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CITY OF  
**PORTLAND, OREGON**

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**OFFICIAL  
MINUTES**

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A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 24<sup>th</sup> DAY OF JANUARY, 2001 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Saltzman and Sten, 4.

OFFICERS IN ATTENDANCE: Britta Olson, Clerk of the Council; Harry Auerbach, Senior Deputy City Attorney; and John Scruggs, Sergeant at Arms.

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

**CONSENT AGENDA - NO DISCUSSION**

**Mayor Vera Katz**

70 Confirm appointment of Steve Karolyi to the Portland Adjustment Committee (Report)

**Disposition:** Confirmed. (Y-4)

\*71 Amend Ordinance establishing a Civic Stadium Executive Management Committee by revising the committee membership to include the Executive Director of the Portland Development Commission and to increase the expenditure authorization (Ordinance; amend Ordinance No. 174414)

**Disposition:** Ordinance No. 175261. (Y-4)

\*72 Amend agreement with Hennebery Eddy Architects for architectural and engineering services for the remodel of fire stations 10, 14 and 23 and provide for payment (Ordinance; amend Contract No. 32659)

**Disposition:** Ordinance No. 175262. (Y-4)

\*73 Lease office space at Camp Withycombe for the Police Bureau Training Division (Ordinance)

**Disposition:** Ordinance No. 175263. (Y-4)

\*74 Agreement with Multnomah County, Gresham, Troutdale and School District No. 1 for fingerprinting and photographing juveniles (Ordinance)

**Disposition:** Ordinance No. 175264. (Y-4)

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**Commissioner Jim Francesconi**

- \*75 Accept an agreement with Tri-County Metropolitan Transportation District of Oregon to lease a bus for recreational activities (Ordinance)

**Disposition:** Ordinance No. 175265. (Y-4)

- \*76 Authorize application to Northwest Neighborhood Parks and Recreation Fund of the Oregon Community Foundation for a grant in the amount of \$38,900 (Ordinance)

**Disposition:** Ordinance No. 175266. (Y-4)

- \*77 Authorize agreement between the Bureau of Parks and Recreation and the Portland Development Commission to plan and implement urban renewal activities (Ordinance)

**Disposition:** Ordinance No. 175267. (Y-4)

- \*78 Amend contract with Don Ganer & Associates to increase contract amount by \$777 for additional scope of work and extend completion date to March 31, 2002 (Ordinance; amend Contract No. 33190)

**Disposition:** Ordinance No. 175268. (Y-4)

**Commissioner Charlie Hales**

- 79 Transmit Certificate of Completion for the Marine Drive Contract Overlay 2000 project (Report; Contract No. 33029)

**Disposition:** Accepted. (Y-4)

**Commissioner Dan Saltzman**

- 80 Accept completion of the Columbia Boulevard Wastewater Treatment Plant dechlorination facility, Project No. 6285, and authorize final payment to Harder Mechanical Contractors, Inc. (Report; Contract No. 31980)

**Disposition:** Accepted. (Y-4)

- 81 Accept completion of the Fanno Basin pressure line - Garden Home Section, Project No. 6398, and authorize final payment to Kerr Contractors, Inc. (Report; Contract No. 32026)

**Disposition:** Accepted. (Y-4)

- 82 Accept completion of the Fanno Creek streambank enhancement project, Project No. 6574, and authorize final payment to Brant Construction, Inc. (Report; Contract No. 33076)

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**Disposition:** Accepted. (Y-4)

- 83 Accept completion of the Whitaker Ponds stormwater pollution reduction facility, Phase 2 of 2, Project No. 5736, and authorize final payment to Dunn Construction, Inc. (Report; Contract No. 33099)

**Disposition:** Accepted. (Y-4)

- 84 Accept completion of the Buffalo Slough water quality facility project, Project No. 6564, and authorize final payment to Accord Construction and Environmental, Inc. (Report; Contract No. 33169)

**Disposition:** Accepted. (Y-4)

- \*85 Authorize an Intergovernmental Agreement with Tri-Met for design services within the Willamette Shore Line Consortium right-of-way for track replacement on the SW Parallel Interceptor project, Project No. 5502 (Ordinance)

**Disposition:** Ordinance No. 175269. (Y-4)

- \*86 Authorize a contract with David Evans & Associates, Inc. for professional design services and payment for the California pump station upgrade, Project No. 6691 (Ordinance)

**Disposition:** Ordinance No. 175270. (Y-4)

- \*87 Authorize a revised Intergovernmental Agreement with Multnomah County for vector control services and provide for payment (Ordinance)

**Disposition:** Ordinance No. 175281. (Y-4)

- \*88 Authorize an Intergovernmental Agreement with East Multnomah Soil and Water Conservation District to fund the Johnson Creek Watershed Council (Ordinance)

**Disposition:** Ordinance No. 175272. (Y-4)

- \*89 Authorize an Intergovernmental Agreement to assist Metro in restoring native vegetation on Metro Open Spaces properties through Bureau of Environmental Services Watershed Revegetation Program (Ordinance)

**Disposition:** Ordinance No. 175273. (Y-4)

**Commissioner Erik Sten**

- \*90 Authorize an agreement with CH2M-Hill for \$210,000 to prepare the Powell Butte Reservoir No. 2 preliminary design report and provide for payment (Ordinance)

**Disposition:** Ordinance No. 175274. (Y-4)

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- 91** Amend an Intergovernmental Agreement with the University of Washington for additional services to enhance and provide maintenance and training for the Portland Water Bureau Supply and Transmission Model and provide payment (Second Reading Agenda 58 ; amend Contract No. 32943)

**Disposition:** Ordinance No. 175275. (Y-4)

**REGULAR AGENDA**

**Mayor Vera Katz**

- \*92** Authorize Limited Tax Revenue Bonds for the Oregon Convention Center completion project (Ordinance)

**Disposition:** Ordinance No. 175276. (Y-4)

**Commissioner Jim Francesconi**

- \*93** Authorize acceptance of the former Killingsworth Landfill at NE 75th and Killingsworth Street from Multnomah County and enter into an Intergovernmental Agreement and a Solid Waste Disposal Site Closure Permit with the Oregon Department of Environmental Quality (Previous Agenda 65)

**Disposition:** Continued to January 31, 2001 at 9:30 a.m.

**Commissioner Erik Sten**

- \*94** Authorize creation of Limited Term positions in the Water Bureau Customer Service Group (Ordinance)

**Disposition:** Ordinance No. 175277. (Y-4)

**City Auditor Gary Blackmer**

- 95** Assess benefited properties for the cost of constructing street, storm sewer and water main improvements in the NE 158th Ave/NE Marine Dr-Columbia Slough south of NE Airport Way Local Improvement District (Hearing; Ordinance; C-9926)

**Disposition:** Passed to 2<sup>nd</sup> Reading January 31, 2001 at 9:30 a.m.

**Communications**

- 96** Request of Richard Koenig to address Council regarding Internal Affairs Division, Police Bureau, declination of his complaint (Communication)

**Disposition:** Placed on File.

- 97** Request of Patrick Dinan to address Council regarding Police Bureau actions (Communication)

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**Disposition:** Placed on File.

At 10:02 a.m., Council recessed.

**JANUARY 24, 2001**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 24<sup>th</sup> DAY OF JANUARY, 2001 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Saltzman and Sten, 4.

OFFICERS IN ATTENDANCE: Britta Olson, Clerk of the Council; Kathryn Beaumont, Senior Deputy City Attorney; and John Scruggs, Sergeant at Arms.

- 98**      **TIME CERTAIN: 2:00 PM** – Amend the Central City plan district chapter of the Zoning Code to include a new eco-roof floor area ratio bonus provision (Ordinance introduced by Mayor Katz)

**Disposition:** Passed to Second Reading January 31, 2001 at 9:30 a.m.

**REGULAR AGENDA**

- 99**      Tentatively deny appeal of St. Johns Neighborhood Association against Hearings Officer's decision to approve the application of the Port of Portland for a conditional use review to allow the construction of a Multnomah County corrections facility at N Leadbetter Road and N Pacific Gateway (Findings; Previous Agenda 44; LUR 00-00554 CU)

**Motion to adopt the findings:** Moved by Commissioner Saltzman and seconded by Commissioner Francesconi.

**Disposition:** Appeal Denied. (Y-3; Sten abstained)

At 2:29 p.m., Council recessed.

JANUARY 25, 2001

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 25<sup>th</sup> DAY OF JANUARY, 2001 AT 2:00 P.M.

THOSE PRESENT WERE: Commissioner Saltzman, Presiding; Commissioners Francesconi and Sten, 3. At the beginning of the meeting, Mayor Katz recused herself on this issue and left.

OFFICERS IN ATTENDANCE: Britta Olson, Clerk of the Council; Ruth Spetter, Senior Deputy City Attorney; and John Scruggs, Sergeant at Arms.

100

**TIME CERTAIN: 2:00 PM** – Appeal of Montavilla Neighborhood Association against Hearings Officer's decision to approve the application of Grace Evangelical Lutheran Church, property owner, and VoiceStream Wireless, lessee, for a conditional use for a wireless telecommunications facility consisting of an 80-foot high monopole at 9330-9342 SE Grant Street (Hearing; LUR 00-00587 CU)

**Motion to tentatively deny appeal:** Moved by Commissioner Sten and seconded by Commissioner Francesconi.

**Disposition:** Tentatively Deny Appeal; Applicant Prepare Findings for February 14, 2001 at 2:00 p.m. (Y-3)

At 4:15 p.m., Council adjourned.

**GARY BLACKMER**  
Auditor of the City of Portland



By Britta Olson  
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 24, 2001            9:30 AM**

**Katz:** Good morning, everybody. The council will come to order. Britta, please call the roll. [ roll call ] let me read the little announcement about the fact that city council meetings are broadcast on citynet, cable channel 30. They're also broadcast live on the internet, and can be reached from the city's home page if you follow the link to council agenda. And the weekly council agenda is available also on the internet on the same site. So for those of you who don't get the daily journal of commerce, the internet is your next best thing. All right. Consent agenda items. Any items of - - that anybody wants to take off the consent agenda for discussion? Anybody in the audience want to take a consent agenda item for discussion? If not, roll call. **Francesconi:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Katz:** Mayor votes aye. And I forgot to note that commissioner Hales is on vacation. Regular agenda. 92.

**Item 92.**

**Katz:** Why don't you come on up here. Since april is opening day -- oh, no. That's the other one. Wrong one. When is the ground shovel day?

**Ken Rust, Director, Bureau of Financial Planning (BFP), Office of Management and Finance (OMF):** I believe it's february --

**Katz:** It's coming soon.

**Rust:** I think the 9th. Good morning. My name is ken rust, director of the bureau of financial management. The ordinance in front of you will authorize the city to issue up to \$158 million of bonds for the Oregon convention center completion project. This is part of the visitor development initiative that we have been working on for the past two years, and as the largest single component of that initiative, which will involve renovations to the civic stadium, operating support for pcpa, the convention center, enhanced marketing and other things that tie the visitor facilities together in the region. We're prepared to sell the bonds next thursday on the city's private label auction website, a competitive sale at [www.wdx.auction.com](http://www.wdx.auction.com). We're expecting a good result and will be delivered bond proceeds to metro on the 13th of february in construction and backhoes, everything will be ready to start, probably immediately thereafter. The convention center itself is scheduled to open late spring of 2003.

**Katz:** 2003. And the civic will --

**Rust:** The first home opener game is april 30th of this year.

**Katz:** Right. Okay.

**Rust:** If you have any other questions --

**Saltzman:** Operating support for pcpa, does that come from the bond --

**Rust:** It's part of the visitor development initiative, which included the inbound creases of hotel motel and vehicle rental tax increases.

**Saltzman:** What is the denomination -- denomination the bonds are being sold at?

**Eric Johansen, BFP:** Minimum \$5,000. The sale will include something called deferred interest bonds, which are zero coupon bonds which investors can purchase at a price -- at a price of less



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than \$5,000 and they mature to 5,000. So there's actually an opportunity to buy both bonds that pay current interest as well as buying deferred interest. It's unusual, but something --

**Saltzman:** What's the current interest?

**Johansen:** We would expect -- these bonds will go out to a maximum of 30 years, and the interest rates will probably be on the longest bonds, somewhere less than, say, 5.50, tax exempt, both federal and state.

**Rust:** The interesting part about the zero coupon piece that Eric mentioned, it's victim to the baccalaureate bonds that the state issues for higher ed projects. They mature at a face value, 16, 18 years down the road which people often use for planning college expenditures for their kids. So if folks are interested in buying our bonds, we can't tell you who will be the winning bidder, but there's a piece of the bonds that might work well for those kinds of investment purposes.

**Katz:** Okay. Further questions? Anybody in the audience want to testify on this item? All right. Thank you. Roll call.

**Francesconi:** Thanks for all your work on this. Aye.

**Saltzman:** This is good work. Certainly maybe not the culmination, but very important element of a package, I know the mayor worked long and hard to negotiate. Good news. Aye.

**Sten:** Thanks to the mayor's office. This is a good piece of work. I admire the way you run the finances, and this is why we're so well -- aye.

**Katz:** You're very generous, everybody. But without Ken, and his figuring out very quickly that we could do a better job than the private sector because of our good bond righting and our tax exempt status and who we are, this would -- the whole package would not have been possible. Originally it was only the selling of bonds for the convention center. And Ken and his team figured out that if we structured it the way we can structure it as a city, then not only can we cover that, but we include the civic stadium renovation, we include the money for hopefully the money for PCPA, as well as expanding fareless square to Lloyd Center. And hopefully other resources for other projects down the line. So thank you. Aye. All right. 93.

**Item 93.**

**Olson:** This is going to be continued one week.

**Francesconi:** Yes.

**Katz:** We'll -- let's carry it over for another week. Any objections? Hearing none, so ordered. 94.

**Item 94.**

**Mike Rosenberg, Director, Water Bureau:** Mayor, members of the council, I'm Mike Rosenberger, director of the water bureau. The ordinance you have in front of you authorizes the creation of well limited positions. We currently have 33 temporary employees working in the bureau. And we have 21 of those in vacancies that we have kept open as people have retired as part of our ratcheting down process, so we don't need to create positions for those people, but we do for 12 others. And what our intention is is to keep these people on board for another four to six months until we are caught up in everything and have the system running the way it is supposed to and have our level of customer service where it needs to be. By doing this, we will be able to do two things that are important and I think fair. One is to provide health benefits to these 33 temporaries that are currently working for us, and the second thing is we'll be able to tell them we expect them to be here for four or five or six months. We expect that by giving them a commitment they will give us a commitment so we can stop the amount of turnover that we currently have, because these employees come here, they work for us, we train them, they're up to speed, they do a good job, they don't get benefits, they get another job offer and they're out the door. So we think this is a good solution to keep qualified people here and to treat them fairly while we spent time with the bureau of human resources as well as asked E von Martinez. I think

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this will do a good job for us. If I could take a second, if it would be appropriate, can I say a few things on the state of how things are?

**Katz:** Yep.

**Rosenberger:** I think we're making a great deal of progress, that is quite demonstrable, and we have I think a very good handle on the three or four primary system functionality problems that continue to plague us. And whereas before we had a backlog that was bigger than it is now, what we've been able to do is whittle the backlog down but also identify the three or four areas that impact groups of customers. So we have about four problem areas that we have plans in place and time frames established in most cases for how we are going to deal with those, and in some cases we're doing the work to address the backlog through the work of some of the temporaries as well as some of our own staff. And the vendor is doing some of the fixes in a couple of other specific areas. So I think progress is being made and I think it is pretty -- we're in daily contact with not only the vendor, but my commissioner and his staff. On a daily basis we're at a place now where on average we're sending out about 4200 accurate bills, and that's where we ought to be. Our hold times on average now are about 3 1/2 minutes, between two and four minutes for a full service phone call, which are the most complicated, remember four and five months ago we were 25 to 30 minutes. So I think we have made some pretty good progress there. That's been well sustained. We've extended our hours of operation in the call center until 7 o'clock monday through friday and have added four hours, 8:00 until noon on saturday morning. We're getting calls, we've changed -- when people are on hold and they call us during the day they get the message we're open until 7:00, we're open until saturday, and that's helping, and we're starting to get calls in the evening and saturdays as well. The final thing I might add, this just came in this morning from the auditor's office, there was some concern with regard to the audit report and the city's coffer because of, you know, issues with the billing system and the accounting. And it's -- and we will get the -- the city will get an unqualified audit machine, so that's an issue that has been taken off the table. While I think we have made progress, the fact is we still have a ways to go. I think we have a pretty good handle on the issues and a pretty good plan for how we're going to get them solved.

**Katz:** Will you be coming back in early february, commissioner Sten? That's what I think the so-called self-imposed deadline was to get a better reading of when all of this is going to come to an end, or for you to share with us what's been happening during the interim.

**Sten:** We could do a report to council, we could do -- I think we had an informal scheduled for the first part of february that we pushed back. It's more on the big picture with the water bureau, future water supply to march, but I think what we'll do is first part of february, do a written report and file it with council so that we have a chance to really share with people. I think we're at this point -- should be a track to -- I think we're at a point where we can lay out what the future looks like with some certainty. I think we're on the right path.

**Katz:** Okay. Let's do that. I think in light of all the discussion with fear that's we don't have enough of a reserve of water, that we also ought to begin talking about water supply and summer --

**Sten:** We have a council date for I think it's the first week in march.

**Rosenberger:** March 5, 6.

**Sten:** That session we're planning to do a pretty broad briefing and -- to start talking through really the long-term future of the water bureau, and that all backs down to this year's water supply. So we're going to do a water supply briefing aimed at -- and that -- the timing of that is -- we're going to be talking about work that will be done over decades, but did I want to talk about that before talking about the final decision on rates, because we'll want to make decisions on how are we starting to think about ramping up water supply structure over the next few years. And of course that will impact how we strategize the rates this year and upcoming years.

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**Rosenberger:** We'll be talking about supply, we'll be talking about wholesale contracts, treatment of the bull run and issues around water quality regulations, infrastructure. It will be a pretty wide range and hopefully visionary stuff that will -- we'll need to start dealing with budget time.

**Sten:** We're planning to do computer system --

**Katz:** No, no. I think we'll need two separate briefings.

**Francesconi:** So is the number of people not being billed or not receiving regular bills, is that number dropping?

**Rosenberger:** It is. It's lower than it was three or four months ago. It's probably in the 16 to 18,000 range right now. And there are people who are affected by three or four particular problems. People who have had a meter exchanged in the last nine months. 4,000 people in that area. We have some particular issues around people on payment plans. About 7500 people are impacted by that. Then there are a couple of others that -- technical ones, the single biggest one revolves around figuring out the winter average for the sewer portion of a residential bill, which gets a little complex, and works differently under this system than the old one. But we are chipping away at those things on kind of a daily basis and the point is to get these three or four technical glitches fixed so that they work properly and -- in the future and coat add to the backlog at the same time as we have a cadre of people focusing on the backlog. So we're organized to address backlog issues, daily billing kinds of issues, and daily operational customer service issues.

**Francesconi:** Okay. My last question, it makes sense to -- I support your ordinance, so you don't have the turnover. I think i've asked this question about every time you've come, and I think there may be progress on this. Have we brought in some outside people now to give us some advice on this?

**Rosenberger:** We have. We have brought in outside people. In addition to the vendor, we have brought in people from a couple of private consulting firms. From a local Portland official, from another software firm that isn't any of the above. So we have four or five. I'm currently talking with another kind of expert consultant who is in the process of doing a couple of interviews inside of our bureau, and he is to give me a proposal in about a week of some things that I think -- and he thinks -- he can do for us in terms of additional sort of outside expertise. Another set of eyes here.

**Francesconi:** Thank you for doing that.

**Katz:** I'm sure we'll wait until the council informal sometime in february to hear further on the condition.

**Rosenberger:** I think that as a -- the commissioner says, we'll get something in writing i'd say in early february, and then schedule something any time thereafter.

**Sten:** I'm inclined to make sure people are comfortable to file a report on the calendar so we'll do it in chambers and people can watch if they want on tv, rather than --

**Katz:** I think that's a good idea. There may be people who are watching who've had concerns, and if you're really moving toward progress, it would be nice to allay people's fears. Okay. Good.

**Saltzman:** Does the vendor still have six people here full-time?

**Rosenberger:** They have three to four people here, commissioner, and they have a number of resources that are working in hughes. And so -- houston. What i've tried to do is kind of balance -- it's kind -- is kind of measure their progress on the basis of what gets done. Although I do think it's important that we have some senior people here and we do, and we continue to have the senior vice-president from houston who's in charge of all the resources in Portland meeting with me and the commissioner's staff every week and will be here next thursday.

**Saltzman:** Thanks.

**Katz:** So we're not pulling the plug.

**Rosenberger:** We're not pulling the plug, no. I think -- no. [ laughter ] no, mayor.

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**Katz:** All right. Anybody in the audience wanting to testify on this item? If not, roll call.

**Francesconi:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Katz:** Mayor votes aye. All right. 95.

**Item 95.**

**Katz:** This is a hearing. Does anybody want to talk to us about this? If not, i'll take a motion.

**Saltzman:** Move approval.

**Katz:** For approval and come back for an ordinance. All right. Roll call. **Francesconi:** Aye.

**Saltzman:** Aye. **Sten:** Aye. **Katz:** Mayor votes aye. 96.

**Item 96.**

**Richard Koenig:** Good morning, city council. My name is richard koenig, long-time critic, buckman neighborhood. I make this appearance in lieu of an opportunity to exercise the community policing policy that is communication with community partners to resolve community problems. I've been waiting for five years to do this with my police partners. I will begin with the most recent problem brought to my attention, workback. Most recently, council has been courtesy copied with correspondence from and to assistant chief lynnae berg. In berg's letter to me, several problems may be identified. One, she document as system chief alleging untruthfulness on the part of -- the complaint was particularly directed to mark parisi on the construction of the piiac examiner. He did that to make sure conflict of interest was avoided. Notwithstanding this fact, the complaint of captain brett smith received and declined to investigate himself. This goes to the heart of the piiac matter, I believe. Personal contact with mark parisi I was told he did not receive the complaint. Mail being misdirected to the person who benefits from that misdirection, that's a problem. Assistant chief berg documented she reviewed a file put together by captain smith or his staff. In that file are documents which police commissioner Katz and her chief of please kroeker have said the criminal intelligence unit does not keep or, you know, compile or keep. This is a problem that each of you are aware of as a list of the documents were filed with your clerk for distribution to you as an attachment to the correspondence from and to berg. Besides an indisputable evidence that you've got of compiling and maintaining files beyond the scope of an ongoing criminal investigation, you have each received evidence that the information in those files was transferred from criminal intelligence division to internal affairs and then used by captain smith as a pretext to avoid the investigative process required by the police bureau's own general orders. Oh, my god. That's a problem. It's a problem that supposedly nonexistent records were used in attempt to subvert a required investigation of captain smith's untruthfulness. A citizen advisor to piiac reviewed analyze and presented me with her case summary and findings. In her findings she stated the criminal intelligence records documented my, quote, chronic pattern of exercising protected first amendment right to complain. And that because my complaint against captain smith was part of that pattern, that I should not be further allowed to exercise that right to complain. Assistant chief berg documented that she had reviewed the file and agreed with this assessment. This is a serious problem for city council members, slash, piiac, as well as police bureau personnel who have sworn to uphold the constitution of this country.

**Katz:** Thank you.

**Koenig:** Let's resolve this.

**Katz:** Thank you, richard.

**Koenig:** I'll be back next week and look for your resolution.

**Francesconi:** Richard, i'm only going to say this once for your been at this time and for patrick's benefit. There's a whole -- we want to make this time open for our citizens. But when you continue to do this --

**Koenig:** Do what? Exactly what am I doing?

**Francesconi:** When you keep coming on the same issue, what it does --

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**Koenig:** It's new material that has not ever been addressed, sir.

**Francesconi:** Let me explain.

**Koenig:** When it's addressed we'll move on.

**Francesconi:** You run the risk, if all the citizens did this, it's just not -- you run the risk of foreclosing other citizens from having the opportunity to do this. So you can choose to continue this --

**Koenig:** It will be different material next week.

**Francesconi:** I want you to consider, please, the effect of what this does on this process for other citizens that may want to use this opportunity.

**Koenig:** Well, thank you for your threat to all of us, and let's decide a more appropriate forum for resolving community problems, and I'll go there. I have been willing, as I stated just now, I have been waiting for an opportunity for how many years did I say? Five years? Five years. All right. So I've got you all here in the same room, I've got your attorney here to give you legal advice when you need it. These include criminal matters, and you're all becoming come police it. Do you understand that?

**Katz:** Thank you. All right. 97

**Item 97.**

**Patrick Dinan:** Good morning, elected officials. My name is pat dinan. Last friday I delivered to the mayor, the city attorney's office each a copy of the letter before you. You received it I hope. The only indication I could get a date -- the only indication I could not get a date stamped was the police chief's office. When I asked to stamp my copy, and -- in the mayor's office they stamped it. Went into the city police chief's office, and when I asked to stamp my copy the receptionist told me no. There were two senior officers there but after requesting a read before signing they refused to -- it seems to me asking the proof the letter would get into the hands of the assistant chief was incorrect. Do you have the written lawful order date the on -- with a may 1998 date? This stating i, patrick dinan had been trespassed or excluded from city property namely the northeast precinct. You do remember captain smith coming before and telling the council there's a written report and -- in the october piiac hearing that you were -- council members, if there's no exclusion order referral in reference to this incident, how can sergeant stevenson state i've been lawfully trespass? Was captain brett smith telling you the truth or just playing with words to get that issue concealed from you? We can call that circumventing your question with a smile. It seems the iad has a joy of testifying and not providing enough proof to sustain any legal background. Is this a way the community police is working to help we community partners and allow to testify before you folks? I've got more, but I understand what you're talking about, jim. I understand what we citizens before you are having to do to find out why we are being persecuted by the police that are supposed to be protecting our rights. I have asked for over three years -- excuse me, close to three years for proof of a lawful order. You have never seen one, piiac has never seen one, and as far as i'm concerned, there is not a lawful order. If there's not a lawful order, you have officers that violated my rights. And you're responsible as the commissioner. Please, ms. Katz, to use the charter under two -- I believe it's section 2 158th 09, and get some answers to why this is being allowed to the citizens. Maybe this will help the skins have more comes in the police towards the piiac issues. But i've been there for over a year watching people, and I mean to tell you, the persecution that appellants get by becoming before the citizen and council has been amazing. The facts stand and they're not going to go away. You as elected officials are our only avenue to get answers, because it seems like the agencies want to stone wall answers. And i'll continue to come forth until I see that you will understand and work for us citizens and protect us as we want to be protected. Legally. Thank you.

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**Katz:** Thank you. Okay, everybody. We stand adjourned until 2 o'clock.  
At 10:02 a.m., Council recessed.

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2:00 PM

**Katz:** Good afternoon, everybody. The council will come to order. I'm sorry i'm late. There were some very important people that I needed to say hello to. City council meetings are broadcast on citynet, cable channel 30, they're also broadcast live on the internet and you can reach it through the city's home page if you follow the council agenda link. If I -- if any of are you so inclined to watch us, sometimes I wonder why. The weekly council agenda is also available on the internet at the same site. So don't come and tell us that you can't find the council agenda, because you don't read the daily journal of commerce. Okay. First item? [ roll call ] commissioner Hales is on vacation. All right. Let's read item 98.

**Item 98.**

**Katz:** If you recall, commissioner Saltzman made a request of the planning bureau, and I offered my blood -- [ laughter ] -- as a -- he's taken more than my blood. And I said that we were going to proceed and proceed rather rapidly, and the item is before you. I am going to ask before we go any further that you please don't make any other assignments to my poor planning bureau, who had a work plan right after the budget and I need to keep him on track. But this was important, and they went ahead and prepared this ordinance for you. Gil?

**Gil Kelley, Director, Planning Bureau:** Yes, thank you. We were here in mid-december and we're book about 37 days later with this proposal for your enactment grant clark, the senior planner, has been crafting this proposal. And i'll turn it over to graham to explain it to you.

**Graham Clark, Planning Bureau:** I am graham clark, good afternoon. You'll remember we were here in december speaking about the union stationary and some floor area ratio and height issues that we had a proposal to create more development in the area. You approved an ordinance on december 13th in the union station area and several commissioners expressed interest in us coming back with an ecoroof bonus.

**Katz:** No. Commissioner Saltzman.

**Clark:** Commissioner Saltzman especially, and I remember he found some nods.

**Katz:** That's because he took their blood too: I'm sorry, commissioner. You were -- this is very important. It's an issue you've raised, you've been in the forefront on it and the council did agree.

**Clark:** What I have before you today is a floor area ratio bonus for the entire central city plan district having to do with ecoroofs. They would provide a solution to urban growth and start to balance the otherwise imbalanced relationship between the natural and man made world. Ecoroofs are green living roofs that include soil and vegetation and have several advantages. They soak up rain water, detain its release and smooth out the typical peak that's rain events cause in a sewer or outflow system. They better emulate the natural environment like the northwest forest that's we have around us. Second, the vegetation cleanses air pollutants and mitigates the urban heat island created by the dark surfaces that typically are the streets and rooftops of a city. Thirdly, they can offset heating and cooling costs. They tend to because they're more natural they provide a more natural break between temperatures outside and inside. And finally, ecoroofs need less frequent replacement, so in that way they can be less costly over the long term. So the issue we're addressing tao today is that ecoroofs are more expensive upfront. They're about half again the cost of a standard roof treatment, but longer term. The cost benefits start to outweigh because the roofs need to be replaced less frequently and because longer term building operation costs can be mitigated through ecoroofs. The bonus before you today, the intent is to help close the gap in cost between an ecoroof and a standard roof treatment. Just as an aside, the bureau is working on a storm water fee reduction package that also starts to offset that cost in a longer term framework for

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ecoroofs, and that offsetting cost can be up to a 30% of a regular storm water fee. And there are people here who can talk better to that than I can. The floor area ratio bonus offers greater building floor area in exchange for ecoroofs. The way we're doing that, we're offering more floor area in accordance with the percentage of roof space allotted to ecoroofs. For instance, if you have between 10 and 30% of the ecoroof of the building in ecoroof, you get one square foot of additional floor area for each of those ecoroof feet. If you go to the next category, 30 to 60%, you don't double the amount of floor area devoted to ecoroofs, and over 60% you get triple the amount of floor area devoted to ecoroofs. The bonus will apply in the central city plan district. And it's envisioned as a test case. It's likely to be reconsidered along with the other bonuses in the central city plan district. Today we have nine of them. What we're looking to do in the future is to evaluate the use and whether the floor area ratio bonuses are meeting their goals in the central city. These are adopted in 1988. We're looking to reevaluate them sometime in the future. The language for the ecoroof bonus is extrapolated from the north macadam process. That language was proposed to the planning commission in october. Since then the bureau of environmental services, office of planning development review and our bureau of planning have gotten together to improve the language slightly but the intent is still very much the same. The way it's set up, the bureau of environmental services will certify all aspects of the ecoroof. So once that certification is made by the bureau of environmental servicing, it will be handed to the office of planning and development review at the design review stage, basically saying this is the percentage of roof devoted to ecoroofs and during the design review stage, the office of planning and development review will award extra building square footage. So that closes my presentation. Are there any questions I can try to answer?

**Katz:** No. Gil, did you want to say anything?

**Kelley:** Gil kelly, planning director. I would echo commissioner Saltzman's and the mayor's opening thoughts. This is part of a bigger effort we're trying to engage in 60wide in terms of restoring the streams and water bodies for fish and habitat. And this over time will play a critical role in that effort. Any significant way in which we can reduce storm water runoff into the streams and rivers is critical, given the natural mandate that we're now facing from the federal agencies. So I see this as a standalone program, but a critical component of an overall greening of the city effort that many bureaus are engaged in right now.

**Katz:** Gil, refresh my memory. We talked about bonuses. We've had a discussion here, and the council really didn't want to wait for a review. I'm very interested in looking at design bonuses so that developers and architects have the ability to do a far better design in the building if the bonus gives them some incentive. So when are we going to be reviewing that? I don't remember the time line.

**Kelley:** It's not scheduled at the moment. It's something we all know we need to do. As you said, we need to look at whether the bonuses are achieving their intended purpose, and whether we have the right kinds of bonuses and we have the right formulas within each of those bonuses. It's something we've said we need to do. We don't yet have scheduled in the work program.

**Katz:** Put that on the list for our monday meeting, tuesday meeting.

**Saltzman:** I have to stand up for gil. No more work:

**Kelley:** I knew I shouldn't have come here today.

**Katz:** Oops. Anybody have any questions?

**Francesconi:** Do we have any sense of how many ecoroofs this bonus will actually produce? With this incentive? I didn't say that right. This incentive, what will happen when this incentive -- with this incentive?

\*\*\*\*\*: We've heard --



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**Saltzman:** Let me take a stab at that. This is part of the grand experiment. This is why I was so interested in getting this included as one of the eligible bonuses. When we first visited this issue last december, we were talking about the union station area. It wasn't lost to me that that's an area that all our overflows go right into the river there. If we're serious about trying to get ecoroofs to be taken advantage of, areas that are prime to be developed, we need to get the bonus in there to test it, to see if developers do take advantage of it. We know if they do, the advantages to the river and to our environment are substantial. So i'm pleased that we're not only able to put this in for the union station area, but with the mayor's support. This now applies to the central city plan district. I don't think we can tell you absolutely how much more we expect to induce, but we think adding it to the list of bonuses gives us the opportunity while this larger review of the far bonuses is going to occur, to get this in there as a test basis and start to see if this does influence how development starts to take place --

**Kelley:** I think we need to do a little bit of marketing on it. The notion of whether an ecoroof is exactly and how it function and how it's maintained is kind of an education wall piece -- educational piece we'll need to do with the developers.

**Francesconi:** Okay.

**Katz:** Thank you. Thank you. Anybody else want to testify on this? All right. Everybody, this passes on to second reading.

**Saltzman:** I'd just like to thank gil and graham and -- for their quick action on this, and the council for supporting, bringing this back and adding this to the list of eligible bonuses. I think this is something we're all concerned about, we're all concerned about the money we're going to be spending over the next few years to get storm water out of our river, out of our sewerage system, and to the extent we can pursue green solution that's have benefits of not only getting the storm water out of the system, but produce environmental benefits as well, these are things we ought to be encouraging, and you can rest assured we will be doing our share of getting this message out to the development community too and urging them to take advantage of it. One of the dilemmas we face on ecoroofs is that we also have -- always have to point to places like germany. If you want to see one, go to germany. Now that we're having more and more locally, it overcomes a lot of that learning curve that you deal with when you have to tell somebody to go oversees to see how something really works. To the extent we start producing these in our own bark yard and people can say, it's really not that mystical, they're going to happen more, because they do, as graham pointed out in his excellent report, they not only provide benefits to keeping storm water out of the river, they do prolong the life of the roof itself and they save money on heating and cooling costs, which are a lot more on people's minds now than they ever were before. So I think we really have a good time to test this bonus. And I just want to also think the staff of the bureau of environmental services for working on this and wanted to let you all know our chief ecoroof guru, tom lipton was in last week's "new york times." There was a big story about ecoroofs, and not only was he quoted liberally in the story, he actual will you -- actually has his house pictured in the story. As well as the one other building in Portland, the city of Portland has an ecoroof on the hamilton apartments. So you can bet we're selling this message hard. So I think with this bonus here and with the development community we have in Portland, which I think has a green tendency to start with, I think we'll see people stepping up and taking advantage of this. If not, we'll figure out how to fine-tune so it they really will step up. Thanks for your support. We heard a lot last week about the police's rapid response team. It looks like planning has a good rapid response team too. I really want to --

**Katz:** Just don't push it. [ laughter ]

**Saltzman:** Thank you for getting back here in 37 days.

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**Katz:** I wanted to let the council know that I have not yet resolved the height on the buildings by the union station, and so that has not come back to you yet until I see some models of what -- computer models of what all of this means, people are just going to have to wait. And when we're ready, we'll bring it back to you. Good. Thank you. Goes to second. Let's read the next item.

**Item 99.**

**Katz:** Is that Katherine? I can't see. Okay. Katherine?

**Kathryn Beaumont, Senior Deputy City Attorney:** Mayor and members of the council, we have before you a substitute set of findings today. They are a substitute for what's in your book. The findings I was able to review the findings with council for the applicant this morning. At my suggestion they made some very minor changes to pages 158th, 5, and 7 of the findings and those are reflected in the substitute findings you have before you.

**Katz:** They're minor?

**Beaumont:** Yes. They're designed to make sure the findings are as clear and responsive to the approval criteria as possible. I think what you need today is a motion for substitution and then a vote on the findings.

**Katz:** Okay. Do we have a motion to substitute the findings for the findings that were in your book?

**Saltzman:** So moved. **Francesconi:** Second.

**Katz:** Hearing no objections, I'll take a motion to adopt the findings.

**Saltzman:** I would move we adopt the findings second.

**Francesconi:** It's time to build this jail. In fact the time to build it was a while ago. Thanks to the county and to the sheriff for working through it. In the end our citizens will be safer for it.

Thanks. Aye.

**Saltzman:** Aye.

**Sten:** I missed the hearing and have not had a chance to review the record. I suspect strongly it's the right decision, but have to abstain.

**Katz:** I'm going to vote aye. I hope that the county is sensitive to the needs of the sheriff to staff this facility once it's built. Aye. All right, everybody. We stand adjourned until 2 o'clock tomorrow.

At 2:29 p.m., Council recessed.

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[ roll call ]

**Item 100.**

**Saltzman:** Commissioner Hales is not here. He's out of town. But mayor Katz I believe is abstaining from this process. So that's why you have three of us here today. So we're here to hear the appeal of the decision of the hearing's officer with respect to the cell tower in the montavilla neighborhood association in the montavilla neighborhood. And I guess I need to ask the city attorney first to set forth the ground rules for this hearing.

**Ruth Spetter, Senior Deputy City Attorney:** I'll be happy to do that. This is a quasi judicial hearing, and that means you're going to be appealing based on the criteria that this decision was made on. You need to make your comments very specific to those issues. If you fail to do that you will probably be unable to appeal on anything else when you go on up to luba if you appeal further. I would also say to you that if anybody before the close of the hearing wishes to have the record remain open for an additional seven education, they may so request. At the end of the -- the applicant can ask for an additional seven days and then the record will be closed. The I would now turn it back to the council and ask whether there are any issues of ex parte contact or conflicts of interest.

**Olson:** I need to read the item first.

**Katz:** Conflicts of interest, decorations of conflict of interest? Ex parte contacts? I have one, but I need to address something else, because once I say this it probably won't make it much of a difference. I made a statement last time we had a mono pole issue, that I couldn't in good conscience continue to support them. I referenced the discussion that I had in the legislature on agent orange, and that at that time people said that it wasn't a problem, it wasn't an issue, they weren't a health hazard, don't worry about it. We found out many years later that agent orange in fact was a health problem to a lot of the veterans who came back home in later years. I feel very strongly that the federal government has closed its eyes to the potential health issues on this item. I am biased, and because I am biased, I cannot vote on this matter because I swore to uphold the constitution and the laws of this land. This is a law of the land. So I will have to recuse myself and leave the rest of the council to deal with this issue. I wish I could sit here and vote no, but I can't. [ applause ]

**Saltzman:** Okay. Thank you, mayor. So we will have -- we will hear from staff, then we'll have some time, ten minutes for the applicant and ten minutes for the appellatant. Does that sound reasonable?

**Francesconi:** Can I ask a question first if it's okay with the city attorney? I have to make sure I understand this. What happens if one member of the council that's left, the three of us, either abstains or votes differently than the other two members?

**Spetter:** You need to have three votes, otherwise this will be held over. Because it's a fee matter. Fee applications according to the code, when you don't have a three-person vote, are held over. To another time when hopefully you'll have enough people to act.

**Francesconi:** So then commissioner Hales will be back. Let's say theoretically -- hypothetically it's 2-2, or that for some reason you don't get to three. People abstain for principle reasons, or whatever reasons, or you just don't get to three. Then what happens?

**Spetter:** You need three votes or it's not going to go through. What it says for fee matters is that it's held over. At a certain point you could say this is clearly never going to be resolved, then you'd have to take some action. It would be -- they could probably go to court and force us to do something. In other words, to take some action one way or the other. But you have to have the three positive votes.

**Francesconi:** Okay. Thank you.

**Saltzman:** Let's hear from staff first.

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**Sylvia Cate, Office of Planning and Development Review (OPDR):** Good afternoon, commissioners. I'm sylvia kate, city planner with opdr. And if you'll forgive me a little wobble here, part of my computer screen has blown up so it's difficult for me to see what's happening in my presentation. So left me stumble through it a little bit because of that hindrance. The hearing's officer approved this request for a conditional use for a telecommunications facility on december 11th, 2000. The hearing's officer's decision was subsequently appealed on december 26th, 2000, by the montavilla neighborhood association. The site is on multidwelling residential 2000, which the tentative design density a overlay. The site has frontage on southeast 92nd avenue and abutts the i-205 right of way in -- and a recreational trail that parallels i-205 to the east. The telecommunications facility is proposed for the triangular parcel that you see here in the -- on the zoning map. Most of the land of the site, which is a 1 1/2-acre parcel, is developed with an elementary church school, which has prior conditional use approval, as outlined in the decision under the land use history. The proposed telecommunications facility would be located on a triangular-shaped parcel that lies behind the school and east abutting the recreational trail and the i-205 right of way. The proposed facility includes a 90-foot-tall mono pole and associated ground level equipment. The applicant notes that the -- they intend to meet all the landscaping requirements that includes buffering the facility to the L-3 standard, 15 feet in depth. It is important to also note for your understanding of this site that the church school has gone through a separate land use application with the city to expand and add two classrooms, and part of that application includes landscaping plans that will provide additional landscaping around the property lines of the entire site. Such landscaping will provide additional buffering to this facility beyond what is required in the code. As noted in the staff report, staff recommended approval with conditions that was detailed on page 13 of the staff report. The hearing's officer approved the request with conditions as detailed on page 17 in his decision. The site for the proposed wireless facility is one of three contiguous parcels owned by the grace evangelical lutheran church. The proposed site is on a vacant lot that's directly behind and east of the existing school. We see the front of the school here in this photograph. This is a view looking towards the vacant back lot from 92nd avenue that proposed facility would be in -- installed beyond the grassy play field area we see in the middle ground of this paragraph. -- photograph. This is a view of the existing residential development along southeast grant street, which is to the north of the proposed site for the facility. The facility would be to the left and outside the edge of this picture. This is a view looking south at the corner of southeast grant and 94th avenue along the bicycle and recreational trail that parallels i-205. The interstate is to the left behind the sound wall. The site for the mono pole is approximately 300 feet from this intersection south. This is a view from along the recreational trail. The church school can be seen in the far background. The foreground is an abutting residential lot immediately north of the proposed site for the mono pole. The facility would be to the left of this picture. This is a view of the proposed site for the mono pole. The elementary school again can be seen in the background. The lot proposed for the wireless facility is currently undeveloped. It has a number of shrubs and high weeds and has a chain link fence that separates the site from the recreational trail that runs beside it. This is another view of the vacant lot behind the church school which we see clearly in this photo. A large play field separates this parcel from the existing school building. Small white stakes in the underbrush indicate the approximate footprint of the proposed facility. The applicant is required to install additional landscaping 15 feet in depth consisting of trees, a six-foot-high hedge and ground cover to screen the facility on all sides. This is another view of the site looking towards the north and the adjacent residential development. As mentioned previously, the applicant will meet the required development standard for landscaping and the hearing's officer in his decision imposed a condition of approval that all the trees in the landscaping plan be evergreen to provide year-round visual buffering of the facility. This is a view looking towards the south and southwest corner of the site. There is one significant deciduous tree along this property line. The balance of the vegetation is mostly deciduous shrubbery that offers only partial buffering. The hearing's officer required the evergreen trees as part of the

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landscaping plan to further screen the facility. A second condition of the -- of approval requires a paved area associated with the facility have additional landscaping to the I-3 standard installed to a five-foot depth along the edge of the blacktop. Again, to further reduce the overall visibility of the facility. This is a view looking further south of the site following the curve of the recreational trail. A grassy slope separates the trail from a sound wall and the rest of the I-205 right of way. The tall trees in the nearby area will help provide some buffering of the facility from view angles from the south as pedestrians and bicyclists approach the site along the recreational trail. This is a view of those taller trees to the south of the site. This is a view along the westerly property line where the site abutts another residential property. The existing house can be seen through the vegetation. This house is estimated to be approximately 250 feet away from the proposed site. The hearings officer held the record open for additional information to be submitted for his consideration. In his conclusions, he discusses various objections submitted to him and notes those issues that lie outside the approval criteria that must be considered in this proposal. His decision found that all applicable approval criteria and development standards have been met and approved the facility with conditions. That concludes my presentation.

**Saltzman:** Thank you. I propose we hear from the applicant for -- to give the applicant ten minutes, the appellant ten minutes and then we'll have public testimony. Is that okay? Okay.

**Ed Sullivan, Preston Gates and Ellis, representing the applicant:** Good afternoon. President Saltzman, members of the council. For your record, I'm Ed Sullivan. I'm appearing on behalf of the applicant voicestream. With me in the front row is Warren Merges of the Grace Evangelical Lutheran Church, the landowner. As well as other people from voicestream. At the desk with me is Larry from communications services, who consulted us -- with us on the permitting of this cell tower site and Lance Bailey, who undertakes site studies on behalf of voicestream. As the council's heard from staff and knows from the materials presented to it, this appeal presents only one issue. Which is according to the appeals statement, whether the proposed cell tower will significantly lessen the desired character and appearance of the area around southeast division and I-205. The appeals statement, though, is an incomplete reading of the applicable criterion. That's code section 33815225 d-1, which begins with a clause that's omitted from the appeals statement. It says, based on the number and proximity of other facilities in the area, the -- a proposal will not significantly lessen the desired character and appearance of the area. This clause makes an important difference, because it balances the number of existing cell towers against the effect on character and appearance. There are three existing towers within a two to three-mile range of this site. The facility, however, is needed to provide communications capacity for the overall area. Our existing towers, and we are the three towers within this area, are insufficient to do that job. And there are no competitor towers on which to collocate. If the area is to be served, which is one of the objectives of the federal telecommunications act, this tower is necessary. Because this is a capacity tower, which is needed to provide the level of communications services to our customers in the general area, rather than a coverage tower, built to -- built to provide any level of service, the radius and search for alternatives is a lot less than the three miles that I've mentioned. It's in fact a quarter to one-eighth of a mile for this capacity tower. Before moving to issues relating to the site, I'd like the council also to note the words of the applicable criterion which says the proposal will not significantly lessen the desired character and appearance of the area. I suggest to you that until the record thus far, the appellant has presented no evidence of any effect on character and appearance. The only attempt to make this connection is an unexplained generalization that no one will want to live next to a cell tower. Besides being demonstrably untrue, this particular site is in large part between an existing church school and public lands used for a recreational trail and a freeway. In looking at the cars dense sent to the council, I did find a number of letters addressing the alleged health hazards of cell towers. While my colleagues here can address this issue in much more detail, I do note that the telecommunications act of 1996 provides that if the proposal meets the emissions standards of the FCC, health considerations are not appropriate in reviewing such facilities. And you may wish to discuss

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that with your city attorney. The appellant says it has a policy to locate such towers in commercial and industrial areas. However, that policy is not in the city's plan, nor in the montavilla community plan. It is true this site is zoned for residential use. The city decided when it revised the telecommunications portions of its code that it would consider residentially zoned sites so long as they had 40,000 square feet or more of area, which this one does. Sites that are not specifically designated by zoning but rather a conditional use allowed in many zones present a special challenge for us. Because we're obliged to provide service and must also seek out sites with willing lessors, which limits our range of choices. To bring such matters before the city the applicant hired a site acquisition consultant and a zoning consultant to maximize the use of its existing towers and to study additional areas when those towers would not do the job. These consultants worked with the applicant and with city staff and found this site to meet the code criteria, as well as our own cry tier I don't. The site before you provides the maximum capacity, meets city criteria and is the best available site to provide service to our customers. It's locate order a small parcel that would otherwise go unused giving -- given its configuration and the use of the adjacent school property. While the zoning of the site is residential, its use is institutional in nature and both the church and the applicant are satisfied that there will be little adverse effect on that use. We have agreed to the conditions imposed by the staff and the hearings officer including the use of trees to screen the site in order to assure we're as minimally intrusive as possible. We've summarized our conditions in a handout which you have, and are prepared to respond to questions. I would also like if you have time left to hear from mr. Bailey.

**Saltzman:** Is there time left?

**Olson:** Yes. 41/2.

**Saltzman:** It's your time. Use it as you choose.

**Lance Bailey, VoiceStream:** I had some information I wanted to pass out. My name is lance bailey. My address is 1500 northeast irving. Suite 530, Portland, Oregon, 97232. I'm the zoning supervisor with Portland voicestream office, and I wanted to reference earlier I had submitted a memo to the commission that dated january 22nd. In that memo that was sort of a basic outline of how a cellular network operates. I'm not going to go into the detail about that today unless someone had questions. Really the point of that memo was sort of to provide information to the commission on where the need for this site comes from. And I think there may be some confusion between what may be considered a coverage or could pass -- capacity need from an engineering standpoint. And ed has touched on this issue already. This is a capacity site and it -- the need for this site comes from the fact that our customer base has grown such to the point that the sites that we have in that area within this three-mile area have the -- have become overloaded, if you will, and in this case we've -- we're required to build another site. In this particular search ring the approximate -- approximately one-eighth of a mile was the area we looked at sites. And I want to just --

**Saltzman:** One-eighth of a mile from one of your other towers?

**Bailey:** From the center of this particular zone we were looking to offload. I wanted to receiver, there's a number of photos, I understand that time is limited, but in the packet I just passed out -- we were aware when we -- when we went out to look for this site that there is commercially zoned areas in near proximity to where the church is. Essentially the area of division and 92nd, that intersection. If you're really think about an eighth of a mile, it doesn't go very much further out from where the church is from that intersection, and i'll just touch on the four properties that may -- that may have been potential in that area. On those four corners we have -- there's one existing gas station, there's one gas station that's currently not operating. It's our company policy as well as other cell companies' policies to not really pursue sites in gas stations. I think you're probably aware of some of the environmental issues that those type of sites can have. It's a potential legal liability on our part to sign a lease and to do development on one of those sites. So typically we don't look at those particular sites. On the other corner is a 7-eleven. Again, it's the type of site that they maximize the amount of ground space that they use. When we go in and look at a site we're required to be able to lease from the landlord a

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minimum amount of a property that's going to allow us to do our development. 7-elevens and convenience stores are typically not good sites because they tend to maximize their space with parking and retail space. On the other corner is a building supply office -- a building supply business that is essentially used as a storage facility for -- there's a number of derelict equipment in the rear of this property. Again, that was eliminated for environmental reasons. So I just wanted to sort of get a background on the reason why we didn't go for any of the properties in the commercial area and instead we were centered on the church property, which did meet all of our requirements. We were as sylvia mentioned in her staff report, we had enough ground space to provide landscaping setbacks that were required in the code. And unless -- unless you have any other questions about that process, i'll turn it over.

**Saltzman:** Okay. Any questions for the applicants? No questions? I guess one question, I didn't catch the part of the historic site. I didn't understand the -- you're talking about a property at the corner of -- one of the corners of 92nd and division?

**Bailey:** The four corners of 92nd and division.

**Saltzman:** I understood the gas station and the 7-eleven.

**Bailey:** There's one -- there's a gas station that's out of business.

**Saltzman:** Is that what you referred to as the.

**Bailey:** I didn't mean to it -- to refer to it as a historic site.

**Saltzman:** Okay. And that property was ruled out for what reason?

**Bailey:** For the same reason as the other gas station. Typically the environmental -- when we look at a site we go through a phase one environmental, generally we'll do soil testing, any other type of obvious environmental contaminants. Because of the legal liability of the company, we'll typically, if we can't pass a phase one environmental, we'll look for other sites.

**Saltzman:** This property did not pass the phase one?

**Bailey:** We didn't test those sites. But it's been our experience in the past that an overwhelming majority of those type of sites will commonly have those problems.

**Saltzman:** Okay. Okay. Let's hear from the appellant. And we'll give you ten minutes. Who's the appellant, or appellants? If you could give us your name.

**Alice Wallen:** My name is alice, I live at 2320 southeast 92nd. 97216. I live adjacent to the property where the proposed site is. Today i'm here not only as my own voice, but the voice of average jane and average joe. I received the notice in the mail and tried very hard to make some sense out of it. I contacted the city asking for information in regards to the criteria to try to understand the criteria. And actually no one from the city could help me interpret the criteria, so I was just kind of left on my own to try to figure it out. The reason why i'm the voice of several other people here today is because after the original hearing, I -- and nobody showed up, one other neighbor showed up, I went knocking on a few doors to see why, and if -- how my other neighbors felt about it. Out of the first seven doors I knocked on, no one had even heard about the proposal. And so since then we had a meeting and informed other residents about the proposal, and I have at this point 45 letters with me from concerned citizens. A lot of these letters are a drafted letter, and the reason why they're a drafted letter is these people didn't have any information on their own to write directly to this. Anyway, in the letter they say that they fully agree with the montavilla neighborhood association, and our other neighbors in drafting this letter for them to sign to oppose the approval of the cell tower to be placed in a residential area or near a school. And i've listed some of the city -- i've listed the city codes that I tried to understand and make some sense out of, and actually I have extra copies here for you. Do you want me to bring this up to you?

**Saltzman:** Sure. Give them to Britta. Okay. Well --

**Wallen:** Okay. Well, 33815, 225 a, b, and c, i'm trying to interpret this. Every one of these stated that this would be for 100 watts of effective radiated power or less. Because the notice said that it would start out at 239 and because there will be future sites on the pole, it could easily go up to 1,000. I do

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believe it's intended to go up to 1,000 watts of radiated power or more. I kept struggling with this. I went down, I called the city, and I was just told that our codes are old and antiquated and basically meaningless. But I didn't get any real answer. I went down to the city building and asked planners down there and they really had no answers, and they just told me that -- when I said, this is over 100 watts, they just said, well, that's why it's a conditional use permit. But I still never got an answer. Most recently, looking here under d, which is the criteria listed for this, under d, it says, approval criteria for all of the radio frequency transmission facilities. But it doesn't tell me how much watts. How many watts this d would be for. So then one of my -- somebody that was really giving me a lot of help, penelope sanders, said then it goes to the federal code. But that wasn't explained on here, and when we tried to find out what the federal code was, apparently the federal code is in a completely different -- it doesn't go to watts, it goes to some other type of frequency standard, and no one that we know can even convert the federal code standard to the -- into watts. And penelope will be speaking about that later. So, you know, my whole position on this is that if i'm given proposal that as a resident -- and i'm just the average person. If I can't get answers from the city and I can't understand this, then how can I be confident that this is safe? Next to my home? I had several letters from different people with a lot of different concerns. And one of the letters in particular was from glen clark that lives right there in the neighborhood that has a pacemaker. Glen has been told not to stand in front of microwaves and he's been told to, if he goes to the airport, to quickly get through the airport and not spend any time at the airport because of his pacemaker. Other people have cancer, and some of the information that -- by the way, I had to go to the internet to finally get some information. And I find that to be a blessing in disguise, because on the internet I did find out a lot of information concerning health hazards, and some of the people that I spoke with have been dealing with cancer, and in some of the studies that I have gotten off the internet, show that when cancer is already present, this type of microwave type of radioactivity -- bear with me for a minute because I can't remember all this terminology. But this increases tumors to grow even more rapidly. And so in our neighborhood we have people with pacemakers, people with cancer, small brand-new babies, young children, pets. From what I understand in this book that i've recently gotten and read, is that the standard was based on a healthy man of average size. But you'll find a combination of people of all sizes, of all health conditions, and I really don't want to eliminate our pets, because our pets are like family to us. That wasn't brought into the equation in setting the standard, but just, you know, for the sake of this. The only thing that I could ever find out on any of this was 100 watts or less. And I think until somebody can put this into the proposal, what you're dealing with when you're going over 100 watts, it can be explained to somebody that's going to be totally impacted by the cell tower being there, I don't think, d, this -- d, under 33815225, I don't think that should be allowed to be part of the proposal unless it can be explained in watts. Because they're addressing this in watts, but they're not explaining it in watts. Do you see? Do you see what i'm talking about there? So under a, b, and c, it's all 100 watts erp or less. D doesn't explain that to us.

**Saltzman:** We'll bring staff up to explain that to you. Did you have somebody else that wanted to testify on your ten minutes?

**Wallen:** Am I done with my ten minutes?

**Saltzman:** You're -- how much --

**Olson:** About 2 1/2 minutes.

**Wallen:** Okay. I'll just go off my letter, because that wasn't the only issue. The watts was one thing that truly threw me. This 80-foot-tall tower will significantly lessen the desired character and appearance of our neighborhood. I've got 45 letters with me today. I've probably got that many or more on their way that will be submitted before the end of the week. There are no tall buildings in our area. We're not zoned for tall buildings. There are no tall trees near the site to buffer or camouflage an 80-foot tower. The city's recommendation to paint the tower gray and plant six-foot-tall trees around an 80-foot tower doesn't say to me or any of my neighbors at all that this is going to be -- that it's going



to blend right our neighborhood. We feel that the concern -- the health concerns that people have, they're not being addressed, and just the visual impact of it, we were an rf -- r5 zoning. Now we're r2, I believe, r2-a. There are many homes right now, brand-new homes going into this area. I have property, my neighbor has property that we intend to develop into residential -- for smaller parcels for residential homes. We feel that with the tower looming over our property, who's going to want to buy our property? Who's going to want to buy our homes? I feel that the use of a cell phone is a convenience, not a necessity. Public benefits do not outweigh the impacts -- those using the convenience would not be sharing the risk assumed by those of us being forced to live near a tower against our will. I oppose being made into a human guinea pig. I think right now this technology, it's - - it's an experimental thing at this point, and they haven't proven that it's safe. And where -- they haven't produced any studies whatsoever that I am aware of that this technology is even safe. I mean, it's just all kind of a guess at this point. Well, the other thing is I would like to leave this open for seven days so that we can submit more information.

**Saltzman:** Okay. Go ahead. Questions for ms. Wallen? Before we go to public testimony, why don't we bring sylvia, do you want to come up and answer the question about the code interpretation and the 100 watts? I believe the question as I understand it is why isn't the 100 watts erp limit applicable for this particular application.

**Cate:** Okay. When we revised the code in 1997 in response to the passage of the '96 telecommunications act, we created thresholds for review, and one of those thresholds that was established in the code was 100 watts of effected radiated power, which is considered in the telecommunications industry as being extremely low powered facilities. So any facility at 100 watts or less have certain approval criteria and a certain procedural pathway to get reviewed by the city. Anything above 100 watts effective radiated power is reviewed against the criteria d-1-3. Now, to flesh out that scenario, it's important to understand that the fcc, who is the regulatory authority for all radio frequency transmission levels, has established that cellular facilities, cellular pcs facilities such as the one before you today, can operate up to 1,000 watts effective radiated power and be within their limits, and in some particular circumstances they're allowed to operate as high as 2,000 watts. Again, from the industry, the radio frequency industry, the telecommunications industry standpoint, anything in that range is still considered very low power. So our code split apart extremely low power with all else. And it's a threshold there that makes the difference in what approval criteria are applicable.

**Saltzman:** So d applies to anything up to 1,000?

**Cate:** Anything over 100.

**Saltzman:** Anything over a hundred. Okay.

**Cate:** All the development standards in chapter 274 apply -- are required by all the approval criteria to be met by alpha silts and all of those standards apply to alpha silts regardless of their effective radiated power.

**Sten:** Do the criteria in section c apply?

**Cate:** No, they don't. The criteria under letters a, b, and c do not apply because each of those sections of the code are specific to a facility at a 100 watts or less. And if you read the detail of the language, it's whether it's mounted on a building or a tower and so forth.

**Saltzman:** Okay --

**Sten:** Okay.

**Saltzman:** What about -- does anything in our city code speak to a priority of siting in commercial or industrial properties available properties prior -- over residential?

**Cate:** Yes. In fact, when we revised the code in '97, it was restructured so that the facilities are very much encouraged to site in industrial and employment zoned lands without a conditional use review. Unless certain -- again, certain thresholds are met. In fact, for a facility to locate in a residential zone, it's a very stringent review. There are additional development standards that have to be met, and I think perhaps one of the most important of those standards is that the site has to be 40,000 square feet

in size. The underlying intent of that standard is that -- is balancing two things. First, that the telecom act of '96 prevents us from outright prohibition. That we can't be barriers for entry. Secondly, if then we need facilities in residential areas to provide the universal coverage, what sorts of sites would be most appropriate. And at 40,000 square foot site limit is intended to steer these facilities towards institutional uses or other nonresidential development that's within the neighborhood so that it has less of an impact then -- than putting a facility smack in the middle of a totally residential area with nothing but residential development on small lots. So it's kind of --

**Saltzman:** Is the applicant required to demonstrate that available commercial or industrial sites that fit within the location of criteria -- Are not superior before they go to residential?

**Cate:** Not under the approval criteria that are applicable in this case.

**Saltzman:** In this case?

**Cate:** In this specific proposal.

**Saltzman:** In this specific proposal. So there could be others -- other situations in the city where there would be a requirement that the applicant demonstrate that available commercial or industrial properties were thoroughly investigated prior to coming in and honing in on a residential property?

**Cate:** That's correct.

**Saltzman:** So what's the difference in this particular situation?

**Cate:** Again, it's how the threshold applies to the approval criteria. If you look at -- if you'll give me a moment I can give you the specific site.

**Saltzman:** When you say threshold, are you talking about the wattage threshold?

**Cate:** The watts.

**Saltzman:** The 100-watt issue?

**Cate:** If this was -- if this facility was at or below 100 watts effective radiated power, the criteria under letter b would apply and that one of those criteria require that the applicant must prove that the tower is the only feasible way to provide the service. But in this specific proposal, those criteria are not applicable.

**Francesconi:** Why not? In other words, if you don't mind commissioner Saltzman, why did you change it for this category?

**Cate:** When the code was revised in '97, the 100 watts effective radiated power was a threshold that was set through a long legislative project, with lots of input from the public, from the industry itself. And at that time 100 watts erp was the fcc standard that was applicable to these sorts of facilities. Shortly after we revised the code, the fcc changed their regulations. And so now we have a gap, if you will, between these criteria and what the fcc allows today that we have not caught up with.

**Saltzman:** That was in '97 when that happened?

**Cate:** Right. The revisions were effective I believe november 29th, '97.

**Francesconi:** I guess -- why didn't we just change it to make it uniform once they changed? Was there some policy reason?

**Cate:** Well, yes. I think one of the things that's very important to understand is cell facilities in the vast -- and the vast industry of radio communications relatively small facilities as compared to, say, the kgon tower on heally heights, which is an enormous tower with an enormous number of antennas, and is broadcasting at significant wattage levels. 100,000 watts. As part of the code, there was a recognition that when you start talking about high-powered large facilities, there's -- there's no conceivable way really to mitigate the visual impact of a 300, 400, 500-foot tower. On the flip side, the cellular facilities, while they may seem so -- somewhat large to the pedestrian, scalewise 80 feet, 100 feet, they're -- there are a number of things you can do with landscaping and screening that help soften the visual appearance. So again, that was another reason why there was a separation created in the code to apply criteria and standards designed to minimize the visual impacts of these facilities.

**Saltzman:** Any other questions?

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**Francesconi:** A big big issue is the safety issue. When you're looking at the approval criteria, I guess you could get into safety by looking at the wattage, or if the potential harm that way -- outweighs the benefit, those would be ways. But then in looking at this, it looks like the fcc is specifically -- has specifically said that we can't consider that. Is that right?

**Cate:** That's correct. And again, what we do with our code --

**Saltzman:** Elaborate on that point for us.

**Cate:** Well, the -- congress has empowered the fcc as the regulatory authority for radio frequency emissions. They are the end body. And there's no authority on the state or local level to regulate those emissions. The fcc is the authority. Specific to our code, we ask applicants to demonstrate that they are in full compliance with the fcc standards. And the typical application and the -- this is also true at the specific application, the emission levels that the facility is operating at is a fraction of the maximum allowed by the fcc. The fcc's standards in terms -- in turn are established with a fivefold safety level. So it's -- i'd like to emphasize that these are very low-powered facilities, and their emission levels are minute. Within the world of telecommunications. And in turn, and when congress passed the '96 act, they specifically embodied language in that act that preempts local jurisdictions from denying an application based solely on health hazards as an issue.

**Saltzman:** Unless the fcc adopts a rule. Unless they adopt a rule.

**Cate:** That's correct. If someone -- there is a procedural pathway to take an appeal direct to the fcc on that basis, but local jurisdiction is not charged a -- to handle that issue, only the fcc.

**Saltzman:** Okay.

**Francesconi:** My last question has -- is not directly relevant to the approval criteria or decision here, but the testimony you heard was they had trouble getting information from the city. I'm not blaming you, because you've done a good job trying to sort through all this. But on that question, is there anything we can do to kind of give a little more information to the public about not only our own code and what the criteria is, but what our limitations are and how maybe they need to be at senator smith's office instead of city hall on some of these questions?

**Cate:** Well, frankly i'm a the personally distressed that mrs. Wallen didn't feel like she goes as much information from city staff or understandable information, because I tried to do very due diligence in trying to explain the regulations and the constraints, and also embodied in the staff report we always put staff notes in pointing out where we're constrained by the '96 telecom act, so give the reader -- I realize it's thick reading, but we try to get it in there to demonstrate where we're constrained to people can understand that. Perhaps there's an opportunity for additional information on our web page. That's -- that certainly is a logical place to try to assemble additional information for the public.

**Saltzman:** Okay. So we will go to public testimony now. How many people want to testify? Okay. Three minutes. Each person will have up to three minutes to testify, and why don't you come up maybe -- come up three at a time. We have a sign-up sheet. If you could -- you'll each have three minutes, and then the bottom left-hand corner of the screen will show you your time. If you would each just state your name before you testify for the record. Hospital wants to go first?

**Joe Schmidt:** I'm joe smit, and my wife and I live at 8931 southeast stevens. We lived in that house for 47 years. Up to this point there's been no safety problems. And I have not heard yet today what's going to be emit the by that tower. By the way, i'm a cancer survivor, a heart attack survivor. Today hi some melanoma taken off my arm, my hand, which I don't know is malignant or not. No one has told me other than what's brought up on the internet that the tower could be emitting substances that would cause cancer and affect your heart problems. And my question is, why no one in the neighborhood was ever notified that this tower was a possibility. So we could come up here and give you our statements. I didn't know nothing of it until last week. I don't know what else I can say. There is a tower up on kelly beauty -- butte, and there's three grade schools in the neighborhood, a high school in the immediate neighborhood, and I just don't think it's a place for a tower. Cellular tower.

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**Mike Wallen:** My name is mike wallen. I live at 2320 southeast 92nd. Which is right next door to the school. Where the tower is supposed to go. I think putting an 80-foot tower in a residential area will not only lower our property values, but it will make it unwise to develop our property. No one wants to buy property next to our even close to a cell tower that has harmful effects. Why the city would allow a cell tower to be placed in not only a residential area, but in a school yard, is just beyond me. It's very harmful and there's absolutely no protection from the harmful rays. And -- any place your cell phone will reach, these rays will go. That includes your basement. The -- the school has children from kindergarten true -- through eighth grade, and they'll be exposed to it for eight hours a day. People that live next to it will be next to it or close to it, will be exposed to it 24 hours a day, seven days a week, 365 days a year. I don't know -- i'm just sure if we looked, we would find more suitable areas for a tower and why the cell people haven't checked these residential -- these businesses even in that area, which is best not to get them in close to residential areas anyway, but they chose to pick a school yard as opposed to a business site, you know. And as far as a buffer, the tree -- the trees and things they're supposed to put in are going to be six feet tall, and they're going to take 30, 40, 50 years to grow. And the tower is 80 feet, which is seven stories high. And you're not going to hide 80 feet with six feet. No matter how many trees you put in. And the tallest trees close to it, the ones they showed in the pictures, are actually over 200 feet away from where this tower is supposed to be. And nothing else even close to it. And they already have a pool through the city to rebuild their tower up on kelly butte, which they're not doing because they say the structure it's on is unsound. Well, that's -- that sounds unsound to me. I mean, it's going to be a lot less for them to make their structure sound and use their site on kelly butte than to put it in a school yard and start from scratch. Oh, and the area this tower is going into and why it was changed, I don't know, but there was a four-plex built next to it which this site -- this -- this site where this tower is going was supposed to be a playground for the children who live in this apartment complex. I know for a fact there's at least six children there in that complex, and there's no play area. Now, how they got the variance to eliminate a play area for these children I have no idea. But it isn't right. And the reason that apartment complex was allowed to be put in there, one of the stipulations was the fact they had a certain area for a play area. And it's been eliminated. And if that tower goes in, they're certainly not going to have room to put a play area. Thank you.

**Michael J. Wallen:** My name is michael j. Wallen, I live at 2320 southeast second. I'm the son of alicia and michael e., Before I get into my -- would it be possible for me to ask a question about the procedure here before I get into my three minutes?

**Saltzman:** Sure.

**Michael J. Wallen:** As far as I understand it, we can say anything we want here but you're only allowed to consider statements which relate to the approval criteria. Is that correct?

**Saltzman:** Yes, that's correct.

**Michael J. Wallen:** All right.

**Saltzman:** Check with counsel to make sure.

**Spetter:** Your decision is limited to your approval criteria.

**Michael J. Wallen:** All right. So the -- excuse me. I'm very nervous. So the approval criteria is that basically the only approval criteria is that lit not lessen the desired character of the neighborhood. Is that correct?

**Saltzman:** Yes.

**Michael J. Wallen:** All right. Are you allowed to consider -- if I were to find a psychologist who said that because of people's perception of health effects, whether real or -- they're not imagined, but we don't know yet, and people who don't know yet aren't going to want to move near one. The applicant said that it was demonstratively false that no one wanted to live near a cell tour. I believe that applies to people who are already there and simply don't care -- I do not believe people want to move next to a

cell tower. And I am wondering if it would be possible to -- for a psychologist to submit an affidavit to that effect. And for you to be able to consider that.

**Saltzman:** I believe the record remains open for seven days at your request. So any information can be submitted.

**Michael J. Wallen:** That would be pertinent to the criteria?

**Saltzman:** Well, I guess that's -- we have to limit our approval to the decision criteria. I don't think that would fit in.

**Michael J. Wallen:** It would not? How much more time do I have?

**Saltzman:** It's in the bottom of your screen.

**Michael J. Wallen:** I don't see -- there's no time on the screen.

**Saltzman:** 1:33.

**Michael J. Wallen:** Thank you. If that cannot be allowed to be considered, then I would -- I would ask if -- if the nature of the neighborhood is to be taken into effect because I really don't understand these approval criteria as a private citizen. I've done my best to study the codes, but I really don't understand it. And i'm just wondering, you know, there's the bicycle and recreational trail right behind the tower, and at night all sorts of people are back there. Activities -- well, illegal activities go on back there. I'm wondering if what would happen if some juvenile delinquents cut through the cyclone fence and messed with the tower and were somehow injured? Would voicestream be liable? I mean, they'd have to put police around to prevent it, wouldn't they?

**Saltzman:** Are you through with your testimony? Is that -- does that complete your testimony?

**Michael J. Wallen:** I suppose. I don't really understand the procedure here. I don't think there's anyone at city hall we could have gone to to help us. I feel that my government is closed to me.

**Francesconi:** Let me make a comment, then you can react. First, I want to tell you you did a very good job. You may think you didn't, but you did. And you actually understand this a lot better. I wasn't sure if the message was getting through. So in fact I think I understand it very, very well. What you did at the beginning of your testimony was try to come up with a creative way to give us some evidence, because you understand that we do have a lot of limits here. Unlike some of the neighbors, I think you do understand our limits. So you were trying to help us. Unfortunately my answer is the same as commissioner Saltzman's on your first attempt with the psychologist, because of that fcc was just like the federal government giving us a law saying we can't consider safety. So they've gone even further. So I don't think we can do that. You -- your second attempt was valiant, but that's not an approval safety, or whatever, there. So that's what we're stuck with. So what the city code tried to do is limit it to these 40,000 square feet to limit it, because it's very hard to find those as we grow. But the decision was made to just allow them the institutions, because the federal government has said that we want this coverage. So that's where we're stuck. So you tried really hard, but that's the problem we're having.

**Michael J. Wallen:** I understand. I know I said i'd conclude my testimony, but would I be at all possible for me to respond to what you said?

**Francesconi:** Sure. That was a question.

**Michael J. Wallen:** Okay. I had said I concluded my testimony. Basically two points. First of all, is there any way the -- you see, there's -- it's the whole thing about the very low power towers versus everything else. And this is going to be everything else. This is going to be ten times the original fcc standard for safe public exposure. I'm just wondering if it will be possible to pass a law that the city or -- at the city or state level adding -- making it more specific of what happens if you go over that 100-watt barrier. Second of all, i'm just wondering how the federal government can stop a state from creating its approval criteria under the tenth amendment. I know they have very -- they have a lot of coercive ability, but I was not aware that -- I don't understand how the fcc can specifically say that you cannot make a law. They can encourage you, that's the principle behind many of the federal regulation

that's apply to states. But i'm sorry, I just don't understand how this works under the constitution. This is the conclusion of my testimony.

**Francesconi:** On your first, I don't know that -- I think commissioner Sten could answer the second part much better than me. On the first part, it -- we should consider that in a sub -- we should ask staff to look at that to see if there's anything that can be done. It won't help in this case.

**Michael J. Wallen:** I understand.

**Francesconi:** But that's worth looking into.

**Michael J. Wallen:** It will help other neighborhoods.

**Francesconi:** Maybe if there's something we can do. We are not, because the staff worked pretty aggressively to try to limit this. Because we put a ban on this for two years trying to do this. On your second point, there's certain circumstances, inner state, commerce, interstate communications where the federal government has a specific role.

**Michael J. Wallen:** I'm aware of that. I was not sure if -- if national and international communications companies, their actions would be covered under interstate commerce.

**Francesconi:** I can't cite to you the specific provision.

**Michael J. Wallen:** All right.

**Sten:** This state's basically have the right to regulate anything that's not expressly preempted by the federal government. And in an area of telecommunications, the federal government has clearly said these are matters of national interest and we're going to have consistent policy. On these issues they set the standards. That's an act in congress that decides that as opposed to constitutional or anything else. It's a congressional decision to take authority for these issues. And basically their logic, which i'm not saying is my logic, is that we won't have a national system of communications such as cell phone unless there's some certainty that the towers can go up. So they take some of the authority away from us in doing that. And expressively say, you know, the health standards, for example, will be determined at the federal level and if we believe these towers to be safe, that's not -- that can't be an issue when the local government sets up its criteria. So we have to set it up as a land use approach. So that's the framework.

**Michael J. Wallen:** May I say one more thing? May i? I keep saying I conclude my testimony, but I have so many questions about this.

**Francesconi:** We really --

**Saltzman:** We have other people that want to testify.

**Michael J. Wallen:** Just one question, if I may.

**Saltzman:** Why don't you directed to it our counsel and we'll bring it -- up the next three witnesses.

**Michael J. Wallen:** All right.

**Saltzman:** Please call the next three witnesses. We have three people? Do you want to call the next three? Okay. You each have three minutes, and the time is shown in the lower left-hand corner of the screen. Please give us your name and please use the microphone. Would you like to start.

**Penelope Sanders:** 1214 NE 73<sup>rd</sup>, 97213. Sure. My name is penelope sanders, a resident of the montavilla neighborhood. I'm the land use chairperson at -- of the neighborhood association. So it's my job to act as technical assistance to the snakes when they have concerns about land use issues. Voicestream has applied to site a cell phone moan 0 pole in a residential zoned area. The mandated process of neighborhood notification is something we do have issue with. The required sign that was supposed to be posted ten feet from the street lot line we feel was not that close and out of compliance. There were a lot of neighbors that were not notified because the way the planning bureau sends things to landowners instead of residents. A lot of people missed the boat on being notified on this. And I think that's one reason why a lot of people have a lot of objection here. They feel like they were not given a chance to have any say in this. The criteria used to judge whether this is allowed in the Portland city code uses the qualification of 100 watts of radiated power or less. And I think we've kind of gone over this, but the code does say if -- it does say, in all other cases referred to the federal code

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regulations title 47 part 1, section 1310, and I tried to have that put up for you, but -- Yes. As you can see, the measurements that are presented in that federal code say absolutely nothing about effective radiated power. They're all in megahertz and megawatts. And it's just very difficult for the layperson or neighbor to understand --

**Sanders:** It's very difficult for premium who aren't radio frequency engineers to determine if this is safe or not. So I think there's a deficiency in the code and that we don't understand this. I think when we approach the planning bureau and tried to get that explanation, it obviously was not clearly communicated, or else alice would not feel like she was put off. And as you can see by those standards, there's a time limit of 30 minutes exposure, and maybe some of the voicestream guys can explain a little further what those mean. But that's one of the reasons why people have a great fear about this, is because they don't understand these measurements. This area was also recently upgraded to high density, the r2-a zoning. And as people have said before, we're concerned that that area won't be developed for housing to its full potential. The only reason they found a 4,000 square foot site was because that process of upgrading to that zoning has not started to take place yet because it's relatively new. We've -- we'd just like you to take into consideration the aforementioned thoughts in your final decision. Thank you.

**Judy Thayer:** High name is judy, I live at 9307 southeast grant. I'm a new resident to the neighborhood. I have a manufactured home. As I go out my back door for the year i've lived there, i've enjoyed a cup of coffee on my patio every morning. As I look directly east, kelly butte is to the east. Now when I go out on my patio to enjoy my coffee, now once the cell tower will be erected, I will see a kinkel tower. I won't see -- a cell tower. I won't see the forest, the trees, the sunrise, the cell tower will block my view. And that's a small issue. But i'm hoping that will give some place for other than a health issue, there is one thing in regards to health issue that I want to just briefly touch on. I have a dog who suffers from epilepsy. This dog has been a big member of my family. I've invested several thousand dollars with this dog. It is my understanding that with the radio frequency that it will be emitted from the tower, that will increase his seizure activity, and at some point it will cause his death. This dog is like my child. He's my son's best friend. More than the view, the fear of losing my dog far outweighs my view. But the way I understand the criteria, that is something that will allow you to work within in considering your decision for the placement of the tower. Thank you.

**Vida Jordan:** 2339 SE 92<sup>nd</sup>, 97216. I'd like to submit --. All right. Thank you. My name is vida jordan. I love my neighborhood, I love the neighbors that I share this neighborhood with. I'm an rn by profession. So I know the medical research is not a criteria here, but perhaps it should be. In 1956, the fcc gave permission for cell towers. At that time, this research was not out. In 1997, it sounds like the city decided to -- which criteria they would have cell towers adhere to. Well, this is all new medical research. These are 20 different proven points that will -- I will submit a research paper that will give credence to this. This is not unproven research. And this continual radio frequency, this low pulsating type of frequency that is emitted by cell towers is actually the most dangerous. Per the research. Number 1, I just want to state these, it causes increased growth of brain cancer cells. Number 2, a doubling of the rate of lymphoma in mice. Number 3, increase in tumor growth in mice and changes in tumors. Number 4, increased breaks in single strand, that's rna and double strand dna genetic material. Number 5, two to four times as many cancers in polish soldiers exposed to this type of radio frequency. Electromagnetic radiation. Number 6, more childhood leukemia in children exposed to rf. That's radio frequency radiation. Number 7, changes in sleep patterns in rem sleep. Number 8, headaches caused by rf; radiation which passes the blood-brain barrier. 9, changes in the blood-brain barrier. Number 10, changes in cell division. Cell mycosis, and even causes cell death. Changes in eeg brain waves. Number 12, changes in neural transmitters. The functioning of our minds. Number 13, metabolic changes in how calcium ions move in and out of the cell membrane. And this research is primarily toward neural research. Other multisystem body systems have not been researched as much as the neural. Number 14, cytogenic effects. Alzheimer's and neurogenerative

diseases. There's quite a few of neural generative diseases. I'm thinking of ms, the part I read about ms, increased rate of ms. 15, decreased memory attention and slow reaction time in children. While slower memory, when you're driving your car, and decreased attention can lead to accidents.

**Saltzman:** Can you wrap up here? You're not going to go through your whole list because your time has expired.

**Jordan:** Increased blood --

**Saltzman:** We have your written testimony.

**Jordan:** Damaged eye cells and overall degenerative degeneration in transient memory loss. Thank you for extending my time.

**Sten:** More for the panel, I have to give penelope special consideration because we went to high school together. And she had a very good education. But this is for anybody in the --ful it was on a commercial street, but it was similarly nearby, would you raise the same objections? These -- I assume -- i'm not sure I can figure -- if you're raising the health -- there's two sets of objections that I hear. Understanding that i've got to stick with the arrival criteria, but the two general objections I hear is its visual blight, it's ugly, and there's a belief of health problems. So if it was on someplace other than this site would you -- in the neighborhood would you have the same objections?

**Sanders:** Well, I think at one point we wouldn't be able to raise them because we would -- it would just be a loud use.

**Sten:** It's not an industrial --

**Sanders:** Right. If it wasn't a commercial or industrial zone, we would be much happier. And we encourage voicestream to try to find one of those sites.

**Sten:** Okay.

**Saltzman:** Thank you.

**Sanders:** I don't -- also don't want to walk out and look at it. It's right in front of my house.

**\*\*\*\*\*:** Can I say something?

**Saltzman:** Let's finish the testimony. Then we'll bring you up. Give us your name.

**Debra Runyen:** I live at 9311 southeast grant. High parents live at 9315 southeast grant. We have lived on that property since my great grandparents built the home. We've recently put a second home on it for me and my son to live on. We're kitty corner from the site. The four-plex was put up while we've lived there. The freeway was put in while we've lived there, and the tower would be right behind the four-plex where the children -- there are six or more children living in this four-plex. When they first asked for that to be permitted to put in there, that extra little triangle was part of the criteria for putting the four-plex in there. I don't know how they were able to sell it off to the school. They were. Since the school owns it. One of the things, the criteria, there is commercial in the area. There is the two gas stations, they haven't even looked at because they automatically wipe them off. And then the -- it's window door, you know, little building that they store their window and doors I think there, and they have garbage, you know, old trucks and stuff in the yard there. It's on the corner of 92nd and division. They said they didn't even really look there either. That was their testimony. Why they couldn't put it there, I don't know. That is a nice-sized lot. On the other side of the freeway there is commercial right on the other side of the freeway off of division. There is apollo college, u.s. Fish and wildlife, there's a gas station, storage units, right on the other side of the freeway. So I don't think they really looked any farther than right there, because they were able to get somebody that was willing to let them put out their property because they do get a nice lease amount of money. And the school can use it. And I know that's why they're letting them put it there. Why else would they let them put it near children?

**Rose Marie Opp:** 11135 SE Yamhil, 97216. My name is rose mary. I'm the chair and land chair of mill park neighborhood association, and i'm here today because another case is going to be coming in in an appeal about a cell tower, and I came to talk with you about that. I think that the citizens in the neighborhoods need support. Technical support. My partner, larry and I spent an afternoon going over



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this and he's an engineer. And we just came out with our heads just -- we need help on this. And I think the approval criteria needs to be updated to deal with this kind of technology. When I called the city, I was told safety is out. We can't even discuss it because of the authority of the fcc and all of this kind of thing. Like I say, it's very complex. You'd have to have a consultant to deal with this. And what I might want to then focus on, then, is maybe a way out here for you to help the neighborhood with the approval criteria that you do have, because under 33815.225 c 1, it says that the burden of proof is upon the applicant to show why the tower must be rat in location. And as I heard the applicant speaking, they were saying that, well, they eliminated this site or that site because of environmental reasons or legal matters, or -- they didn't want to take on any additional little problem here. But it seems to me that just because a corporation doesn't want to deal with a little extra legal liability, why should they get the easy road out and these cell towers should be placed in this neighborhood? I really feel that the city should not be assisting the corporations, maybe they should be saying, clean up the site. If you really need this coverage, the capacity coverage, or whatever they were discussing, why don't you be a good neighbor and clean up the site on that office site and keep it away from the homes as much as possible. My preference is that they aren't even anywhere near here, and near the residential or schools. So that's one thing I would like to ask, is to stand up for the neighborhoods and the citizens who come before you, because they're the ones that have to deal with it night and day. And live there. And I do believe that under 33815.225 c 4 that the visual impact cannot be mitigated. And I do believe the property values will go down. If I was going to be buying a home and a real estate agent took me negotiation to -- next to a home that had a cell tower, I would say forget it. The people's lives are going to be changed by this. People do not want this right next to them. Don't even want it in the area. We don't even know what the health impacts are going to be, really, in ten years, 15 years. And I don't -- they say 3381 -- under 3381522 -- public benefit does not outweigh the impact. Well, the public benefits -- the public also like Mrs. Wallen was saying, these cell towers many in many cases are just a convenience. Not a necessity. And I would also like to say that the police officer that comes to our neighborhood association has brought up a point, that sometimes these cell towers interfere with the police radio, with what they need. So here's another matter that I think the city needs to look into. Thank you.

**Saltzman:** Thank you. Who's next?

**Opp:** Could I say one more point? In northwest Portland, I believe a moratorium was put on this because of some hotel things swayed down there. Maybe we need a moratorium on the cell tower placements throughout the city until we can come to some kind of adjustments so that the neighborhood really can be reached on this. And the safety issues, we can come to terms with this. Thank you.

**Saltzman:** That's all? Okay. Mrs. Wallen, I believe you have time, I think you have about a minute left.

**Olson:** About two minutes.

**Saltzman:** I don't know if the applicant wants to come up. I think we probably have some questions. Go ahead.

**Alice Wallen:** The reason why I wanted to bring this up before, I think people are misinterpreting the fcc section 704. This is -- it says no state or local government or instrument may regulate the placement construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the commission's regulations concerning such emissions. They're just saying it needs to comply with the commission's regulations and that was my issue about that we were -- it didn't give us any, so we need to bring that into light until -- and tell us what those regulations are before it can be a proposal. Secondly, here under 33274. on you 40, -- 040, i'll try to find the exact -- under 5, it says under the statute -- staff note, just -- I won't read the whole thing. The bottom it says, the fcc adopted standards effective august 1st, 1996, which are virtually the same as those reflected in table 2741. Because this

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land use review was submitted after those standards took effect, this conditional use review cannot be denied solely on the issue of harmful radio frequency emission levels. It doesn't say you can't consider it. It just says that it cannot be denied solely on that basis. So we're trying to give you other things to go along with it, but you can still consider the harmful effects to the people in that neighborhood. I did also want to point out that it became a tremendous burden upon me to notify my neighbors that this was even going on. I don't even think I reached ten to 20% of the neighborhood. And when every person I asked, I asked them if they'd been notified, one out of -- maybe one out of 20 said yes. We're talking about 5% have been notified by mail. I asked them if they saw any kind of sign posted at the school. People driving by every day, had never seen any postings. I have a picture of it here. I was told by Philip Wong of the district coalition that they're required to put this sign ten feet from their property line. I went out and measured where they had it placed, it was over 40 feet. Nobody saw it. So I still don't know how we can have due process when when -- myself and one other neighbor attended the hearing and we were basically the only people that really knew.

**Francesconi:** Could I ask you commissioner Sten's question? Are you okay with this in a commercial district?

**Alice Wallen:** No. Well, commercial -- it depends upon commercial, how close that commercial is into a residential. Because you're talking about the corner of 92nd and Division, those corners right there are commercial, but everything else north of that is all heavily residential.

**Francesconi:** So I just want it away from residential, but --

**Alice Wallen:** And I really want it away from schools.

**Francesconi:** You're okay with it in a business district?

**Alice Wallen:** Business district. There's people living and working every single day. And I can't take home the burden. They would have to fight them -- fight that for themselves, because my burden right now is to protect my family, my neighbors, and I forgot to say, I'm the voice of the children that have absolutely no say in this whatsoever. As I was growing up, my mind was allowed to develop safely, and I -- I value my brain more than any other part of my body. And this causes neurological problems as well as cancers, so I think we have a lot of issues here to think about.

**Saltzman:** Okay. Thank you.

**Sten:** I have a couple questions for the applicants.

**Saltzman:** And I have questions for staff. We'll start with the applicant.

**Sten:** Ed, here's the question. If I were to look at approval criteria d, and --

**Sullivan:** Which part?

**Sten:** Just the whole thing, 1, 2, and 3.

**Sullivan:** Only d-1 is before you.

**Sten:** D-1 is really what I'm looking at. And I were to argue to you that there's a bunch of towers in the area and this will make it worse and less than desired character because the character is -- it's reasonable to say looking at poles lessens your desired character of a neighborhood, there's a bunch in the neighborhood already, so they've got their share, therefore it lessens it, and I'd like to turn it down on that reason -- on that reason, what would you argue?

**Sullivan:** I'd have to look at the circumstances, but I think that's a more difficult argument to make than the one I have to make to you today. Which is we've got three, they're all ours, you've got nothing that deals with capacity. That's my answer.

**Sten:** And I know you're not a telecommunications lawyer.

**Sullivan:** Hell no.

**Sten:** I know the FCC requires you to have uninterrupted coverages. That's something we haven't talked about. I don't know if the FCC requires you to be able to serve an unlimited number of customers, because as I read your argument, you have uninterrupted coverage in the area but you have too many customers which breaks that up. So do you have a right to this pole under telecom law?

**Sullivan:** I don't have a right to mandamus you into making this application approved.

**Sten:** So then if I were to say to you that i've got -- i'm not voting yet, i'm asking questions -- that I could come up with a scenario under which I think this is lessening the desired character under the argument I just made, and if I were to say I was underwhelmed by the diligence of your look on the commercial street, and I think a cell tower on a commercial street would not mess with d-1 in the way I think it may, is there any reason you'd consider looking on the commercial street to see if you could find something? I understand you don't like to go to commercial streets for all the reasons, and I felt those were legitimate, but we also like to have peace in the neighborhood around here.

**Sullivan:** And you know just as well as I do that as soon as we're to try to locate on any area, the next door 98 bob would be right back before you making these same arguments.

**Sten:** Except you would need a conditional use.

**Sullivan:** There may or may not there. May be other permit way of getting this before you. The only reason this is before you is that you said in a residential zone, even though you have 40,000 square feet, you got to have a conditional use permit. That's the only written reason this is before you. The standards that are applicable here are fairly plain. Particularly d-1. You've got to look at the other facilities in the area, and what i've suggested to you and nobody's counter -- contradicted me, there's nothing want two to three-mile radius except ours, and that won't work. And in order to deal with that capacity, you asked me whether or not there's a case for making a capacity argument, I answered you and I any in my -- I tried to be my lawyerly best and say, I can't make you give me this. But I think I can -- if there's a pattern, have the city grant something in the area in order that we make our coverage applications.

**Sten:** Let me just make -- we'll get to the vote in a couple of minutes. I'm making up -- what we're going to do today here, folks, we're stretching, but I think this is a policy issue that you've got a lot of good points on, and we're also making a land use vote. From a policy argument, I think this company ought to look hard at one of these commercial sites. For the simple reason I think there is some question as to in my mind as to how many towers you have a right to, and I think there's reason to try and build peace with the neighborhood. And it seems that could be done in my mind, based on the answer to the questions we've had. So I would just encourage -- my prediction is this is not the last time in the city you'll be hiring mr. Sullivan, so the more we can try to find ways to work these out, it is everybody's benefit. I think there's a commercial strip there that looks to me like has a fair amount of vacant land on it and you could do it without a conditional use and at least get a compromise. I don't know if you have any comment on that. It's a statement. Do you have any comment on that?

**Bailey:** One comment is that in this case it's a commercial strip, but boarding on a residential zone. Some of the photos I provided in the package shows that typically the development on that street has been buildings up along the street, maybe some parking on the side or in the rear, so essentially if we were to be able to find a piece of property out there we would be back on the rear portion. Within 50 feet of a residential zone is going to be a conditional use. So will without actually pointing to specific properties and saying it will be here, here, or here, I would say with good certainty that you're going to be doing a conditional use permit to put any type of facility in that zone. Because of the fact that it's such a narrow commercial strip.

**Larry Sotomayor, Communication Services:** 5621 E. Burnside, 97215. In addition, the height restriction in the commercial general zone is 45 feet. We'd be exceeding that which would also kick it into a conditional use. So there's a number of issues that make that commercial land unsuitable. The risk management standpoint from the environmental issues are significant. I know one of the comments made by the appellants, the opponents was that's a simple issue, but where voicestream becomes part of the chain of title of that piece of real estate they lease, that becomes a very significant environmental liability. And from -- when you're talking about building a nationwide network, that becomes an issue of liability that's totally beyond the scope of any corporation to take on. And all of those not all of them, but the majority of those commercial properties in that area from a risk management standpoint are going to be unsuitable. The assumption is always from the land use

standpoint. Yeah, there's commercial land there, there's not to be a site. You've got to have a willing landlord. You've got to have property that's going to be environmentally suitable and is going to have to be set backs in all of those cases the commercial land all backs up to residential. We would be in the same lapped use review process that we are now.

**Saltzman:** I have a question for mr. Sullivan. I guess the d-1 approval criteria, are you arguing because the other facilities in proximity are voicestream facilities, therefore they don't count as other facilities under d-1?

**Sullivan:** No. What i'm saying is those won't do the job to serve the customers. If it were a matter of colocating, because that's what I think the opening phrase really means. If you've got a bunch of them there, why have another one, why aren't you looking to colocation. Why aren't we looking -- if we had a competitor there we could collate on -- colocate on, that would be a good argument.

**Saltzman:** Or on one of your existing voicestream facilities.

**Sullivan:** We acquaint do that.

**Bailey:** It was sort of brought up earlier.

**Saltzman:** You can't put a capacity builder on a coverage --

**Bailey:** Correct. When we go out to look at a site, just -- it was brought up, there was a question to staff of whether the city encourage location and -- in industrial commercial or some type of hierarchy. In our hierarchy of how we look at it, the first thing we're going to do is a colocation. The second we're going to look for tall buildings. It was brought up in the earlier testimony, there are no tall buildings in that area. Third or equal would be utility pole. That would provide service in the area. Again, that doesn't -- there is no existing in this area at all. So --

**Saltzman:** What about the reference made to a kelly butte site?

**Bailey:** I wanted to cover that. I know I sort of touched on it briefly. If I could put this overhead -- this was included in the packet that I gave you as well. I think it's a good question. It sort of makes the point about what we're talking about in a capacity or a coverage sighted. -- site. If you look -- this actually does a good job of explaining the situation with kelly butte. And we do have a site on kelly butte currently.

**Saltzman:** Where is the proposed site in this figure?

**Bailey:** It would be in the blue listed as capacity in parentheses.

**Saltzman:** That's the proposed tower. Okay.

**Bailey:** We currently have a site on kelly butte that provides service, and the -- because of increase in the customer demand in this particular area, which is exemplified by i-5 -- the 205 corridor and the intersection of division, essentially what this capacity sighted does is it offloads the amount of calls from kelly butte, because each wireless facility, whether it's antennas on a building, colocation or your own tower, can only certain -- handle a certain amount of calls. Once you've reached that capacity you're going to enter into interruption of service. So this is the justification and really our engineering need is to provide this site which covers a smaller area which allows us to provide more calling service within that particular zone. And I think this graphic, we sort of tried to put this together to illustrate the kelly butte situation specifically, but I think it does a good job of sort of explaining the basis of what capacity and what we mean by that.

**Saltzman:** Okay.

**Sten:** Does the fcc mandate you to build in uninterrupted nationwide network to handle any volume of calls that might come down the pike?

**Bailey:** I'm not a lawyer, and it could probably sit and argue this around and around, but I would make an argument that if you're in an area that is being served by a site that is at capacity or even above capacity, you're not going to be able to make calls, you're going to drop calls. And to me that's not uninterrupted service.

**Sten:** Some businesses you can't provide service, you take less customers.

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**Sullivan:** The telecommunications act has a policy of providing or assuring national coverage. And there is no case. I'll say it right 94, that -- right now, that a denial of one would equal a denial of coverage all together. On the other hand, we've got an obligation to come before you and fulfill this national policy. The way that the code is written, we meet the criteria and the attempt of the appellants to say, well, you ought to go somewhere else, and we'll see if the incomes conditional use permit appeal. That isn't consistent with the criteria. Is it a 40,000-square-foot residential site. It has an institutional use on it. We meet the criteria. That really should be the end of the inquiry. Why don't you complete your --

\*\*\*\*\*: If I can address the health issues, it might be helpful.

**Sten:** I don't think anyone has asked.

\*\*\*\*\*: You don't need to do that for my stopped point.

**Sotomayer:** Let me just make a couple of points for the clerk's purpose, my name is larry sotomayer. With communications services. 5621 east burnside. Portland, 97215. As ms. Cade has talked about the land use review process and 33.274, the code is very stringent and difficult to zone a property in a residential district. The code's written specifically for that. For example, as a matter of comparison, if we were in an industrial district, there's no height limit. You can do powers all day long, there are a couple of restrictions, but they're nothing like residential. And from practical standpoint, what I do for voicestream is I zone for them. I prepare the zoning applications, testify at the public hearing to the hearing officer, et cetera. And if there were an easier way and an easier piece of property to zone for this, we would have done that. It's a function of time, it's a function of money, and we look at a number of different factors. And for example, if there were an ideal commercial piece where we could zone and not have to have gone through this heart -- this process, in a heartbeat we would have done that.

**Sten:** If you were to look at a site on the commercial corridor and understood your argument to be you'd have to go through the conditional use process as well, and I understood mr. Sullivan to say the neighborhood is kind of sailing, we'll get that you time, if you looked at one of those in the neighborhood -- and the neighborhood gave you a written assurance it would support that sighted, where would that leave you?

**Sotomayer:** From a land use standpoint, the 40,000 square foot residential piece that's proposed is not just the ideal piece, it's really the only piece. Because the commercial is not going to work for a number of different factors.

**Sten:** You've said to me that -- again, this is not -- I can't argue this with it, but i'm -- I see a variety of factors, and I do think the code is clear. I think the code says if -- it should be approved if it does not significantly lessen the desired character and appearance of the area. And I think one can make a rational conclusion that it does lessen it, and I think one can make a rational conclusion that it doesn't. You sort of overcome that by saying, but the fcc mandate this. But it's not clear that the fcc does mandate better service and so all of these different points of law which have never been litigated come together, so I can see a good basis for which -- by which I could using d-1 make a motion to turn this down and would be very comfortable. That being said, you've said that these commercial sites are all environmentally unsound, but some of them are just vacant buildings. I think they're tougher, and if -- i'm poking if the neighborhood would support one of those sites, why wouldn't we try and explore putting it instead of assuming they're going to fight on you a case you can see the council is torn about because the neighborhood has a good argument, although I think you have the force of law to argue.

**Sotomayer:** Commissioner Sten, there would be a new set of -- as mr. Sullivan said, a new set of neighbors. We'd have the neighbors to the south much that commercial, or to the west of that commercial. Again, the presumption is we could find a suitable site. It's -- it's voicestream's opinion there are no suitable sites within that area. And yes, there might be supposition behind that, but it's based on not just minutes, but years of experience and evaluating sites for this purpose and putting up literally thousands of sites nationwide. The land use review criteria is real specific. Mr. Sullivan is

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correct, we've met those criteria. The issue of compliance with rf emissions, voicestream provides a set of what are called power density calculations and those show and demonstrate compliance with the fcc standards and we meet those. And so in that regard we've complied with every criteria and every standard that the city essentially puts as a hurdle or an obstacle or a requirement to --

**Sten:** I'm looking at d-1. I'm reading the language. It's my job to interpret and vote.

**Francesconi:** On this one, what if I think the cell towers are ugly, and if you add anything ugly to a neighborhood, it lessens the character and appearance of the area? What's wrong with that?

**Sotomayer:** You wouldn't have any cell towers.

**Francesconi:** I understand that. But what -- so is that the problem? That's what you would say? Therefore that can't be the interpretation?

**Sotomayer:** I think you've got to look at the language with the opening clause, which was left out of the appeal.

**Francesconi:** I agree. And I didn't understand your response to commissioner Sten. I want to you keep going.

**Sten:** Let me elaborate.

**Francesconi:** Explain. That's right. Explain what that opening sentence means.

**Sullivan:** I think that clause means you've got to look at whether there are other facilities there, and then I think you've got to balance out. Can you colocate on those facilities? Why add a new tower if you can co-locate?

**Francesconi:** I see.

**Sten:** I think -- I would agree that if you took the logic that they're ugly, therefore you can never site one, I think in this case by your own testimony your company has three in the general vicinity and you have uninterrupted coverage except for the fact that you signed up more customers and so I -- I think we could -- i'm unclear on what the fcc dictate is on this. But I many clear I think that a company that's got three towers in the neighborhood that generally speaking the most standards people don't like to look at saying, you know, we can go unlimited, so essentially the other side of your argument is d-1 can never apply. That d-1 might as well not be in the code. As long as you think you need a tower --

**Sullivan:** I'm not that extravagant. And I didn't make that argument.

**Sten:** I'm saying I could reduce the -- your argument to the opposite absurdity. As long as you say you need a tower, it can't therefore -- as long as you can't put it somewhere else, it can't make -- under what standard could I -- I guess let me phrase it differently. Under what standard -- is it ever -- can you imagine a situation where you could use d-1 to vote against a tower in your opinion?

**Sullivan:** Yes, I can conceive of one. First of all, again, without beating a dead horse, you got to start with the opening clause. Do you have something else? And if you do have something else, why aren't you there? Why aren't you there in your -- and your competitors with a colocate? Then if you could do it, I think you need to balance appearance and character. If you don't have that opportunity, and you do have the customer base and you do have a national policy that says that you've got to have obstacles that are local removed in large part for this, it seems to me that you have to use that prism in looking at this clause and then you could still -- I can look you in the eye and say that it might be that this particular location screws up the desired character and appearance. You haven't heard an awful lot about character and appearance. In the context of this case. Which -- what you have heard is generalities of nobody wants to move next door, or it's ugly. That's nothing to do with the character and appearance of this area. No one has come before you and talked to you about what this area is. Except for us when we use the one-eighth of a mile location. I think you've got to look at all of that stuff. You're smiling, so I think you have something on your mind. If you care to share it, i'd be glad to try to respond.

**Saltzman:** While he's thinking, let me ask you a question. One-eighth of a mile, I look to the east and see this large public right of way, zoned open space. I think of i-205, I think of Oregon department of

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transportation, I think of the fact the state budget is -- can't fund state police right now. Are you allowed to talk to odot about putting towers in right of ways?

**Bailey:** Odot has been -- they've been very resistant. I use that lightly -- to leasing us space. My understanding is that it's a safety issue. When we develop --

**Saltzman:** Safety from what point of view? Transportation or --

**Bailey:** I'm getting to that. We require access to our sites, which means that someone has to physically go out there and maintain if something goes wrong with the site, they have to be able to go there and take care of the problems. Odot is very reluctant for good reason to allow access into the right of ways on the side of highways. They don't -- particularly a highway like 205. It's a safety issue as far as traffic is concerned.

**Saltzman:** How is that -- are other states department of transportations equally as reluctant? Or are there other states that use their public right of ways --

**Bailey:** I can't answer that. If I was to set policy, I think it would be a good idea. If you go down some of the busier highway corridors and you see a lot of the structures that are put on the side, lighting or whatnot, it would be a great opportunity for wireless facilities, but that's --

**Saltzman:** The transportation corridor is driving your capacity -- it's people in cars using your phones.

**Bailey:** To answer your first question, it's really not an option to us except in very limited cases to go with an odot property.

**Saltzman:** Okay. Any further questions? I wanted to bring up ms. Cade.

**Francesconi:** I've got just one. How many cell towers is your company going to put in this neighborhood? Is there any limit?

**Bailey:** There is a limit. I couldn't give you the number. And i'm not an engineer. I don't design these sites. But there is a certain amount at which it -- you wouldn't be adding any additional capacity by putting another site in. Based on the footprint of what the sites cover.

**Francesconi:** So maybe three months from now, a year from now you could be back with another one for this neighborhood?

**Bailey:** I would say not.

\*\*\*\*\*: Co-locate.

**Francesconi:** Don't.

**Saltzman:** Okay. Let's bring up --

**Sotomayor:** One other comment. From a buffered standpoint, you look at this and if you look at the map that ms. Kate has, there's probably not a better residential piece of property from a 40,000 square foot standpoint that's better buffered. On the east you've got the huge public right of way and the -- in the form of i-205 to the south there's no private property contiguous. It's the trail all the way back and the right of way back to 92nd. And on the west side, you've got the setback of the entire church property. It's impossible to make the towers envision ill, but only on the north side of this property is there contiguous residential usage. You really couldn't ask for a better buffer than that in terms of the distances of real estate between those.

**Saltzman:** Thanks. I was intrigued by the testimony, I think about several people mentioned the fact is that the housing complex to the north at one time was required to develop that fry angular parcel into a playground as a condition of its approval. Do you know anything about that? Was that brought up in the record?

**Cate:** I did not find that in the land use history related to that. I know that there was a subdivision to the north, but I didn't find any condition specific to that parcel.

**Saltzman:** Was this issue raised before the hearings officer?

**Cate:** I believe that it was. It's my recollection that was raised.

**Saltzman:** Nothing was submitted as evidence to that effect?

**Cate:** No.

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**Saltzman:** Okay. Why don't we just get the notification issue out of the way. There was I guess first of all we do a mailing, right? To all -- what's our mailing requirement on this issue? I know we mailed something on november 14th. I'm sorry, the -- mailed on october 19th. A notice of proposal in your neighborhood. Who was that mailed to and --

**Cate:** We're required to mail a notice to all property owners within 400 feet of the site, and then all recognized associations within a thousand feet of the site. What you heard today is probably you've heard before, there is that disconnect between the law requires us to notify property owners in the case when you have tenants and -- in rental property, it's understandable that the tenants feel a little left out of that process, because we notify the property owners. I think the record will show that we did do will the correct notification. I know that issue was brought before the ho.

**Saltzman:** The other issue was the sign by the school being placed not within ten feet of the school. What --

**Cate:** That was not brought up at the hearing to my recollection. There is a signed affidavit from the applicant that it was posted properly. But there is -- there is some potential discussion to be had about whether or not it was within a required ten-foot setback area. If it would be helpful to the commissioners, I noted a couple of other things that were brought up that if you would like staff to provide some clarification it might be helpful in your deliberation. One, there was some discussion about the discrepancy between the fcc regulations and the city regulations. Actually I don't want to belabor the technical points and put you all to sleep, but there are two different measurement, the fcc regulations that I believe it was penelope put up on screen, or the power density calculations that are in fact measured differently than until watts, and that's why there's probably -- folks are looking at apples and oranges and getting confused between two different measurements. They both apply in all cases. Secondly, I would just like to clarify particular for your concerns, mr. Sten, should voicestream find a general commercial site nearby, it's -- even if they can locate their facility more than 50 feet from abutting residential because their mono pole is 80 feet in height, that alone would trigger another type 3 conditional use review. So in -- an alternative site would in fact require another review. I'm not suggesting that that's not appropriate, but I did want you -- want to make sure you weren't aware they could just go in and allow by right and lastly, to help provide you with some understanding of the criteria about the desired appearance and character based on proximity of other facilities, in general we look at proximity in terms of roughly about 2,000 feet. Because that's a threshold in the code that says if you're a new tower, say, in the industrial area, you're allowed by right as long as you're 2,000 feet or more away from another existing tower. And if you're closer than that, why are you putting up the new tower. You've got a colocation opportunity. Similarly, in terms of proximity, we're saying is there anything within the approximate area that provides colocation opportunities. Certainly you can stretch that. That's an elastic and discretionary criterion, but in practice to get back to this scenario, you were discussing a perfect example would be, yes, it has a significant impact in terms of proximity. Is if there's another tower within 2,000 feet. That's getting very close in proximity from the intent of the regulation. So I hope that helps clarify some of the intent behind that criteria.

**Sten:** Thanks.

**Saltzman:** I guess we're at that point --

**Francesconi:** Not very much. That means that's a very unclear criterion, just for what it's worth.

**Saltzman:** Further discussion amongst the council? We're through with testimony. It's now the point where we have further discussion, or i'll entertain a motion to approve, deny. I don't think we can remand.

**Olson:** There has been a request to keep the record open for another seven days and seven days after that for rebuttal.

\*\*\*\*\*: It was a tentative decision.

**Saltzman:** Tentative decision. Any discussion? Motion?



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**Sten:** I was trying to work something out here. It isn't working. I'm going to move to deny the appeal and uphold the hearing officer's decision. I'll give my explanation when I have a chance during the vote.

**Francesconi:** Second.

**Saltzman:** Okay. Please call the roll.

**Olson:** On the tentative motion to deny. Francesconi.

**Francesconi:** I think commissioner Sten made a valiant effort to make a compromise. I think they did meet the approval criteria. And that's all we can judge by. On the issue of health, which a lot of you have legitimate concerns, did I actually glance -- tried to read some of this book. And it's not -- I don't think we can really get into it. Because it's outside the approval criteria. But I wanted to try to educate myself on this. Even reading this book, though, until the conclusion, it does say -- it doesn't say that they're dangerous. It says they could be dangerous. I want to make that clear to you folks. And it even goes further right in the conclusion in your book that it says, but are all electromagnetic fields detrimental to us? Most likely not. Are some more detrimental than others? Probably. Can we all perhaps tolerate a certain amount of exposure from all frequencies? Probably. This is your book. Will it doesn't say these are dangerous.

**\*\*\*\*\*:** I didn't -- you didn't read the whole book.

**Francesconi:** I read the whole conclusion. And I guarantee you in the conclusion if they had concluded it was dangerous -- I also did read the chapter about difficulty in setting standards, which you asked me to read. And so there is a lot of problems here. But when you have problems kind of -- this may sound -- with your taxes, you don't come to the city council. You go to the federal government. And it's the same kind of issue here. So really, I think you need to give this book to senator smith, who I believe has the most clout in our delegation, and -- because at the moment, tell -- until the democrats take control, go see senator wyden, and try to do something about this. Because it's legitimate. I would love to have done what the mayor did. I respect that that's what she believes. But I can't go there because I always have a duty to try to uphold these criteria, because that's my job. And I said I would try to do that. So in terms of the other -- the first issue, I actually do think these are ugly. But I don't think, just because I think they're ugly, that would mean they're all gone. And -- everywhere. I'm also the fire commissioner, and there is a public safety value to having cell phones that we actually use through this. So there is some public safety and public policy reasons to do this. But we have a code that we're limited with. So I appreciate your concerns, but sometimes we up here have to do the hard things even if there are some issues that other people need to address. Aye.

**Saltzman:** Well, a couple things. We'll -- i'll vote to deny the appeal. I do think you've raised some important issues. I do think we need to visit as a policy perspective this. Is probably my second time dealing with one of these issues. But I do think we need a higher standard of showing that these things cannot be sited in commercial or industrial areas regardless of whether they're allowed outright or as a conditional use before they can go to a residential property. I think that is something that i'm not satisfied that corporate policy of voicestream or whatever I think they ruled out commercial properties too liberally. I think we should have a higher standard of proof, whether the place is a gas station or was a gas station or not. There wasn't even a phase one, level one assessment done. So we don't know if there was a problem or not. I accept what they say about the height or distance between residential would still require a conditional use, but my gut is overall these would be more acceptable to residents if they were on a commercial or industrial property, even though they do abut a residential zone. I think that's something we need to take a look at. We need to take a look at, especially when we have a cash-starved department of transportation these days who is only complain ball game not having enough money to do road work, how we could get them more money by locating cell towers there. This is a discussion we have to enter into our state legislator as well as our executive branch, but we can't compel them to put them there. This is something we need to look at. There are legitimate access issues, but we're always hearing how we have so little money to work on our roads, this would be one

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way to direct more money to them by having these royalty payments or whatever paid to the state. Finally, on the health issue, we don't have the ability to -- we are preempted by that even looking at that from federal law, but I got to say that -- I think as a -- the mayor state there'd probably are legitimate issues that concern me, that probably should concern all of us. I think if you're really concerned about radio -- radiation, it's hard to live in an urban variety. Few among us don't use cell phones, pagers, microwaves, tvs. If you live anywhere in the city you're bathed with electromagnetic radiation. Whether you like it or no. That's just one of the facts of living in an urban environment these days. So I will vote aye.

**Sten:** This was -- we gave the rules of the hearing at the start then proceeded to not follow them. You're not supposed to testify on anything except the code. I think why -- why commissioner Saltzman allowed that, we were trying to get at some of the policy issues. I think the neighborhood has done a good job at getting at some of these issues. I understand why you don't want the to you they're and ultimately what these hearings get down to is usually trying to balance two competing needs and usually -- and I think you make a good case, the competing need for these tours is a lot of people use these phones ask there is an fcc mandate to make sure the phone works. I heard someone's phone ring during the testimony, and I have one and I can't be a hypocrite and say we can't have these tours but many of us use cell phones. That being said, the reason I pushed pretty hard on mr. Sullivan, I can construct an argument by which I can turn this down, but I can't honestly and intellectually say I think that's the strongest argument and I have to base this on act like a judge up here, they have rights undid your our code and I think that they've made the criteria of the code. I am a little -- I understand the mayor's point of view on -- and why she excused herself because she said she couldn't judge this independently. She is the planning commissioner I think perhaps it may have been better so sit through this and understand the issues. I will approach they're her, because I think we could under our land use code, i'm just -- this is on the fly, I think we could raise the bar a little bit for residential properties more than we have without taking away the rights that the companies are given. I think we could probably have a little stronger criteria that needed more proof that there was a commercial or industrial site. Having not done that, I think voicestream is within its rights to go to the site of a willing seller that's better for them. I mean, they not require to do that. If I think if we adopted some type of thing that said if there's commercial industrial site nearby, you somehow have to go -- I can't write code on the fly, but there's things we could do to strengthen the code and maybe put some tools without impeding on both the need and the fcc, the need for cell phones and -- in town and the fcc mandate to put these up, and i'll suggest to the mayor that given the passion with which she feels these things, we ought to -- she ought to look -- the mayor's in charge of the planning bureau. So she'll make the decision whether that goes into the work program. And i'll be glad to discussion that with her. But that's her call. So that being said, I have -- voicestream, I think you can't do enough work with the neighbors because you're going to have lots more of these, and if something breaks on the corridor and there's something you can do, terrific. I'd also suggest even despite the hard feelings that you consider a meeting with the neighborhood to talk about how you're going to do the mitigation and maybe there's some other relationships that could help heal the wound. Maybe not, but this is -- the reason I pushed on you so hard sort of knowing that I probably thought you had the better case, is that I think there's a greater relationship here that is on -- only gets worse every time we have one of these hearings. We're going to have to find a way to get -- for to it get better. I'm asking your help in trying to solve these problems and maybe help us push a little bit on the code and maybe mend some fences with the neighbors who I think have a let -- legitimate point but not the force of the code behind them. Aye.

**Saltzman:** Tentative decision, the record remains open for seven days.

**Olson:** It will remain open for seven days to february 1st, and then for rebut y'all seven days after that to february 8th.

\*\*\*\*\*: And by five p.m. Of those dates you have to get your comments in.

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**Saltzman:** Okay. We stand adjourned.  
At 4:15 p.m., Council adjourned.