in the resource center.

Katz: Questions?

Hales: I guess I had a couple. I'm not sure if i'm following your point. Did you bring up this dispute about the survey and the location of the dirt in the earlier hearing?

Hughes: Absolutely.

Hales: And I guess I need to hear opdr's response to that later, but -- so you've never been able to come to any resolution with the department about the location of the dirt? You're still arguing about where it is, not whether a violation occurred?

Hughes: They're stating that their people with their tape measures were a far more accurate reading, and actually in the testimony at the hearing, jessica actually did admit that their measurements may possibly be off. Again, I quoted this when I -- I had the ability after the hearing to say anything I want to the hearings officer, and again, I pointed out all these points to him. But they were on deaf ears.

Hales: It would have to be an awful lot. Off a great deal in order for your violation not to have crossed that threshold. From just looking at the diagram here, the exhibit c-6, you would have had to have been -- all the dirt would have had to have been inside the lot corner, it looks like.

Hughes: It was.

Hales: To be in the transition zone.

Hughes: It was. And I have documentation from center line concepts.

Hales: Your surveyor --

Hughes: An overlay actually overlaying the outline of the dirt piles which clearly show inside the 25-foot resource center. I mean, that's exactly what our point is on this situation, because a white stake, these are used for approximation. They're not used for accurate monuments.

Hales: I understand that. But they'd have to be looks like at least 20 or so feet off in order to -- for this to be a valid excuse that you don't need to mitigate the problem.

Hughes: If you were to drive out to that property and look right now to where the pin is, you would see heavy vegetation approximately seven feet away from the corner of that pin, heavy

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vegetation. There's no way that was ever destroyed. My argument is clearly that I don't even know how they came up with this amount, because if you actually went out there on a road trip and you took a surveyor out there and he documented what they're saying is, you would be in heavy vegetation that I supposedly destroyed, and it's not there. And it's there.

Hales: On the other side of the coin here, if we determine that a violation did occur, what's your reaction to the suggestion that since you've already sold the house, the only way we can make sure the mitigation plan is carried out that there would be some sort of performance guarantee after all the -- the homeowner is the one left holding this bag legally, if we don't have that from you.

Hughes: Well, what I could -- the two points I would bring up is, first of all, I don't have a final permit that. Needs to be done. The house needs to be finalized. Second of all, the homeowner, who I've worked very well with and have been very honest with in this whole process, is willing to sign a document also granting for some reason if I do not comply, he's willing to take responsibility, because that's the kind of person I am.

Hales: Why do that instead of a performance bond?

Hughes: Well, probably because a performance bond is going to take more money out of my pocket. I've already spent over \$10,000 this. House has almost been a bust, to be honest. The percentage of profit in this home is about \$15,000, and I've spent almost all of that in the fees that it's taken to get all the way to this process. I've spent I guarantee you 11 to \$12,000. So I think what he's probably doing is saying, you know, Mr. Hughes is an honest person, we're willing to put our name and dollars on the line because we know he's going to fulfill this. Rather than having me put 5 or \$10,000 up again of my money sitting in a pot that I can't utilize, plus the fact that I'm going to have to go out and purchase trees and hire somebody to put all this implement this whole process. That's going to cost money as well. As you can see, the cost is going to escalate again and again. I've been a builder for ten years. My builder board record is impeccable. I've had -- I believe three actual homeowners that have come against me and every single one of them was resolved. No one's ever been against my bond. Via perfect record in that respect.

Hales: Okay.

Katz: Thank you. Anybody else want to talk?

Saltzman: I have one more question. I'm confused about the trees. There were trees removed.

Hughes: There were some --

Saltzman: You showed us an aerial photo, and there were trees there, and I'm assuming they're no longer there and you're going to have to replace those.

Hughes: There were trees removed. Some were actually not even in the ec area. If you looked at the picture you'd see the line actually as -- is at an unusual angle, chopping off the back corner of the property. Some of the trees removed were actually inside of that which had nothing to do with it as far as an environmental issue. And some of them were in the transition zone. Yes. I'm not contesting the transition zone situation and the dirt was in the transition zone, absolutely.

Saltzman: You are replacing those trees that were lost in the transition --

Hughes: I've actually already put in four trees, and am willing to again, do whatever is necessary to mitigate that situation. Again, I just feel it's necessary that the mitigation process was based on how much area was damaged. I feel that the amount of damage was nowhere near what they're saying it is. Again, that's cost, because for every foot of damage they want so many trees and shrubs to enhance what was damaged.

Saltzman: According to your survey, you didn't intrude into the transition zone?

Hughes: I intruded into the resource center, but not into the resource center, no. Correct.

Katz: You mean to say you intruded into the transition zone, not --

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Hughes: Correct. Transition zone, not the resource center.

Francesconi: Why did you do that?

Hughes: Why did I do that, sir? To be honest with you, and I had pictures to show this in the very beginning, when I dug out that lot, we found huge pieces of asphalt. We also found two ridges of asphalt. I had to dig down eight feet where I should have only had to dig down four. It produced a lot more dirt. The inspectors all saw this, and I came to the developer and asked him why I was not told that there was asphalt put underneath this property, why that was not disclosed to me. He said oh, it's engineered fill. I then talked with several people and asked them if asphalt was considered engineered fill. I got people that I talked to said no, he then showed up to the property with the engineer is that supposedly allowed this to happen and said oh, yeah, it's typically perfectly all right to go ahead and put chunks of asphalt from an existing old road apparently, into two layers, two veins across this area. I didn't feel comfortable with building on top of that, a home, a structure that people live in. I didn't feel it would be sound. So it caused a more enormous amount of dirt than was expected originally. And to be honest with you, the hard thing is as a builder, I don't just build one project at a time. I build typically two to three. So I can't sit at a job all day long and baby-sit that job. So some of it falls on the people that we hire, and unfortunately I hired an excavator that even though he saw on the paper ec area, failed to comply with that. And I do realize i'm having to sit here before you because of that and not him.

Francesconi: Why haven't you fixed it already? The part that -- or have you?

Hughes: Oh, absolutely. I've already -- as jessica I believe has pictures of, i've already seeded that entire area. There is no dirt remotely even close to the resource center. It's been dug back and out, and i've actually removed about eight loads of dirt from that area. I've planted four big leaf maples in that area, again, that's what I felt would be reasonable and of course the city of Portland did not agree with that. And again, i'm not an environmentalist, so I was just trying to do the best I thought.

Sten: At this point you don't think the hearings officer was completely right in how they described what went wrong.

Hughes: I don't think the hearings officer was correct in the fact that he completely omitted center line's findings, and in the fact that the city of Portland required me to pay for that and have that done, and then did not want to use it as evidence. I mean, it's very apparent to me they would have loved to use it, had it shown the violation. But because it didn't show the violation, they no longer wanted it. That wasn't something they wanted to talk about.

Sten: You're not appealing the hearings officer's decision?

Hughes: As far as --

Sten: Have you appealed the decision?

Hughes: I didn't do the appeal.

Sten: What i'm concerned about, i'd take you at your word, but if you're in dispute with the hearings officer as to what the right mitigation is, that's what you're required to do, how -- are you going to do what the hearings officer and the planning bureau told you to do or are you going to keep disputing it?

Hughes: No. Absolutely not. Again, i'm here today because they said we would bring up any points I felt were -- I thought extremely important.

Sten: Okay.

Hughes: Again, i'm here, i've been a builder for ten years, I have an outstanding record. I've had no criminal record, I have nothing. I'm a fairly decent person, believe it or not.

Sten: I believe that.

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Hughes: Whatever is stated to me, i'm going to do. I'm going to comply with. If that means put 100 trees in that area and that's what everyone decides to do, i'm going to do it. I plan on build -- being a builder a lot longer than the next week or two.

Katz: Any further questions? All right. Anybody in support of the opponent of the appeal? All right. Linda, have you a rebuttal, five minutes. Then we'll bring staff up and see if there are any questions.

Bauer: Linda bauer, pleasant valley neighborhood association. He now has new violations at a different location. I'm very concerned, very concerned.

Katz: Linda, that's probably not appropriate if it's not -- if it's new information. Not related to this case.

Bauer: Complying with the rules is new forks because at the time of the hearing he hadn't complied with the rules. So I guess I need to state that as well.

Katz: Okay. Go ahead.

Bauer: I think for everybody's good that performance guarantee needs to be required. Thank you very much.

Katz: Thank you. Okay. We'll ignore that statement with regard to any other building activity. All right. Staff, come on up. Does council have any questions of staff?

Hales: Can you recount for us sort of the staff's reaction to this debate about the survey corners, where the dirt was located, and -- I can't -- i'm not sure why we would have required him to go back with a subsequent survey, but if we did do that, then why didn't that have a bearing on this dispute? Can you throw some light on that from the bureau's perspective?

Wilcox: Yes, commissioner. I submitted an exhibit to the hearings officer, it's exhibit h.3. We did look at the survey site development required at the time because of the amount of cut and fill. So we investigated the survey and at this time the inspectors took a look at it, went out to the site, took photographs, and I did include a site photograph in the hearing, i'm not sure if I can put that back up. This photograph is an important fact to look at.

Katz: We don't have it yet.

Hales: Hang on just a second, jessica.

Wilcox: This photograph is very significant because it all depicts large vertical cut of the fill. An obvious sign fill has been removed. This is important because this picture was taken in february, one month before the survey by center line was completed. Therefore fought -- the survey of the fill piles was completed after an unspecified amount of fill had been removed.

Hales: So what we're seeing there is a lot -- there was a larger volume of fill, right, and somebody's gone back and removed part of it, thus the big cut on the left?

Wilcox: Yes.

Hales: And the distance that you're showing there, I can't read it on my monitor, is that 9 1/2?

Wilcox: 9 1/2 feet.

Hales: Beyond the transition area. By our measurements?

Wilcox: Yes. And what the inspectors did, as mr. Hughes pointed out, the white stakes were out there. As mr. Hughes said, the white stakes were there because the official survey monument was covered with soil. That official survey monument is in the resource area if you look at the site plans. And i'll move to that one. This survey point right here is the one that mr. Hughes is talking about. If it was covered with soil, then as you see, this is the resource line, it's clearly into the resource area and that's why they had to put the white survey stakes there.

Hales: So if he had stayed within the transition zone, the stake would have been visible.

Wilcox: Correct.

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Hales: Okay.

Saltzman: Could you go back to that photo again with the tape roll? On the face of that fill right now, that's where we measure the 9 1/2 feet into the resource zone? Or that length?

Wilcox: Correct. What the inspectors did, I believe there's a stake right in this corner down here, and so they went out and then took the measuring tape out.

Saltzman: And mr. Hughes had his survey company --

Wilcox: Come in after. And in fact the survey actually states that it's the location of fill, not location of disturbance. We believe the survey they took was -- it was one month after the violation occurred, one month after this picture was taken, this picture shows fill was removed, and the survey says that it was location of fill, not location of disturbance.

Saltzman: So even after this removal there's still fill.

Wilcox: Yes.

Saltzman: Present in the photo. Okay. I guess the other issue -- were you through? Go ahead. The acceptability of a homeowner in essence guaranteeing the performance. Is that a mechanism that's allowed?

Wilcox: It is, the same issue came up in the hearing and staff recommended a performance guarantee that -- to ensure mitigation was completed for the entire five years. Because my --

Saltzman: As opposed to the homeowner guaranteeing it.

Wilcox: Correct. Because during the process of the violation, we cite the property owner, and the property owner at that time was mr. Hughes. So during this land use review, mr. Hughes was the property owner. During this time, he has sold the property. So we felt the performance guarantee was best to follow the original property owner.

Francesconi: That's for five years performance bond?

Wilcox: Correct.

Francesconi: How much does that cost?

Wilcox: Well, what the applicant is required to do is get three estimates, and there's a series of items that they're required to do that's listed in the code, and it requires three estimates, so i'm not sure. What it does is takes into account the amount of plantings.

Hales: And the duration of the performance bond has to be so long for what reason? Just to assure survival of what's planted?

Wilcox: Correct.

Hales: Five years seems like a long time.

Wilcox: Correct. It's to ensure the plantings have survived.

Hales: When we do require performance bonds and -- excuse my ignorance of how often with with -- we do this, is five years the normal span?

Wilcox: We haven't really required them too much for environmental violations because we're starting to do these more often. I'm not sure how they've dealt with this in the past.

Katz: Is that in the code or in the rules?

Wilcox: This is in the code, a performance guarantee. For five years, no. In the code it states that --

Hales: One may be required?

Wilcox: Right.

Francesconi: There's no legal question here? We have the authority --

Beaumont: You do have the authority to require a performance bond as a condition of approval.

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Francesconi: I think we probably should, but it seems a little expensive and a little long to me. I don't know. Is there any alternatives here that staff can provide us? Maybe i'm just the only one here.

Wilcox: I can definitely get back to you. I'm not sure what other alternatives --

Katz: We're going to take care of this right now.

Wilcox: The performance guarantee is in section 33.700.050. The amount of guarantee -- the amount of the guarantee must be equal to 110% of the estimated cost of performance. Then the applicant must provide written estimates by three contractors.

Hales: That could be just for the cost of the replanting. It was suggested it be a five-year performance bond based on some sort of maintenance requirement. I guess while I think it would be excessive on one hand to simply hope that the homeowner would assume this responsibility, I think it might be excessive on the other hand to tie mr. Hughes or any other builder to this mitigation requirement for five years. So I guess some sort of performance requirement that assured that the planting was done by the contractor seems reasonable. The maintenance of that planting in truth is going to fall to the homeowner anyway, regardless of what we have in the code or in the agreement, because mr. Hughes has moved on to other projects and the homeowner lives there. So if -- I think with any environmental zone mitigation effort, the property owner is responsible for maintaining the plantings, and if they don't do it I guess they're subject to enforcement at least theoretically. So I guess -- doing this on horseback here, I have the same sense I think that you do, jim, that something would be reasonable here but maybe not that much. I think a requirement -- performance bond requirement to comply with the mitigation plan is something I would be interested in seeing, but not necessarily a maintenance requirement. See what i'm saying?

Francesconi: Yeah. Is a maintenance requirement in the --

*******:** In the code?

Francesconi: Normal?

Wilcox: Yes, it is.

Hales: I thought it was more general than that, i'm sorry.

Francesconi: You say that -- read that language again?

*******:** The amount of the guarantee?

Hales: Just how the guarantee is described.

Francesconi: Yeah.

Katz: What you read before. You read the code, section --

Wilcox: I'm sorry. 33.700.050.

Katz: Read it.

Wilcox: The section states requirements for performance guarantees when they're required in the applicant by this title or as a condition of land use approval, then it gives the type of guarantees and the amount. The amount of the performance guarantee must be equal to 110% of the estimated cost of performance.

Hales: But that doesn't specifically direct that it deal with maintenance, right?

Wilcox: Right. I see what you're saying. There is another section of code that requires monitoring and maintenance. What the performance guarantee does is it ensures that mitigation plantings are installed. So if you would like, we could do a performance guarantee to ensure plantings are installed, but then require the applicant -- the property owner to monitor and maintain the site for a period of five years. What we require them to submit a monitoring maintenance plan yearly.

Hales: I guess --

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Katz: Let's -- did you have maintenance language in the code that you're checking out?

Wilcox: Yes.

Katz: Could you read that.

Wilcox: 33.24 -- maintenance of landscaped areas is ongoing responsibility of the property owner. Require landscaping must be continuously maintained in a healthy manner. Plants that die must be replaced in kind. A fine may be levied if the landscaping has not been maintained and the plants are required to be replanted.

Hales: But that's a code requirement. It falls to the property owner. Measure mr. Hughes at that point is no longer the property owner.

Saltzman: He was at the time.

Katz: Let's -- let's hear from this side.

Sten: Mr. Hughes, I buy that you're trying to do the right thing and have a good record. But in this case I think you got apples and oranges, because the contractor made the mistake, it's a mistake that's being mitigated. The code number we're talking about is maintenance and mitigation in a normal situation. I've got a homeowner who no offense, you said moved in against your advice without a building permit. I think you gotta have a five-year maintenance bond from the contractor to fix the mistake the contractor made, whoever's fault it is. You haven't mitigated destroying an environmental land by planting. You've got to get the plants growing, make sure they're maintained. If you can work it out with the homeowner, great, but it's the contractor's responsibility.

Francesconi: If I could not respond but maybe agree, I didn't realize that the maintenance part was a normal part of the performance bonds. Now that you've read that section to me, I guess I don't think we should create an exception here either. We just should follow the code.

Hales: Well, let me throw this into the discussion. I don't think we've done this before, or if we haven't -- if we have, we haven't done it often, right? And i'm -- as usual, i'm going to be the designated warrior about the administrability about these requirements. We're going to have these cases under our e zone regime where somebody fails to perform or otherwise screws up. Contractors build stuff and move on to the next project. If we've got all these performance guarantees sort of sitting around in files of various durations, i'm nervous again about our propensity to keep asking the enforcement, the nonfee funded enforcement side of the office of planning and development review to be chasing around after possibly vanished contractors trying to deal with 3-year-old or 4-year-old performance requirements. I'm just -- before we walk through this doorway of starting to do this, I guess i'd like us to know what we're up to.

Sten: I think that's -- I think you absolutely just nailed why you need a bond.

Hales: Right, but can we afford to actually make this fairly cumbersome system work?

Sten: If your premise is it's going to be hard to enforce it, which is the premise you just put down, then that's why there should be a bond. If it's relatively easy to enforce and you can take people at their word, then you don't need a bond. But what's going to keep that situation -- there has to be -- we shouldn't have environmental zones or we have to some extent enforce that if you destroy them through fault of your own or not, it's your job to fix them, and if we say it's really hard to keep track of it so therefore we're not going to put a bond on it, what's there?

Hales: I'm not saying that, erik. I know that without the bond we're going to have a hard time. But i'm saying with the bond, we're going to have an administrative challenge. There's a warning over the doorway we're about to walk through. I'm just trying to articulate it.

Katz: Did you have anything else you wanted to share? Why don't you grab a mike. You don't need to write it for jennifer.

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Rebecca Esau, Office of Planning and Development Review: Jessica. Rebecca, office of planning and development review. We've been talking about bonds and the city attorney has consistently said if we do go the route of bonds it would be better to get a letter of credit as opposed to a bond, that's just a technicality. But it's much more workable from opdr's standpoint, a letter of credit. The other thing, maybe one option would be to get a letter of credit for the plantings and then have a separate letter of credit so once he gets the plantings in, gets that money back, and then do a separate letter of credit for the maintenance, maybe a three-year period would be more workable than five.

Katz: Does that work?

Hales: I like that idea.

Katz: Will it work? Hello. Will it work? I'm asking you.

Esau: I think it will work. But I don't know if that's workable --

Katz: I just wanted to know if you thought it would work.

Saltzman: The letter of credit on the trees comes back after the planting or after the five-year period?

Esau: One letter of credit for the plantings. So he gets that back after the plantings are installed and a separate letter of credit for the ongoing maintenance and that could be shortened to three years.

Sten: I'll leave this to you guys, because I think commissioner Hales is correctly worrying about administration, and certainly i'd leave to it the contractor because he's in a position he doesn't want to be in if that's preferable, my hunch is if you're worried about administrative issues putting two letters of credit in place for relatively small amounts of money, it's probably more administrative work than having one. But i'll leave that to the bureau.

Francesconi: Except he can get his money back. Which is important. I vote for two letters of credit.

Hales: I think if we're going to do it, we might as well make the burden as small as possible.

Katz: Okay.

Sten: It's probably not cheaper.

Hales: I don't know.

Katz: All right. There's the suggestion that it be two letters of credit that as soon as the plantings are done that letter of credit is set aside, and the other letter of credit is for maintenance, and you've identified three years versus five years. Can somebody tell me why you came up with five years? Is that -- have we done five years before?

Wilcox: We do five years for environmental violation reviews. Typically the land has been destroyed in some instances so we've conferred with the bureau of environmental services and they say five years is appropriate for -- to ensure plantings have been established. So that's what they use and we decided to use their expertise.

Hales: So ready for a motion?

Katz: Go ahead.

Hales: Okay. So --

Katz: Hold on.

Beaumont: It sounds like what we're aiming for is perhaps attaching another condition of approval to the hearings officer's decision.

Hales: Right.

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Beaumont: If you decide to sustain it. I might suggest that you outline -- I think you've pretty well outlined the concept of what you want. Perhaps if we can bring it back with final language for a condition next week, final it next week.

Katz: We'll do that. All right. Commissioner Hales, go ahead.

Hales: I'm going to move that we do make that tentative decision to uphold the hearings officer's decision, but add a condition of approval requiring a performance guarantee, and I think we might want to let staff work some more on that and give the applicant the option of either bundling it all together for installation and maintenance, or separating them, if that's advantageous for the reasons that's jim, you were talking about. And bring that back in two weeks?

Francesconi: Second.

Katz: And the -- do you want to talk about the length of time?

Hales: Three years I think is reasonable.

Katz: All right. There's a second on that. Discussion?

Sten: I think it ought to be five.

Katz: Commissioner Saltzman?

Saltzman: I'm voting to go with three.

Katz: Okay. I would go with five, but that's fine. You've got the three votes -- the votes on the three. Roll call.

Francesconi: You know, when there are violations, there need to be consequences. So I think this is good that the staff has come up with this, including a performance bond, including maintenance.

So I think we've come up with a reasonable approach here. On commissioner Hales' real concern about how do we enforce these, there's a way that some of the costs, there could be fines or a mechanism that that money then goes to this section of opdr to enforce these things, so we can tie these two together, I don't know, that's up to commissioner Hales and to the staff. Last thing, jessica, you did a very good job. You did a very good job. Having those codes there that we should have had, you were very clear, very assertive, did you a very nice job.

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

Francesconi: Aye.

Hales: Our environmental zone regulations are expensive and difficult to comply, particularly on sloped sites. I think in many cases it's hard to frankly justify some of what we require. But it's on the books, people have to comply with it and when they violate the requirements, we have to do this. I'm going to continue to raise the concern not just in the quasi judicial context, but about the - - all the regulations we've adopted, and others that we're considering, and the feasibility of administering and enforcing those codes after the fact. So thus my quibble in this case. But again, nice job on a difficult matter. So we'll look forward to your next appearance. Aye.

Saltzman: Even though i'm supporting -- the reason i'm supporting a three-year period rather than a five-year period, which runs against my own bureau's recommended policy, I think i'm going to support this on the merits of why I believe a three-year for this particular project is appropriate, and sufficient. But I do also want to add with the healthy streams initiative percolating up this way, we're going to have to look at a lot of these issues and revisit a lot of these assumptions in our code, and perhaps change them, perhaps not. But I think we'll have to have a new willingness to look at all these issues. But again, my decision is based upon the case here. Aye.

Sten: Aye.

Katz: The issue of enforcement is not a new one, and commissioner Francesconi's recommendation of taking a look at fee -- a fee structure for people who have violated these environmental requirements is probably a very sound one. So part of your budget assignment

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ought to be commissioner Hales, with your bureau managers, is to see whether that's doable and how much you can anticipate. Because, yes, you ought to have the resources to do the enforcement, and it ought to not be funded by everybody else who's complying with the law. Aye. [gavel pounded] okay. Thank you. Done well. You didn't even break out in a sweat: [laughter]

Hales: Two weeks, katherine?

Katz: Two weeks. Who was minding the store back there? All right. Item 91.

Item 91.

Katz: Okay. I'll take a motion.

Hales: Move that we -- do we need to do anything first?

Katz: Did you want to talk to us?.

Duncan Brown, Office of Planning and Development Review: No.

Hales: Here if you need us.

Brown: You have the findings before you. I think they're pretty self explanatory.

Hales: Thank you for another long chapter, another chapter in a long story.

Brown: Hope so.

Hales: Maybe the end. I move adoption of the findings. As revised.

Katz: I do hear a second?

Francesconi: Second.

Katz: Roll call.

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

Katz: Mayor votes aye. [gavel pounded] thank you very much, and we stand adjourned until tomorrow, 2 o'clock.

At 3:00 p.m., Council recessed.

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2:00 PM

[roll call]

Sten: The mayor has recused herself from this hearing based on her point of view of -- on cell towers. So i'll be running the meeting as the council president.

Sten: I'll ask the city attorney to explain the hearings, the rules of conduct and the order of appearance for the participants.

Frank Hudson, City Attorney: Good afternoon. Today's hearing is an on the record hearing. That means you have to limit the testimony to material issues in the record. That means that during the hearing you can only talk about the issues, testimony, exhibits, and other evidence that were presented at the earlier hearing. You can't bring up anything new. This hearing is designed only to decide if the hearings officer made the correct decision based on the evidence that was presented to him. If you start to talk about new issues and try to present new evidence today, you may be interrupted and reminded that you must limit your testimony to the record. [sirens] the order of testimony will be as follows. You -- we will begin with a staff report by opdr staff for approximately ten minutes, following the staff report the council will hear from interested persons in the following order -- the appellant will go first and have ten minutes to present their case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to the council. This three-minute time limit applies regardless of whether you're speaking for yourself or on behalf of the organization such [inaudible] association or neighborhood association. The principle opponent will have 15 minutes to address the city council or rebut the appellant's presentation. After the principle opponent, the council will hear from persons who oppose the appeal. If there is no principle opponent, the council will move directly to testimony from persons who oppose the appeal after supporters of the appeal conclude their testimony. Again, each person will have three minutes whether you are speaking for your self, on behalf of an organization. Next i'd like to say a few things about the scope of the testimony. This is an on the record hearing. It is not an evidentiary or de novo hearing. This means you must limit your remarks to arguments based on the record compiled by the hearings officer. Presenting your argument it is permissible to refer to evidence that was previously submitted to the hearings officer. It is not permissible to submit new evidence today that was not submitted to the hearings officer. The planning staff and I will be listening carefully to your arguments and if it strains from the evidence or issues presented at the initial hearing, I may interrupt you or remind you that you must limit your argument to issues and evidence in the record. If your argument includes new evidence or issues, council will not consider it and it will be rejected and the final -- in the council's final decision. If you believe a person who addressed council today improperly presented new evidence or presented illegal -- a legal argument that relies on evidence that is not in the record, you may object to that argument. The council will provide time at the end of the hearing for anyone to offer this kind of objection. Finally, under state law, only issues which 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. Again, the council will provide a time at the end of the hearing for anyone to offer an objection.

Sten: Thank you. Does the council have any ex parte contacts to announce? Any conflicts of interest? Would anybody in the audience like to challenge the lack of ex parte contacts or conflicts of interest declared by the council? No? Okay. Let's get started with the staff presentation.

Ruth Selid, Planner, Office of Planning and Development Review: Good afternoon. My name is ruth, i'm the staff planner for this case. Do you -- have you a copy of the power point

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presentation in front of you if you want to follow along there. This proposal is for a conditional use and design review for a radio frequency cell site, 95-foot tall mono pole, the type 3 conditional use is required because the height of the pole proposed is taller than the height limit base zone, which is 75 feet. Also included are ground level equipment cabinets within a fenced and landscaped enclosure. The site is immediately east of i-5 on a slope between the i-5 freeway and macadam avenue. The pole would be 36 inches in diameter, of steel painted brown to match the office building adjacent. Antennas would be enclosed at the top of the pole. The hearings officer's decision was denial. In the decision conclusions, the hearings officer states the applicant has shown the criteria are met but have not shown design criteria have been met. The conclusions he states, the proposed pole is located approximately 35 feet from a rank 2 site within the Portland historic resources inventory where it received high scores for its architectural integrity and context.

The height of the proposed pole in the location next to the historic structure fails to meet a number of the design guidelines. Design guidelines found were not met are a5, enhance, embellish and identify areas. A5-1, in north macadam recognize the special history of the area. Respect architectural integrity. Complement the context of existing buildings, and finally, design for coherency. The applicant's argument include the following. The decision errors in its finding regarding 47 usc 332. This is referring to the telecommunications act of 1996. This is not a criteria for approval of a conditional use or design review. The hearings officer does discuss this act in his findings where he -- he cites case law that has been shown -- which states that it is allowable for a jurisdiction to refuse to approve a facility based on aesthetic reasons. They also state that the decision errors in several other approval criteria. They've also stated the credible evidence that -- is that the proposed pole provides service by the least intrusive means and from the only feasible location. And also if the council had wished to prohibit construction of a 95-foot-tall pole on this site or de -- it would have done so. This map is the applicant's submittal showing three sites that they considered for this facility. The proposed site is candidate c, here, it's actually right between the yellow line which is macadam avenue and the orange, which is i-5. And then two other sites further north that show candidate a and b up where 405 and i-5 kind of join. This proposal is notable because it's only the second time that a service provider has requested a mono pole within the central city plan district in a design zone. The only other proposal was one for a site on bond avenue in the middle of the bond avenue area here to the east of i-5. That is this facility. I was the planner for this facility. This provider originally proposed a mono pole and this is the approved design, it includes antennas within this circular tower. This material is -- allows radio frequency transmission through it, but it's been designed and detailed to give the appearance of a water tower.

Here's the zoning map. This side is at the very southern edge of the central city plan district immediately south of it is the macadam plan district, and to the west are other areas that are outside design zones. The general site layout, if you look at the upper right-hand corner, the dark area would be the enclosure and the pole to the left, this little circle. This map is interesting to -- showing the contours there. It's very steep slope, this enclosure and the pole would be located right where the slope breaks and drops steeply down to macadam avenue. And here in this aerial you can see the site, the little red dot there, the pole -- yellow lines show the ownership and the pole and the equipment would be at the kind of -- just to the right of the top part of the building, about 35 feet away. Right at the edge of the parking lot. And it's right at the edge of the ownership. All of the greenery that you see to the right of that between the site and macadam avenue is actually part of the state highway system and is not under control of the ownership. This is a view of part of the building from the north. This little segment is a stair and utility kind of part that's connected with a little bridge element to the main office building. This building was designed by a notable

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local architect, richard w. Sundeleaf, who is the prone of the northwest style along with john young and another person who designed this building for his own offices in the '60s, and it's in very good shape, it's really intact with his style. It's notable for simple wood material and a very strong horizontal emphasis in the roofline and in windows. The vertical battons are a typical element in this style of architecture. This photo shows the approximate location on the site where the pole would be, about where these two guardrails come. It's just 35 feet from the building and then the enclosure would be here at the edge of the slope. Again, all of this shrubbery to the right is off the site on the state highway land. And this is stepping back onto the south from the neighboring offices' parking lot, where you can see the building to the left and the pole would be there, as you can see, quite visible from macadam avenue, which you see on the right below. This is a photo simulation our office prepared to show the relative width of the pole and approximate height in relationship to the building. The pole would actually be slightly higher, but it would be on the reach of the slide that we -- went beyond the reach of the slide we had. Here's another reputation from macadam avenue. This is looking from the north. This shows the actual proportionate height and relative width of the pole in relation to the office building, which is just behind the -- some of the trees there. This is the site viewed from macadam avenue from the south. You see the office building in the center, the pole would be just to the right and coming up above the height of the trees. In this context there are other poles, but they are the kind of pole that is a much smaller in diameter, the typical light pole, signal pole that you associate with a traffic intersection. This pole conversely would be really out of context up the hill amongst two and three-story office buildings with the sky and the hillside as a backdrop. Again, here's the site from the west side of macadam from the street level. The pole would be visible clearly visible right to the right of the building here. Again, very much out of context at that scale for a three-foot-white, 95-foot-tall pole. This is a photo simulation of the pole. The building at the greatest height is 35 feet. That's at the south end, and this pole would be 95 feet high. In summary, the staff recommended denial and the hearings officer's decision denial, he found the applicant has not shown all criteria for design review are met. The scale and location are not compatible with the building or the area and the visual impacts of the tower would be considerable. Alternatives facing the council would be denial, which would uphold the hearings officer's decision, rather -- denial of the appeal, if you wish to approve the appeal with conditions or as proposed, revised findings would need to be adopted for this case. That concludes our presentation.

Sten: Thank you. Does council have any questions?

Hales: Since I got here late, can -- i'll go back to ex parte and conflict statements and add my -- the fact that i'm here and that I have had no ex parte contacts and do not have any [inaudible]

Sten: Any questions from the audience by commissioner Hales' statement? Hearing none, and no questions from the council at this point? I'll ask the appellant to come forward. You've got 15 minutes.

*******:** Is there a running time kept?

Sten: It says you have 42 seconds, but we'll adjust that.

*******:** All right. We won't count technical time against the 15.

Ty K. Wyman, Attorney for Sprint: I think we're ready. Thanks for the tv timeout there. Technical timeout. My name is ty, my address is sixth avenue, suite 1500, Portland. I'd like to note that's actually a change of address from my prior --

Sten: Just a second. We think it's 15 minutes, correct? Sorry.

Wyman: I'd like to thank the council for its time and its consideration of our case. The context of this matter I think is distinct frankly from most that you see, and i'm certainly not saying all your

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land use cases are the same, I know they're not. But wireless facilities are unusual because they're permitting regulations are subject to this hybrid of federal and local law. The purpose of the federal law certainly one of the purposes is to set forth the national policy of complete coverage of wireless service. And that's really what this case is about as we'll detail for you a bit later. I would say the case is also unusual because this is a site that is essential to sprint to fill an identified gap in its existing service. There are a couple of really key findings from the hearings officer on that point. The hearings officer did agree that a gap exists presently, which is to say that presently calls at times of peak usage calls within the area of the subject site are often being blocked or dropped and that the site would be effective to fill the gap, which is to say, prevent those calls that are currently being blocked and dropped. Furthermore, the record shows that really that there is no other site that can fill this gap. So what we're presenting to you, then, is certainly a case that's squarely within the telecom act, and the provision of the telecom act that prohibits the city from, through any permitting decision, effectively denying service within an area. The case law is discussed by the hearings officer, and as the hearings officer agreed, does bear out that the -- the national policy, the law in the telecom act is that we don't want these gaps, and that local decisions cannot effect or perpetuate them. That's what we're going to show you today. We got about continuing a football analogy, we probably got down to the 10 yard line with the hearings officer, his comment was, you looked at three alternative sites, that wasn't enough. In fact, we did focus on three specific alternative sites, however, as our radio frequency engineer will explain, there was a lot of description as to why sites west of the subject site, which is to say up the slope, cannot be effective or would not be effective to fill the service gap that is the point of this application. So with that, i'm going to introduce the folks I brought along with me. Laurie hutchin, who is with sprint, and she'll testify next, then we'll hear from amal, also with sprint, he's a radio frequency engineer. We've got a couple of zoning specialists along with us from sba, ron and april, if we need their support. So with that, i'll turn it over to miss hutchin.

Lori Huchton, Sprint PCS: My name is laurie, i'm with sprint pcs, i'm a project manager. My address is 4683 Chabot drive in pleasanton, california. A background on how we got to where we are. We've been working on this project for about 21/2 years now. We started with the -- started looking for candidates in the area, first we looked for locations on rooftops, and were not able to find anything to meet our f needs or our network operation needs. Then from there we started looking for candidates, landowners in that area that would have a large enough lease area to hold our equipment, meet the setbacks and the requirements of the zoning, which is where we -- how we ended up with the candidate we have now. He was the only landowner that had a -- not even probably just a lease area big enough for our equipment. It doesn't allow for much more room than that. That is how we ended up with the candidate we have now.

Saltzman: Is it the same owner of the building?

Huchton: American wood products, yes.

Wyman: So long and short is there's a lot that goes into finding these sites. It's not as if every site in the area is necessarily available to us. In fact very few of them meet the criteria that miss hutchin just went through. What I want to do before we go to amal, who is really going to go through the meat of our presentation, I want to point out page 15 of the hearings officer's decision. I want to isolate for the council where our difference with him is and how frankly small that difference is. The hearings officer finds the applicant did show with substantial evidence that the proposed site would effectively fill the service gap. The applicant did not show with substantial evidence that there was not another location which would be less intrusive at the same time filling the identified service gap. He goes on to say, evidence of three alternative sites being unsuitable

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by itself is not sufficient to persuade the hearings officer that other sites are not available, which would be less intrusive. For example, there was no persuasive discussion of any sites outside of the d overlay zone. We did focus admittedly on three specific sites, and i'll -- I think amal will address how we came to address those sites. However, there was a broader discussion in addition to the considerations that miss hutchin has already explained, there was a broader discussion of why we can't go farther up the slope, which is where he would send us. So we're down to just this alternative site issue and whether we have exhausted the alternative sites analysis that is required for this. Amal?

Amol Bhoje, Sprint PCS: Hem low, I work as an rf engineer with sprint pcs. I live in Oregon. I've been working as an engineer for the past 5 1/2 years. All I would like to present right now is that why do we really need to go at the specific location that sprint is insisting we want the tower on kelly avenue. Just before I began with my presentation, I guess the council must be aware that - each operator works with a different technology. As far as sprint is concerned, in all its market, sprint pcs works on something called cdme. Core division multiple axis. It works on a single frequency. I mean, the fcc normally allocates frequencies to different carriers to work in different markets. With sprint, with cdma, the technology works in such a way that all the antennas in the system transmit at one frequency. So when you just go -- when I just present my presentation, the main thing that I need to stress is that it's not possible to have towers near each other in cdma. That's because if we have towers near each other, one tower pulls interference for the other tower, and as a result of that, the capacity handling the -- the traffic handling capacity of the existing tower goes down considerably. So we basically want to address two points by having this site at kelly avenue. One point is that we want to -- capacity to increase and secondly we want coverage to increase. So i'll just go through the presentation.

Saltzman: Which frequency does sprint use?

*******:** We are basically at 1955 megahertz in the market.

Bhoje: This is the first slide. As you can see here, this is i-5, which goes all the way to downtown, and this is the macadam avenue. I have indicated three sites over here. These are existing on-air sites of sprint pcs in the region. Here is one, this is the second one, and this is macadam, the third one. This is the existing coverage of sprint pcs in the region. Just to go through it, the spots which show red, the coverage is very good. You can get in building, indoor. Basically in a place like downtown, we prefer to have such coverage so if you go inside a building, the call doesn't drop. Then we go to orange, that's a lower signal level. You can have -- in the commercial area, shopping complexes, in malls. Yellow coverage is basically on-street coverage. I mean, you can get signal on the street, but if you go inside a building or so, the call may drop. As you can see over here, this is our bad coverage area right now. We have yellow spot, again, we have some problems along i-5, and because of this we are dropping calls in that region. This is the proper site where we are proposing the sites. These were the site that's were indicated in -- which sprint already has in that region. This is the -- basically the hearings officer earlier mentioned that we should try for something towards the west of the proposed site. Here is the proposed site, and this is to the west of the proposed site. If we -- this is the highest elevation that you have. And it just looks down all the way up the river. As I mentioned earlier before starting the presentation, if we held sites nearby, or if the signal from one site overlaps the signal from the other site too much, then it creates interference in the network. I mean, this would be an ideal spot to have something like a tv tower or something, which is only a one-way communication, and you just transmit and all the people around you see the signal. But since cdmas are two-way communication and we have to take care of interference issues, if we do put the tower anywhere in this region, and since this is our

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area of coverage, if you point any antenna facing toward the Kelly Avenue region, it will just fly across the viewer and we will have intense interference towards the eastern side of the river. And this will basically defeat the whole purpose of the site, because just for having one side, you are eating up the capacity of all the surrounding sites in the region. This is basically the clutter. Clutter is like -- this is the downtown, you see this red, these are huge buildings. Orange is all the commercial area, and pink is the residential area. If you basically look at the Kelly Avenue region, you see there are many commercial spots in the region, which Sprint needs to cover. And we're -- at present we have very bad coverage. This is something that I had already mentioned in my hearing, and that was -- this is the f-2 cluster of Sprint. There are two ways in a CDMA to improve your capacity. One way is to just add another site. Adding more sites basically increases your traffic channels. You can handle more calls. But then in a place like downtown, where the traffic volume is very high, you can just go on adding sites and sites and sites because it's just not possible. So the way CDMA works, we have one layer of frequency, and then a second layer of frequency, so you can have ten layers of frequencies. And each frequency caters to different customers. This is -- and you call like the base frequencies f-1, f-2, through t-10. What you see here is the f-2 cluster of Sprint in Portland. This is the only f-2 cluster that Sprint has in Portland right now. Here is the Kelly Avenue site location. And if you see it's right inside that f-2 cluster. Always it's highly recommended by the -- that whenever you log on to f-2 frequency your call gets -- the base of cellular communication is that as you move along a certain part, your call gets handed over from one site to the other site, then it gets handed over to the other site. If it does not get handed over, that means it becomes a stationary form, which is useless. So if you log on to f-2 frequency channel, it's always desirable that you go on handing from an f-2 site to an f-2 site, to an f-2 site, until you reach the border. This is the red border.

*****: How much longer do you need?

*****: Oh, five minutes. It's too long?

*****: You're down to 16 seconds.

*****: Oh, okay.

*****: We may ask the council for indulgence for three minutes.

Saltzman: I'll check.

*****: You may want to sum up.

Bhobe: Okay. Here if we don't have the site we have a hole, and this would really -- this is the site, the prediction, the coverage prediction with the site proposed on air, and you see the entire region is covered. This was already shown by the planner. These were the sites which were initially considered. This is the last slide. Here all I want to -- the -- this is one of our sites. We cover an antenna in this direction to see if it covers the region, and as you can see, this does not cover the region, because -- negative 120, which is very low.

Sten: Thank you. You're out of time. It sounds like I'll just move to questions from the council. I think there will be enough questions.

Hales: Don't take your power point off. If you would, go back a couple of slides to the one showing your predicted coverage with the tower. And that is -- I think I understand from your presentation what the technical problem is that you're trying to solve. The hearing officer's denial is based mainly on design issues, and the design issues in part turn on the proposal for a 90-foot tower. What would happen to your predicted coverage with a tower that was, say, half that height? Or a rooftop mount on what must be a 40-foot building? In other words, I realize it wouldn't be as great, but how much less would it be with a rooftop mounting on this building, or a more modest

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tower height, given -- you've got some topographic advantage to start with. Isn't it up on a ridge above the freeway at that point?

Bhobe: It's not above the freeway.

Hales: It's above macadam but below the freeway?

*****: Yeah, the proposed is a little lower in elevation.

Bhobe: The main problem we have over there is that the area is surrounded by trees. Even if we go to a height of 50 feet, and if the signals are going through the trees, it's of no use. Secondly, the main point is this site needs to handle what -- between the other sites. Okay, if somebody's driving from downtown towards mack -- macadam, it hands over here, this site picks up the signal, he's driving farther, and if it -- it can't handle it with this site, the call gets dropped. Basically 95 -- we're not asking for more height, because if we go higher it will create interference. What will happen is the capacity of the entire system will go down because of that interferes -- interference. 95 is the -- the design is basically designed with minimum tower heights.

Hales: I see.

Wyman: I think we've done a good design. The staff acknowledged it's sleek, it's uncluttered. Is it perfect? No, but is there a perfect design for a 90-foot cell tower? No.

Bhobe: Also if you go into the -- we are kind of squeezed over there. I'm sorry.

Sten: That's okay. Further questions from the council?

Hales: Not for me.

Saltzman: So it's your contention you don't to meet the design review criteria?

Ron Meckler, SBA, Inc.: No, it would be our contention in -- and we submitted findings to the effect, that we do meet the design criteria. We submitted I believe five different designs to starve, none of which would -- to staff, none of which encouraged us to proceed with application on. This is the fake tree stuff, the faux water tower, all of it. We ran the gamut. We shrunk it down to get it as sleek as possible.

Huchton: We did do a photo similar of the -- sim of the water tank. There where our site is proposed, the tree looks ridiculous because if you have the tree standing there with no trees raw round it, it pretty much stand out and you can tell more than you could than with a slim stick design. But we proposed the tree, we proposed a flag pole, we proposed a water tank, we proposed a light pole.

Saltzman: Light pole?

*****: Yes.

Saltzman: Fly pole?

Huchton: Light pole. It's a slimmer design. At the top it has an accelerator, which is thicker in design, and halfway down it has lights coming off of it.

Saltzman: Was there another proposal too?

Huchton: The water tank, the flag pole, the tree pole and the light pole. And then what we have now, which is just a cylinder. Just a slim stick design, straight up and down all the way.

Meckler: And the staff photo sims, we would disagree with those. There are photo sims all over the record. It doesn't look quite as obvious.

Saltzman: I'm assuming staying within the allowed height limit of 75 feet would not serve your purpose.

*****: No.

Huchton: Yeah. We had originally had the pole located on the other side of the building and we had it at I believe 80 feet or 85 feet, and they suggested that we move to it the other side of the building and because we moved it, it went lower in elevation and therefore the pole height had to

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be increased to meet our coverage objectives. So we had originally had it at a lower height, but it was a little closer to the building. And at their suggestion we moved it. That's how we ended up where we are now.

Hales: What were the possibilities with respect to tower sharing?

*******:** Colocation.

Huchton: There were no colocations. There's none in the area of course like she said, there's only been a couple other applications, and there was no other towers in the area. We looked at some rooftops, but because of the terrain and where the buildings that we could -- and how some of them are designed, we couldn't locate on some of the buildings. But those ended up not meeting the objective we needed either.

Sten: Any further questions? Thank you.

Meckler: Thank you for your time.

Sten: Are there supporters of the appellant who would like to testify? Nope? Are there opponents of the appellant who would like to testify? Seeing none of either, I'm going to ask staff to come back up for questions from the council.

Hales: Ruth, I guess I'm -- if I could, erik, the question that's sort of -- this is focusing down to for me, maybe I'm not -- maybe I'm missing some of the criteria and some of the issues, is whether or not they have met the quote unquote least intrusive standard. And the hearings officer apparently concluded that they didn't. Am I getting that right?

Selid: Right.

Hales: And given the testimony that we've heard, what option other than simply not building the facility is less intrusive?

Selid: That's a good question. They did propose in a previous case a pole in a different location on the site that was more -- had more impact on the building. I think at that point it was 75 feet or 70 feet, because at that point they were thinking they could meet it, they wouldn't have required the conditional use review. But they would require the design review. You know, I can't tell you what I think the approvable design would be. In this context, in this particular site, I think a three-foot-diameter pole is a really unusual object to have on this hillside, particularly next to this building, very close to the building. If it was significantly shorter and further removed from this particular building, perhaps it could be approvable, but I haven't seen any proposal from the applicant that would minimize the impact of this extremely tall pole at the location on this site, which is at the point where I think it's most visible. Again, hit to get taller because they moved it out to this edge of the site.

Saltzman: So staff rejects the alternative configurations, or the tree, the light pole, was that -- was that you that rejected --

Selid: This particular case they did submit to the hearings officer an example of a pole as she explained as a light pole, it was part of their supplemental package to the hearings officer showing some alternative designs. They did not submit to the hearings officer a flag pole or a tree or a water tower. I think those were things we had discussed to some extent in a previous case, which they withdrew.

Saltzman: So had they suggested those, you're saying staff might have been --

Selid: I don't think staff would have been very supportive of those things. Again, the context here is very different from that of the other pole, which had the water tower configuration. That made a lot of sense in that location. That location is an area with a lot of industrial -- semiindustrial office, and a lot of vacant sites. It's on a site with self-service storage and a site that will likely be redeveloped in the future. So in that contexts -- context, a water tower had some connection to a

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sense of industrial use and so on, and it was also a pretty flat site. This site is highly visible from sidewalks and streets that are well traveled. The backdrop in this case is a hillside and trees. The context is two and three-story office buildings, it has no real connection to the more industrial or maritime nature of the other areas of north macadam.

Saltzman: What about the tree?

*****: The tree?

Francesconi: What kind of tree are we talking about? It.

Selid: Was a pine tree kind of thing.

Saltzman: Played out of steel.

Selid: The antennas were clearly visible projecting out from the pole that formed the sort of trunk of the tree. That's the one image i've seen on the website.

Hales: This particular design hasn't been used in Portland, but it does demonstrate that only god can make a tree.

Francesconi: I suspected. Forget it.

Sten: They look all right in wooded areas, because you can blend them in. But I don't think putting them as a standalone is a great design.

Hales: It's not a pretty sight. It's a good effort.

Francesconi: I have a different issue than commissioner Hales. Not the design, but the location. There's no other location. And they gave some testimony on that point. What's your reaction to that?

Selid: From the map that they showed and the other maps they showed today, it seems to me they had a fairly large area they were searching. It wasn't just a narrow area from the edge of the hill to macadam avenue, but in fact it stretched out up to like where 405 and the marquam bridge are located. It's a really large area, and it seems to me that since other service providers have been able to find locations that they could locate on rooftops or in the one case they found a site where they could do a pole in a stealth design that was suitable and fit the context of the area, it seemed to me reasonable that given that they did search a fairly large area, that there should be some other site that would better meet the design guidelines than this particular site. I think this is an unusually sensitive site to its location on a hillside, and next to this ranked 2 property.

Francesconi: Did some of those other sites offer 90-foot-height possibilities? Do you know?

Selid: The height limit in terms of allowable height for a structure is really not an issue. Other sites I think could have accommodated a taller -- whether that height would have been required in other locations, I don't know.

Francesconi: Thank you.

Hales: We might want to get the applicant back up for that question, because i'm curious about that too. Just the topography of this area, i'm still a little floored that the only solution is to build a 90-foot-tall pole below the freeway, when there's this massive bluff above the freeway just to the west. So it seems to me that -- again, i'm a layperson, so I need to understand what the technical considerations were, but it seems like a ten-foot-pole on an 80-foot bluff is an option as opposed to a 90-foot pole below the bluff. So i'm going to need some help from the applicant as to why that criteria was met.

*****: Do you want me to stay up here?

Sten: That's fine.

Hales: Perhaps --

Sten: Are there any other questions for staff? Let's bring the applicant back up, and I think it's you. Come on up. Did you understand commissioner Hales' question?

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Bhobe: Oh, yeah. I don't have my slides right now, but if you go to the slides, you will see that when our system is designed across a river, you usually don't point any antenna towards the river. Whenever rf signals are transmitted by an antenna, it's highly desirable they get -- a certain point. They're exactly covered the hole that you want to cover.

Hales: If you were on the bluff and aiming east, you would cross the river.

Bhobe: Yeah, because it's a straight dip.

Hales: I did -- did you explain that. I'm sorry. If you went up on the bluff and aimed east, north, and south, you would -- okay. I get it now. Thank you.

Sten: Any further questions for either staff or the appellant? Great. Thank you. Then i'll -- do you have questions?

Saltzman: I guess for ruth, the issue really boils down to, did they look at enough alternative sites.

Selid: I think that issue boils down -- the hearings officer found that they could meet the approval criteria for the conditional use review, which relates to filling the gap in the site. The -- what was not met are the design guidelines. So they -- the hearings officer found that they had not shown that they could meet all of the guidelines for the context compatibility, architectural compatibility for this particular design.

Saltzman: Does the design review commission get involved in these at all?

Selid: They would if this was not a conditional use case. In this case the applicant chose to attach the type 2 design review to the type 3 conditional use case, so it went to the hearings officer. If it had been simply a design case would it have been a type 2 and would have gone then on appeal to the design commission.

Saltzman: Are there any apartments behind on the west of that pole looking east? I couldn't tell.

Selid: To the west of this?

Saltzman: Where the pole would be. Are there apartments on the hillside whose view of the river would be -- would have the pole in them?

Selid: I'm not sure what the actual uses are. I know that there is a zoning that is an office zoning. I think it's a co2. It's on the west side.

Saltzman: The neighborhood association filed no objection?

Selid: Hi no responses in writing or at the hearings from any adjacent property owners or -- actually, I take that back. There was nothing from the neighborhood association. One property owner wrote with objections, an adjacent property owner.

Hales: I think i'm ready to make a motion.

Sten: Any further questions? Thank you. I'll open it up for council discussion and entertain any motions.

Hales: I'm going to move that we overturn the hearings officer and approve the application. And i'll explain that at greater lengthly guess if we want to talk about it informally now, but it seems to me that this is a case where although our design review criteria are good, it really -- the staff was right to deny it, recommend denial and the hearings officer walls right to deny it, the council's obligation is to weigh the larger question of the effect of the telecommunications act versus the mitigation that we've tried to put in place with our cell phone location criteria and the code, and in this case with a combination with that and the design review criteria. In other words, we've tried to push people into putting them on buildings, hiding them as best they can, and we've been pretty successful at that overall. And we have avoided what at least it may look to be in this case which is just a head-on collision between our design criteria and coverage. And that's where the fcc and the national interest is in these issues. And this looks like it might be that case. Frankly, I don't want

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to put us in the position of rather these folks litigated or not, of setting up that case, where our design review criteria get challenged based on the national mandate for coverage. In other words, we've got an opportunity, and we've taken it, to push this cell phone company companies pretty far into collocation where they can, buildings where they can, screening and landscaping where they can't, and height -- relentlessly scrutinize height. And we've done all that in this case and it's down to a 90-foot pole or no coverage. And I guess from a legal standpoint, I just don't want to go there, and I think we've done the best we can, and they've met -- the way I think we can write finding that's support this decision is that no one has suggested that there's a less intrusive way for them to solve their technical problem. So that's why I make the motion.

Sten: Any further discussion?

Saltzman: I guess I want to -- I need ruth up here again. Oh, i'll second the motion.

Sten: A motion and a second. We'll have discussion now.

Saltzman: Were you just talking about there was at one time an effort to look on the west side of the building at an 80-foot or 85-foot tower?

Selid: Yes. In an earlier case --

Saltzman: That would have met their technical demands?

Selid: They proposed a tower less than 75 feet high. 75 feet is the limit for the base zone that would not allow -- require them to do a conditional use review. And they did have a proposal for something 75 feet or shorter that was further west and uphill of the current location.

Saltzman: That met their technical needs?

Selid: I presume.

Saltzman: And that was withdrawn by -- that proposal was withdrawn by sprint?

Selid: They withdrew that proposal.

Hales: But that one was regarded architecturally as more intrusive.

Selid: Yes. Staff regarded that as very architecturally intrusive.

Saltzman: Okay.

Sten: Okay. Any further questions or discussion on the motion? Roll call.

Francesconi: I'm going to vote no. The reason is, continuing the football analogy, the 10 yard line is not a touchdown, and contrary to I think you're a ways apart from the hearings officer, and I think that it violates the design guidelines and therefore I believe there's some areas outside the design guidelines that should have been explored, and have you more of a burden of proof on that. Finally, I guess on this question, you know, where we have a staff who understands this, I trust the opinion of the staff on this, that we haven't crossed the line that commissioner Hales has suggested. So for those reasons, no.

Hales: I think our staff did a good job in this case, and although they don't expect to agree with me 100% of the time and I don't expect the same, they don't have the responsibility that we do to look at the larger legal and policy framework. They have to look at the code and apply it. So that's why these cases get to us and that's why our design review cry year have as many vague terms as they do. So the design commissioner in those cases and the council and ours can exercise this kind of discretion. I think that discretion is appropriate in this case. A couple other mitigating factors for me. The north macadam district may soon develop. We've all been waiting for that a long time and I hope we don't wait much longer. But if it does, there will be significant new construction of buildings right along the freeway that will allow relocation and probably require relocation of cell phone towers in this area to provide coverage into what's now an empty area. So I don't suspect that ten years from now that these networks will look the same as they do today, but meanwhile,

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everybody's using this technology, and the federal government is right to push us towards finding a way to allow it and I think in this case we need to. Aye.

Saltzman: I think the applicant has shown that there's -- the appellant has shown that they've bon a thorough search of alternative sites. And this seems to be the best site from their perspective. I'm still baffled why a 75-foot tower on the other side would be architecturally more intrusive, but I guess in this case I will defer to staff's opinion, and I believe if we're not to interfere with federal law, which preempts us in this particular situation, or at least we're knocking on that door, i'll also support the motion. Aye.

Sten: I tend to agree. I think the staff did an appropriate job in interpreting the design code, and I think it does fall to the council to try and figure out where the mix and federal law and our codes lands as sprint's attorney described, and it's my opinion and I think this is where this case turns, that sprint's met the test that there is not another place to put this, and I do support the federal law that would have to have complete grid in the country, and I think that most times pushing a stronger design code as commissioner Hales says does get the right result, but in this case I think we're up against one or the other and it comes simply down to either a less intrusive location, and i'm convinced that you've met the test that there is not, so I vote aye. [gavel pounded] the motion passes, and the hearings officer is overturned. Do you want to return with findings or can we just --

Hales: The applicant will need to write the alternative findings. How long do you need?

*******:** Two weeks would be fine.

Sten: Okay. Why don't we schedule the findings to come back in two weeks. And the council is adjourned.

At 3:00 p.m., Council adjourned.