



---

CITY OF  
**PORTLAND, OREGON**

---

**OFFICIAL  
MINUTES**

---

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 2ND DAY OF MAY, 2001 AT 9:30 A.M.

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

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

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

- 498**     **TIME CERTAIN: 9:30 AM** – Hear appeal of Richard Koenig (PIIAC #00-20/IAD #00-287) to the Police Internal Investigations Auditing Committee per City Code 3.21.085(4)(d) (Report introduced by Auditor Blackmer)

**Disposition:** Continued To May 9, 2001 At 10:00 AM

**CONSENT AGENDA - NO DISCUSSION**

**Mayor Vera Katz**

- 499**     Confirm appointments of Marcela Alcantar, Ray Koistenen, Carl Moyer, Sheila Holden, Richard Strathern, Susan Ingram, Marne Sall, and re-appointments of Janice Wilson, Bill Isaacson and Ron Young to the Workforce Investment Board for terms to expire April 25, 2003 (Report)

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

- 500**     Accept the traffic signal communication system expansion within the City as complete (Report; Contract No. 32398)

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

- \*501**     Contract with the Portland Public School Police Department to participate in the Police Bureau Department of Public Safety Standards Training (Ordinance)

**Disposition:** Ordinance No. 175526. (Y-4)

- \*502**     Contract with the Milwaukie Police Department to participate in the Police Bureau Department of Public Safety Standards Training (Ordinance)

**Disposition:** Ordinance No. 175527. (Y-4)

**MAY 2, 2001**

**\*503** Contract with the Gresham Police Department to participate in the Police Bureau Department of Public Safety Standards Training (Ordinance)

**Disposition:** Ordinance No. 175528. (Y-4)

**\*504** Amend contract with Grandma's Place to extend contract and increase compensation (Ordinance; amend Contract No. 32091)

**Disposition:** Ordinance No. 175529. (Y-4)

**\*505** Agreement with Multnomah County, acting by and through its District Attorney's Office, for three full time officers to work for the District Attorney's Office. (Ordinance)

**Disposition:** Ordinance No. 175530. (Y-4)

**\*506** Authorize application to Oregon Parks and Recreation Department for a grant in the amount of \$250,000 to renovate Westmoreland Park and restore Crystal Springs Creek (Ordinance)

**Disposition:** Ordinance No. 175531. (Y-4)

**\*507** Designate and assign certain City-owned property as public street right-of-way in connection with the construction of the Interstate Max project and grant temporary construction easements (Ordinance)

**Disposition:** Ordinance No. 175532. (Y-4)

**\*508** Contract with Marsh USA Inc. to provide insurance marketing and procurement, risk management, claims management, program administration and related services for Phase II of the Owner Controlled Insurance Program, and provide for payment. (Ordinance)

**Disposition:** Ordinance No. 175533. (Y-4)

**\*509** Authorize transfer of cable franchises held by TCI Cablevision of Ohio, Inc. to AT&T Broadband of Ohio, LLC (Ordinance)

**Disposition:** Ordinance No. 175534. (Y-4)

**\*510** Authorize an Intergovernmental Agreement to review and analyze revenues received from PGE for the rights and privileges to operate in the public right of way (Ordinance)

**Disposition:** Ordinance No. 175535. (Y-4)

**\*511** Contract with International Refugee Center of Oregon for \$40,000 for anti-displacement outreach and services to African and Asian immigrant populations in the

**MAY 2, 2001**

Interstate Urban Renewal Area and provide for payment (Ordinance)

**Disposition:** Ordinance No. 175536. (Y-4)

- \*512** Authorize application to the Department of Housing and Urban Development for a grant in the amount of \$3,000,000 for the implementation of lead-based paint hazard control activities and administration (Ordinance)

**Disposition:** Ordinance No. 175537. (Y-4)

- 513** Amend contract with Murray, Smith & Associates, Inc. changing the termination date to July 31, 2004 (Second Reading Agenda 448)

**Disposition:** Ordinance No. 175538. (Y-4)

- 514** Amend City Code relating to purchasing policies (Second Reading Agenda 463)

**Disposition:** Ordinance No. 175539. (Y-4)

## **REGULAR AGENDA**

### **Mayor Vera Katz**

- \*515** Agreement with the Tri-County Metropolitan Transportation District of Oregon for services related to the operation and maintenance of the Portland Streetcar system (Ordinance)

**Disposition:** Ordinance No. 175540. (Y-4)

- 516** Grant a franchise to Global Crossing Local Services, Inc. for a period of ten years (Ordinance)

**Disposition:** Passed To Second Reading June 6, 2001 At 9:30 AM.

- \*S-517** Authorize a sole source contract with VanderHouwen & Associates Inc., to provide programming services to enhance the Water Bureau new Customer Information System (Ordinance)

**Motion to accept the substitute:** Moved by Commissioner Sten and seconded by Commissioner Saltzman.

**Disposition:** Substitute Ordinance No. 175541. (Y-4)

- 518** Authorize a contract with The Climate Trust to accept \$120,000 to develop a web-based rideshare matching program and to guarantee The Climate Trust to hold the rights to 70,000 metric tons of carbon dioxide offsets (Second Reading Agenda 461)

**Disposition:** Ordinance No. 175542. (Y-4)

**MAY 2, 2001**

**City Auditor Gary Blackmer**

**519** Establish the Office of the Ombudsman (Ordinance; add Code Chapter 3.77)

**Disposition:** Passed To Second Reading May 9, 2001 At 9:30 AM.

**Communications**

**520** Request of Dave Carter to address Council regarding Office of Planning and Development Review remodeling fee (Communication)

**Disposition:** Placed On File.

**521** Request of Patrick Dinan to address Council regarding Portland Police Bureau and City Council accountability (Communication)

**Disposition:** Continued To May 9, 2001 At 9:30 AM.

At 10:38 a.m., Council recessed.

**MAY 2, 2001**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 2nd DAY OF MAY, 2001 AT 2:00 P.M.

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

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

Commissioner Francesconi arrived late.

- 522** **TIME CERTAIN: 2:00 PM** – Appeal of Pleasant Valley Neighborhood Association against Hearings Officer’s decision to approve the application of Majestic Homes, Inc. and Alice Kisaberth, for a 31-lot Planned Unit Development subdivision with an environmental review at 14449 SE Clatsop Street (Hearing; LUR 00-00486 SU PU EN)

**Motion to uphold the hearings officer with the condition the culvert be day lighted and corresponding footbridge be placed on the property:** Moved by Commissioner Saltzman and seconded by Commissioner Francesconi.

**Disposition:** Tentatively Deny Appeal With Conditions: Prepare Findings For May 9, 2001 At 2:00 PM.

- 523** Tentatively deny Appeal of West Portland Park Neighborhood Association and uphold Hearings Officer's decision as modified to approve the application of North American Islamic Trust, property owner, for a conditional use for an elementary/middle school operated by the Islamic School of Portland at 10200 SW Capitol Highway (Findings; Previous Agenda 427; LUR 00-00285 CU AD)

**Motion to accept the findings:** Moved by Commissioner Saltzman and seconded by Commissioner Sten.

**Disposition:** Appeal Denied With Modifications. (Y-3)

**Mayor Vera Katz**

- 524** Create a local improvement district to construct street improvements in the SE Pine and 119th HCD Local Improvement District (Second Reading Agenda 497)

**Disposition:** Ordinance No. 175543. (Y-3)

At 3:30 p.m., Council adjourned.

GARY BLACKMER  
Auditor of the City of Portland

By Karla Moore-Love  
Clerk of the Council

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

**MAY 2, 2001**  
**Closed Caption Transcript of Portland City Council Meeting**

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

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

**MAY 2, 2001            9:30 AM**

[ roll call ]

**Katz:** If you can look out in the audience, you can see we have some very special guests, some of whom you know, some who are new to all of us. And so we are going to have sort of a little bit of a presentation before we start our agenda. You know it's sing day may 0 is happening this week. It is not only a historic celebration in Mexico, but it is an opportunity for us here in Portland with our sister city relationship with Guadalajara to bring the Latino community together and to talk about the future here in the city. And to celebrate their presence here and to reaffirm the importance of diversity in this community. And if you -- any of you have looked at the census data, the Latino community is largest community in the Portland region today, and it's growing. And so we need to grow up as well. That's why we're going to take a few minutes here today to celebrate that. We have an elected official here, but I'll call on him in a few minutes. It's commissioner Carlos Jarro, who was just elected as council member in Guadalajara. But there are two special people I want to introduce. One is council Alma Sirria. She's just been a strong supporter here. We've had some very difficult times with the death of Mr. Poot, and the council general has been very supportive, even though it's been very disturbing time for everybody. So I thank you. And Lena Garcia, president of the Portland-Guadalajara sister city association. Thank you for all the work that you've done to keep the relationship as close it has for all these years. I appreciate all the effort that you've put into it. So thank you.

\*\*\*\*\*: My pleasure.

**Katz:** Now I'd like to ask commissioner Carlos Lara to come up. You have the awesome task of introducing -- first of all, come on up and sit down. Don't be nervous. [ laughter ] you can at least speak English. We can't speak Spanish. So you are one up on us already. Tell us a little bit about you and then introduce the delegation for us.

\*\*\*\*\*: Yes. [ speaking Spanish ]

**Katz:** We need a translator. Who is going to translate?

Translator: First of all I'd like to thank all of you for the gracious hospitality you have extended to all our delegation. We recognize that the -- on both the support from both the city of Portland, through the mayor's office, the sister city association here in Portland and in Guadalajara have made our visit here to your fair city possible. On behalf of the mayor of Guadalajara, it is my pleasure to extend our continued relationship and we hope that this visit as well as those in the future will continue to fortunate identify our relationship. -- fortify our relationship. Accompanying us on this visit is the director of cultural affairs, Cecilia Wolf.

**Katz:** Nice to have you here.

Translator: And the president of the Guadalajara sister city association, Uno Raphael.

**Katz:** Good to see you again.

Translator: We also have the director of the -- Ignacio Garcia. The director who usually oversees the Mariachi is with here in spirit, if not here physically.

**Katz:** Sometimes we prefer people in spirit. [ laughter ]

Translator: We also have an attorney with us who is also involved as a business individual in the city of Guadalajara. We're happy to have him with us.

**Katz:** Thank you. Nice to have you here.

**MAY 2, 2001**

Translator: We also have with us one of our famed artists as well as a singer who is also recognized internationally, paco parilla, and he's going to perform for you on your behalf.

**Katz:** Thank you, paco.

Translator: When our mayor was informed and brief on the sister city relationship, he was elated to learn of the 18-year relationship between both cities. And it's his pleasure to share with the city of Portland just a small token through our music and the ballet, sharing just a touch of our culture with the city. And we look forward to the continued growth and development of our relationships in a variety of areas. And I thank you once again for your grand hospitality.

**Katz:** Thank you very much, carlos. And give the mayor my best, and maybe soon I will have an opportunity to meet him. Thank you. Thank you very much. Nicely done. Okay. Paco. [ laughter ]

**Paco Padilla:** Paco padilla.

**Katz:** Stand in front of a mike. You're being televised.

**Padilla:** I think this relationship began for the flowers, the roses, the guadalajara and Portland relationship began because we are rose cities, mexico. This is one of my first songs I made about 30 years ago, it's about very nice old lady, indian lady, lives very near to our house, and she used to go house by house selling her flowers. And this is what she says in every house, and she used to go to my house almost every day. \m\m [ singing in spanish ] \m\m \m\m \m\m \m\m \m\m \m\m [ applause ]

**Katz:** Thank you very much. Gracias. Grassas thank you, everybody, and just want to remind everybody, celebrations starting tomorrow. What time? 11 o'clock. At the waterfront. We'll be there. Thank you. Have a wonderful day. [ applause ] you can see the importance of this relationship. People know each other, they remember each other, and it's not only the mayor, it's other commissioners as well.

**Katz:** It's all about relationships, from all over the world. All right. We're now to our regular calendar.

**\*\*\*\*\*:** Consent agenda?

**Katz:** Let's do the consent agenda. I'm there. Anything to be yanked off the consent agenda?

**Sten:** I think we had a substitute for 517. The substitute is in the packet.

**Katz:** That's on regular agenda. Anybody want to pull anything off the consent agenda? If not, roll call.

**Francesconi:** I don't want to pull this off, mayor, the work force appointments, but at one point we did talk about having an informal work force. I think that would be good.

**Katz:** Yes.

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

**Katz:** Mayor votes aye. [ gavel pounded ] what I was looking around, I was looking around for mr. Koenig. Does he know that we had this item -- why don't you come up.

**Mike Hess, Police Internal Investigations Auditing Committee:** Mike he's, piiac. Mr. Koenig has been informed several times by phone and by writing that -- of this hearing, and he said that he was available this morning. He told me that by voice mail. He stated to me at one time that he would not appear unless he got something in writing from the commissioners and the mayor stating that his rights are not abrogated by this process, and I didn't understand very well his message. I sent you the written message that was written on his appeal. None of us could really understand what it meant, so -- and he was told -- I told him that if you don't appear, we're gist going to go ahead and hear the case. We need some closure on this one.

**Katz:** Okay. Is the council okay on hearing the case without the appellant?

**Hess:** We do that in the piiac.

**Katz:** You do that in the piiac, but I don't know if we do it here.

**Hess:** It's your call, but we need closure on this.

**Saltzman:** I'm okay.

**MAY 2, 2001**

**Katz:** Commissioner Sten, are you all right?

**Sten:** I guess so. My sense is that mr. Koenig's -- knows what his doing.

**Hess:** Very unusual for him not to be here on a wednesday.

**Sten:** He seems to be generally available on wednesday mornings, so my hunch is that he's not coming for a reason. But I don't know that for sure.

**Francesconi:** What's our normal procedure?

**Katz:** It was not to have -- it's not really fair to have an appeal without the appellant here.

**Francesconi:** Do we postpone it?

**Katz:** Don't you agree? So --

**Hess:** We can't come back -- I can, but the advisors, i'm not going to bring them back. I can present it.

**Katz:** It's for them to make a decision. But I think in all fairness, even though there may be a request of some papers -- whatever he wants, but i'm not about -- I don't think I want to do a hearing without hearing his case.

**Hess:** Okay.

**Saltzman:** Can we hear from the advisors at least?

**Hess:** We have mrs. Karl, who presented the case. She reviewed the case and she presented it. We also have two other advisors who voted to affirm the decline. This was a unanimous decline. A unanimous affirmation of iad's -- and captain smith is here and assistant chief berg is here.

**Katz:** Mrs. Karl, will you be able to be here next week if we put this on the agenda, or do you want to make your -- say whatever you need to say right now?

**Mrs. Shirley Karl:** I can be here, but I don't know that mr. Koenig will. He's declined to appear before piiac twice before. We've -- actually we've been stuck without an appellant, you know, which makes the line go on and on and on. So he finally appeared when we told him he had to appear or else.

**Katz:** Well, we may actually put that same request in writing for next week, that he needs to appear or else it just -- it doesn't happen, or we'll hear it without him.

**Karl:** He said he wasn't going to appear unless he could have due process.

**Katz:** And I responded I wasn't quite sure what that meant.

**Francesconi:** One option --

**Karl:** He was getting due process by the fact he had a hearing before piiac. That is the due process.

**Francesconi:** One option, if you choose it, either way is fine with me, you could take the testimony from this today, we could hold it over for a week to give him a chance to rebut or to show up, and then we could make a decision. If anything, that's bending over backwards and more than fair.

**Katz:** Okay.

**Francesconi:** It's up to you.

**Katz:** Let's do that. But then i'd like for you still to appear in case there are questions by the council, if you can. All right.

**Hess:** Thank you very much. I think that will work. I'll introduce mrs. Karl again and she can --.

**Katz:** I don't think we're going to hear -- I think it would be best if we only heard from the advisors at this particular time without the appellant. There may be -- if there are no questions, otherwise you can be excused. Why don't you hold back. Usually I ask you to come back and talk to us. I won't this time. All right. Go ahead.

**\*\*\*\*\*:** My name is --

**Katz:** Hold on. 498.

**Item No. 498.**

**Katz:** All right. I just want to make it very clear, we're not going to vote on this. We'll give mr. Koenig an opportunity to tell his side of the story, and I will not ask captain smith to come up



**MAY 2, 2001**

either. This is just a report from the advisors. It isn't fair to ask them to keep coming back week after week.

**Karl:** Thank you, mayor. This is a hearing that was originally set for april 12th, 2001. It was actually set for april 12th, 2001. It was originally set in late november or december, but mr. Koenig asked for a postponement, and he was granted a postponement twice. The third time we said, if you don't come this time, you'll be put to the bottom of the list because with have a waiting list, and it isn't fair to the other appellants to keep telling them that their hearing can't go on yet. I give you a little introduction on this before going into the case itself. On 4-13-2000, the appellant filed a complaint with the Portland police bureau's assistant chief mark parisi. The general theme of the complaint was that members of the internal affairs division, iad, and northeast precinct, submitted false reports. The complaint was categorized as conduct and was declined by iad on 4-24, 2000. The iad declination was supported by the chief's office. In a follow-up letter to the appellant. Assistant cheer lynnae berg subsequently documented her review of the case and her support of the declination of captain smith. Acting chief berg's assistant chief berg's letter is attached to the letter of disposition. Citizen advisor, myself, was reviewed the iad file in its entirety and listened to the audio tapes in the file. The case was originally scheduled for a piii hearing on december 14th, 2000. On or about the date of the scheduled hearing the appellant stated he did not wish to appear at the scheduled time and the piii chair granted him a postponement. He was offered another hearing date, which was also declined. At that time he was advised his case would be placed at the bottom of the list. The appellant's piii request for review is appended as attachment a. The letter of disposition is appended as attachment b. Information that may not be publicly released is attachment c. And now a summary of the incident. On march 9th, 2000, the piii citizen's advisors heard a piii case regarding an associate of the appellant who had been cited at northeast precinct for criminal trespass. It was stated in the piii hearing that the appellant had been trespassed, quote, trespassed, from the precinct headquarters. Summary of the appellant's allegations. The appellant alleges that sergeant a of iad aided and abetted by d, and -- and other precinct personnel lied in a police report by stating that the appellant had been trespassed. He maintains in his complaint that captain a of iad and commander c of northeast precinct share cup pa built for the allegedly false report due to their command status. Summary of the appellant's interview. There was no interview. The appellant submitted his complaints in writing to assistant chief mark parisi. And then i'll skip down to the citizen advisors analysis. The appellant has had a lengthy history of complaints against law enforcement and code officials. This was documented in the iad file. This -- the complaint falls within the pattern of previous complaints and was found to have no merit. Since captain smith has named -- is named in the complaint, the piii advisor reviewing the case felt a higher authority should review the complaint and captain smith requested that assistant chief berg review the complaint. In assistant chief berg's letter to the appellant, she noted that she had reviewed the complaint and she concurs with the decision by iad to decline any further investigation. Assistant chief berg's letter specifies that the reason for the declination was lack of merit. The citizen's advisors voted unanimously to affirm iad's declination.

**Katz:** Questions by the council? Thank you very much. We will give mr. Koenig an opportunity to come back and share with us his side of the story. I have no idea what he wants, harry.

**Harry Auerbach, City Attorney's Office:** I don't either.

**Katz:** And what we need to give him. But I don't think testifying here changes his status anywhere within --

**Auerbach:** I have no idea.

**Katz:** Within his legal parameters.

**Auerbach:** I have no idea. He hasn't communicated with us exactly what his concerns are. Mayor Katz, I think he -- my sense is he's in a position where he just has to make some choices about whether he wants to come and speak to you about this issue or he doesn't. And it's up to you --

**MAY 2, 2001**

**Katz:** Why don't you try to reach him again and see if you can clarify what his need is and whether it -- whether there's anything that would prohibit him from doing anything legally further after a hearing like this. I think that's what he's looking for.

**Saltzman:** We'll dispose of this one way or another next week?

**Katz:** I want to make sure he can actually be here. He may be out of town. We'll dispose of it as soon as we set a date and we understand what is it that he wants, yes. Okay. Thank you, everybody. Let's move on then to the regular agenda. Item 515.

**Item No. 515.**

**Katz:** Okay. Come on up. Vicky, i'm going to let you testify, but I guess the bottom line is going to be whether all the operational expenses are going to be covered --

**Vicky Diede, Office of Transportation, Project Manager:** Within the budget. Vicky diede with the office of transportation. Project manager for Portland streetcar. As you -- i'll just briefly go over this. As you recall, in january of this year we -- council approved an agreement between the city and tri-met for personnel to physically come over and work for us at the operations and maintenance facility and to help run the streetcar. Since that time we have chosen three superintendents to -- a sign-up for drivers is proceeding and we have two mechanics. So we're getting ourselves staffed up. That agreement also anticipated that there might be other work that we might want tri-met to do as we go through this. Specifically around inspection and the replacements of parts for track signals, train signals, and one other one i'm missing, track switches. So what this agreement that's before you today does is sets out the procedures by which we will communicate with tri-met and seek those services. Everything that we will do with tri-met will be covered within our operating costs projections. We have -- there's several line items in the operating cost projections for contract work with tri-met that is specifically geared to inspection. There are other line items for real materials, materials and services and reserves for repairs. So it's to allow us to give work orders to tri-met and for them to respond to it. If tri-met is not able to respond in a manner that says we can give you what you need when you need it at a cost we can fit within our budget, we may go out and do some contracting with some private people. And if that's the case, we'd bring those back to council.

**Katz:** Further questions?

**Francesconi:** What do we do? What's left that our employees do that tri-met won't do?

**Diede:** Our bureau of maintenance employees will be doing the cleaning of the right of way, ie, the track section and clean out the flange ways. Our people within the bureau of transportation systems management will be doing some inspections relating to the -- i'm losing words today -- the substations, and then they will also do some other inspections up to the point you get to the wire. When you get to the hot trolley wire, at that point in time we don't have the workers that are certified to do that work and then tri-met would take over.

**Francesconi:** I think the contract is five years.

**Diede:** Yes.

**Francesconi:** Do you see this as beyond five years?

**Diede:** Yes.

**Francesconi:** Is this kind of a permanent arrangement?

**Diede:** I think what it does is it allows us to see how all these arrangements work for all the parties. For ourselves and for tri-met and also how it works with tri-met's relationship with their union. I do anticipate at least portions of this will continue on.

**Francesconi:** I guess -- this is -- we don't need to talk about it now. At some point I need to understand, is this going to eventually become the streetcar tri-met's, or is the city going to continue being a transit --

**Diede:** I think those are all questions that need to be on the table. And I think -- I would feel in -- an appropriate time for us to deal with it is probably after we've been in operations for at least a year or two. At that point we'll need to reassess.

**MAY 2, 2001**

**Francesconi:** Okay. Thank you.

**Katz:** Further questions? If not, does anybody want to testify? Roll call.

**Francesconi:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Katz:** Mayor votes aye. [ gavel pounded ] thank you. 516.

**Item No. 516.**

**Katz:** Anybody want to testify? All right. It passes on to second. 517.

**Item No. 517.**

**Katz:** Now commissioner Sten.

**Sten:** We have a substitute. Jeannie, did you want to say anything?

**Katz:** Why don't we move to substitute and then come up.

**Sten:** We have a substitute in the packet. I would move to substitute.

**Saltzman:** Second.

**Katz:** Any objections? Hearing none, so ordered. [ gavel pounded ] all right. Come on up.

**Jeanne LeJeune, Water Bureau:** Good morning. I'm Jeanne from the water bureau. The primary difference between what was -- the only difference between what was originally filed and the substitute ordinance was some additional language that was included in the ordinance to indicate why this was a sole source ordinance. This -- what this ordinance does is we have open vision and the customer information system and we have what's called print man and parms. Those are the systems that actually print the bills. And they have to work together. We originally through competitive bidding selected a company to provide the print man -- develop the print man and parms services, and the young man who has done that service has now moved to another company. And what this is basically a maintenance agreement for the next five years that we can continue to make sure that print man and parms are compatible with open vision as we continue to make improvements.

**Katz:** Questions?

**Francesconi:** I didn't understand a word you said. [ laughter ] but you don't have to repeat that. Can you just -- I should have done this earlier. Can you just tell me what is the purpose of the new customer information system and the program enhancement? Why are we doing this?

**LeJeune:** The customer information system is the billing -- the water bureau and b.e.s. Billing system. The regular billing system that gets out all of the water bills. And part of that whole system is to be able to take all the information, program into the computer what someone owes us, and then to have interface between that part of the computer system and the actual equipment that prints the bills to mail them. So what this does is basically an ongoing maintenance agreement to be able to keep the bill printing system compatible with the billing system as we continue to fix the customer information system problems that we have now.

**Francesconi:** Okay. So is this something we do normally --

**LeJeune:** Yes.

**Francesconi:** Or is this also to help us fix the problem?

**LeJeune:** It's something we would have to do normally. This is ongoing operations. But what about -- what this will do is allow us to have the man who originally developed it to continue to do the work so that as we do things like the storm water discount, additional programming fixes to the system now to make sure that we don't end up having problems as we print the bills.

**Francesconi:** Okay.

**Katz:** Further questions? Anybody in the audience want to testify? Roll call.

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

**Katz:** Mayor votes aye. [ gavel pounded ] 518.

**Item No. 518.**

**Katz:** This is a second reading. Roll call.

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

**Katz:** Mayor votes aye. [ gavel pounded ] 519.

**MAY 2, 2001**

**Item No. 519.**

**Katz:** Well, we only waited eight years. It was worth the wait. Who wants to start? Gary?

**\*\*\*\*\*:** let me do introductions here.

**Katz:** Identify yourself first, though.

**Gary Blackmer, Portland City Auditor:** My name is Gary Blackmer, Portland city auditor. This has been a long coming, and I appreciate council's support for this. One of my commitments is to bill an office that focuses on organizational improvement in the city, and we have it through our audit services, and some of our other responsibilities, but there's also a need I think for us to look at our individual interaction with citizen and look for ways we can do better there and look for patterns where you we can help reduce the friction that government has with its public. And the ombudsman function is one of those that I think is a role that Europe, Canada has taken on, and Australia and New Zealand. And there are places in the United States that have ombudsmen, but it's rare, and so to the -- it's not something I intended to push as a notion of leadership, but I think it's an important thing for local government to have.

**Katz:** Gary, I did.

**Blackmer:** And I appreciate --

**Katz:** Subrosa.

**Blackmer:** Exactly. And putting together an office I think that allows us to do that is really critical. And one of the nice things in looking for the establishment of that office was some very great talent right in our own back yard that Michael Mills knew the city of Portland inside and out, he was past president of the U.S. Ombudsman Association, he's been very much involved in alternative dispute resolution and I gave him I think -- he was eager and excited about the task of developing an office here in Portland. And being able to take what he'd learned in the mayor's office and make what I think is going to be a great leadership role here that will be examples to other cities. And I think the citizens will look at it in the future and wonder how we got by without it, because it's always been something important and being able to institutionalize it will be a long lasting impact on our communications with citizens and our unique form of government I think it's a way for us to allow citizens to find a neutral party at the end of all their other appeals to solve problems. So I want to turn it over to Michael Mills and let him talk about it a little bit.

**Katz:** Michael?

**Michael Mills, City of Portland Ombudsman:** Thanks very much. It really is an exciting time for the city of Portland to institutionalize the ombudsman concept. It's an idea that I and others started to advocate for back in 1984 when Bud Clark first came in as mayor. And what I've tried to do is put together an ordinance that will be part of the city structure forever, I hope, that provides the -- a traditional ombudsman that meets the standards and good practices set forth by other ombudsman offices and professionals through the American Bar Association committees dealing with this subject and the U.S. Ombudsman Association. I think this will go a long ways in -- though it's a small step, it goes a long ways in allowing citizens to have access to government and ensuring that their issues are addressed in one way or another. Particularly citizens that are underrepresented or don't know how to work within the system. So we can make significant changes in restoring trust in government, which is key to all the work that gets done here in city hall. So thank you for entertaining this ordinance and we'll be happy to answer any questions you might have.

**Katz:** Let me start with one. I'd like to hear from both of you. I recall the one issue that comes to mind first and foremost that you worked on Michael in the mayor's office, was the street musicians, which took many of you recall, a long time to resolve. But that work really did pay off. Give me, both of you, give me some examples, knowing what you know now, about what's been happening around the city, give me some examples of other things that you think you might want to tackle. Institutional problems and then what you see as some external issues that you might want to deal with.

**MAY 2, 2001**

**Mills:** Yeah. There's I think a lot of the things I will see, considering the ombudsman office is sort of the last resort when things have not worked out through the bureaus themselves, I think we'll see a lot of those kind of issues that are struggles between bureaus where there's a lack of clarity of who's responsible for resolving it, and citizens fall through the cracks. I'm hesitant to give examples because I don't want to pick on a bureau that hasn't done anything wrong.

**Francesconi:** Pick on transportation. Or opdr. [ laughter ]

**Mills:** Okay. Transportation. Let's say for example four years ago when we had a lot more autos being towed before street sweeping and the hearings officer continued to get loads of appeals coming before him from people upset about their cars getting towed. An ombudsman could conceivably not represent the individual that had their car towed, but the ombudsman could look at the processes that were being used to notify complaints. We're door an -- were door hangers add quad, do we need signs on the street a week to two weeks before? That's kind of an issue where the ombudsman is looking at the systemic problem. I -- in talking with transportation, I think they've been making those steps. That's one where I think you can see that everybody in the city system is busy taking care of their end of the business and nobody is looking at the bigger picture of, what are the impact and how come there's so many people being negatively impacted? Because this is something we intend as a revenue source, it's not something we want to have people subjected to their cars being towed. An ombudsman that's an ability to look toward the systemic problems.

**Katz:** It's the issue of multifamily housing when the front door is closed and people leave things on the table and people take them off the table and throw things away. And the -- people living in the apartment never get the message and find their --

**Saltzman:** Or they just stay there forever.

**Blackmer:** I think communication is kind of one of the keys that we'll be able to hear places where citizens weren't given clear understandings of what they needed to do or what the deadlines were, what the process was. We can help the bureaus to put together brochures, to fill in those gaps that citizens may encounter and be able to explain to them, you know, better what they needed to do so that we can avert and prevent those problems in the future. Because we'll hear issues around like what's called way finding. People losing their way to office in a building because they can't understand how to find their way there, the signage isn't good. All those things where there's obstacles that we don't see that we've built for citizens and -- in resolving their own problems. There's a lot of those that we can take the -- put on the hat of being an uninformed citizen, walk through a process and give advice to a bureau on, well, this is a place where people get lost, and these are things that if you put that into your brochure and clarify, it would help.

**Katz:** Questions?

**Francesconi:** What happens if you have the parks bureau not responding to some persistent problem? What authority do you have? How do you proceed? What do you do?

**Mills:** The ombudsman office will have the authority to talk to anyone in the bureau, to look at records and ultimately come up with a recommendation that would go to the bureau and if the bureau were to disagree with the recommendation and say the commissioner were to disagree with the recommendation, ultimately the ombudsman's only authority is to publish that and say, here's the ombudsman's summary of the issue, here's our recommendation, and they're required to include the bureau's response in whole. And say, here's the bureau's response. And the public and the city council can look at that and then it's a decision for you five to decide, should we change something, should we not? An example, that may be, say, somebody complains about a delay receiving a building permit. And an ombudsman would approach that from a more systemic problem and say, I don't want the bureau to pull this individual's permit out of the stack and approval -- approve that just to make that person happy. I want to look at the big issue. How many hundreds are in the queue, what is the bureau's policy on time frame for dealing with those, what are they doing to address the problem, and you know f. We were to say I think it should be x amount of days instead of y amount of days, and they disagreed because there wasn't funding to adequately staff and

**MAY 2, 2001**

manage that load, then recommendation could come forward ultimately to the council and say, here's the problem, here's what the ombudsman recommends, the bureau says we can't do it because it's a funding issue. And then that -- well, on our priorities s. That something we need to look at and make adjustments or do we just have to live with that?

\*\*\*\*\*: I think this is where --

**Katz:** Pull the mike closer to you.

**Blackmer:** This is where auditing -- performing and ombudsman work start overlapping. The process of coming up with that recommendation is very similar to the audit process, where we talk to the bureau people and we're actually going to invite them to respond to writing to whatever we write. So it will be very similar. I think the opportunity to go to an ombudsman conference and if you had replaced ombudsman with audit, would it have -- it sounded to me a lot like the same issues. Talk about independence, objectivity, the topic that I got excited about was how to ensure that your recommendations are implemented. Basically that was the place where I think performance auditing can help the ombudsman field. I think there's a real opportunity there to trade standards and processes between the two and look at ways that we've succeeded in performance auditing and apply those in an ombudsman context.

**Francesconi:** That's good. Last question. Other than the infer bureau kinds of conflicts, what are the most common complaints you get from the citizens?

**Mills:** I predict a lot of the calls we'll get are dealing with permitting or construction where actually people are directly being impacted. They're trying to get something approved or they've had a city project impacting them, whether it's a road construction or sewer construction. I think that's a lot of the areas that we'll hear from, so I think we'll -- opdr, transportation, b.e.s., those will tend to come up not because they're not running their bureaus in a good fashion, but because they're the ones that are interfacing most accurate -- actively. The fire bureau will probably be at the other end of the spectrum. So those are the kinds --

**Francesconi:** That was before the fire inspection fees. [ laughter ]

**Mills:** Those will come back to you guys. But I think most of the issues will be individual issues. There may be some that are more community wide issues. But a lot of what we'll be doing is trying to empower people to work within the system to say, here's a good approach to address this problem, here's how to build community support for it. Here's who you can talk to. A lot of the work that I'm looking forward to is to do more outreach work. Not just to the existing neighborhood associations, but to those neighborhood groups or ethnic groups that are not well connected and don't know how to bring their problem and can't pick up the phone and get a bureau head or a commissioner on the phone to say here's my issue. So it really is an issue of access. And the ombudsman, something I've met with all the bureaus and something I've stressed is the ombudsman isn't an advocate for citizens right or wrong. It really is an opportunity to have an impartial independent review and then advocate for the solution that's in the best interest of the public. So I would guess half our issues will be supporting what the bureau has done and say, try to explain that in a way the citizen can understand it. And accept that. It may not solve their individual problem, but they may be more enlightened to see that's -- this is really in the best interest of the public as a whole.

**Saltzman:** I'd like to follow up on that. I think we need to be clear about the expectation we're creating. I fully support the creation of this office, but what is the ability of an individual to get their particular complaint resolved through your office? We're talking about individual complaints leading to broader policy recommendations about how we should do business better, but we all know that's not real satisfactory necessarily to the individual who by the time they've reached your office is probably already considerably frustrated with being bounced around amongst bureaus and bureaucrats and whatever. And so I think we need to be clear with our public, are we creating an expectation that an individual can get their complaint specifically resolved through this office. And

**MAY 2, 2001**

I know you've already cautioned us that we can't put our offices on call forward to your number now.

**Mills:** Thank you, dan. That's a point well taken. I think there's a very high expectation and there's a very large burden on the ombudsman office to go out there and educate people and say this is what we can do, this is what we can't -- we can't overturn decision, we can't tell anyone to do anything, all we can do is look at it in a fresh light and try to give the best recommendation we can to change things. Sometimes it doesn't get so far as to even going -- writing something in e-mail or a letter, sometimes it's just talking with somebody in the bureau and saying, what about this option? Is that something that might help solve this particular issue? And they'll say, oh, we'll give that a try, and it solves it, very quietly and very unobjectively the issue is resolved. But there will be those that feel like a martyr. They bring the issue and the problem is backed by city policy, by city law, and we say, well, we can't solve your problem but we can raids it and try to resolve it by changing the policy for those that follow you with the same problem. Great, i'm a martyr.

**Saltzman:** It seems like a lot of sues so often people get frustrated because of it's an -- an issue crosses one or two bureaus' jurisdictions, and can you convene meetings of those bureau representatives who would be dealing with that particular issue and the citizen, for instance? Is that something that is within your purview to do to say, okay, let's try to figure out this problem on behalf of this citizen?

**Mills:** Yeah. Absolutely. And I think that's sort of on the cutting edge of an ombudsman professions. To look at sort of the broader community issues. A good example I think is the issue when I was in the mayor's office where we dealt with the state board issue and the barn side park, where it involved police, parks, transportation, a number of city bureaus and we actually went out and found a mediator, I did the case development, a mediator got these people together with the businesses and came up with a great resolution that still stands today and was a much better resolution than just saying, no, we're going to shut the place down because here's all the legal reasons we should do that.

**Saltzman:** I guess I was also wandering wondering, have you worked with the city's information and referral number, people so they know when it's appropriate to refer calls to your office or not? I guess they probably need some guidance on that too.

**Mills:** Yeah. We've done some initial discussions, and we certainly will be doing more. We're on a compendium, the I and R is here, the ombudsman is here, the audit's is here, so it's good to sort of work with all those people along that line and say, here's where it should fall into our purview or here's where it should fall into yours. And make sure --

**Saltzman:** You are working with them then?

**Mills:** Yes. Make sure referrals that come to us are appropriate so we don't bounce them to somewhere else.

**Blackmer:** At that point we don't have the staff to handle the calls, so july 1 is when we're shooting to begin it. So we have -- one of the things that michael has been doing is getting geared up so we can have is that july 1 start date. So that's what we're shooting for. So we'll certainly give them a good understanding of all of that in the next couple months.

**Katz:** I was just thinking, the two assignments I personally gave harry, one a was a transportation assignment and the other was the sunnyside church. That would be a natural for the ombudsman, and -- though we love the work harry did, and you certainly can use his expertise, but ha would be something that we could turn to the ombudsman's office. Those were external issues that were difficult to resolve. Further questions? Anybody want to testify on this? If not, it passes on to --  
\*\*\*\*\*: I think we do a second reading.

**Katz:** I was going to say, it passes on to second. Before gary leaves, you've all seen at least the first draft of the piiac --

**Blackmer:** No. It's only -- i've been waiting to hear from the city attorney.

**Katz:** Before you get it. Okay.

**MAY 2, 2001**

**Blackmer:** We're anxiously awaiting something from the city attorney so that we can get it on the agenda. I hope to have it on the 17th of may, but it look like we're not going to get anything back in time to give the public an opportunity to review it. I'm -- hopefully it will be the 24th of may we have a hearing in the afternoon about 2:30. So i'm crossing my fingers.

**Katz:** So the public will have a week?

**Blackmer:** I'm shooting for two weeks. Like 13 days, roughly.

**Katz:** Okay. So my recommendation to the council, because it probably will go on two readings, is when you do get the sort of the draft draft to please let gary know if there are any change you want flagged.

**Blackmer:** I could do that at this point. I'd hope to hear back, but I think city attorney is doing other things and so I could give you at least a look at it, but it's apparently going to be changing based upon his review also. So -- and then commissioner Francesconi wanted to meet with jeff rogers and I and talk about the issue about evidence and findings and what the decision process is in the appeal, so that's one I needed to make sure that I understood what jeff was saying and commissioner Francesconi would be able to hear it and maybe ask his questions at the same time.

**Francesconi:** Maybe if I could, mayor, I won't repeat it next time, a brief comment. This is a terrific thing here that you're doing. It's -- it's good government in the sense that we're not only advocating for citizens through the ombudsman process, but then we're reviewing, evaluating and changing our own behavior. That takes another bureau to do that. And so this is good government. I guess to you -- we have the perfect person in michael here to do this with your experience, both here locally and nationally. Gary, I guess I just want to say that you're doing a tremendous job as audit or. This is not a paid political announcement. But i've seen three instances. This is one, the second is the piiac that we just talked about, where you waded into -- waded into the middle of a problem and all of a sudden the phone calls stopped coming to my office because they were all going to your office. But the third area is parks. Speaking of evaluating, you did an audit of parks, which I requested, and it -- you did 90 a collaborative fashion. We've had prior parks audits that sat on shelves and didn't get implemented. But because of how you handled it, we're implementing and it we're about 95% done in the implementation. And it was because of working with you in a relationship you've built with the bureau and how you handle and your staff. I just wanted to take this occasion to thank you.

**Blackmer:** Well, thank you. I appreciate that.

**Katz:** Michael, you may be working on the next may day parade. [ laughter ]

**Mills:** We'll look at the permitting structure there. Thank you.

**Katz:** Okay. It passes on to second. If there's nobody else in the audience that wants to testify. All right. Communications. 520.

**Item No. 520.**

**Dave Carter:** My name is dave carter. I think this is a perfect opportunity to support the ombudsman program. If I would have had access to someone to help resolve my conflict earlier, I wouldn't be here today.

**Katz:** Have you three minutes. There's a little clock next to you, so I don't want to cut you off.

**Carter:** Right. You all saw the poster that was put together by the Portland development commission which showed the remodeling project that I did. You're given nine months on a renovation waiver to complete a project like that. Mine took 13 months. And because of that, the assessments and fines continued and I ended up receiving a bill from the city of Portland to the tune of \$940 to do this upgrade to this house. I just feel it's unfair. I'm disappointed -- disappointed that I wasn't given an opportunity to be judged on the merit of the project and the scope of the project by the assessments people or the building and development people. It's a policy that's in place that gives you just nine months for this renovation, and I felt like the project that I did was large enough scope that I needed a little more time. That and the fact I did it all myself.

**Saltzman:** This was a requirement of pdc, the nine months?



**MAY 2, 2001**

**Carter:** Pdc were the ones that ended up fining me -- finding me a fan any may loan so I could fund the project. If you can see the first picture, I didn't have much to work with when I started out and bought the red tagged home, and by the time I got plans, a permit and whatnot, it took a little longer than the nine-month renovation waiver that was allowed.

**Katz:** You wrote me on this, didn't you?

**Carter:** Oh, vera, i've -- I felt like a ping-pong ball going between different agencies trying to resolve this situation without having to come before the city council here. So like I said, an ombudsman would have been a perfect person to help me resolve this.

**Katz:** So the issue you raise is with a size of a project of your kind.

**Carter:** Correct.

**Katz:** Maybe the necessity of additional time.

**Carter:** Correct.

**Katz:** Okay. So that's a policy issue.

**Carter:** It is a policy issue. They're very strict and rigid on that nine-month waiver. And i've written numerous letters to different people in the auditor's office, and the -- and the whatever office I got bounced to another time. That there's just no wavering on that nine-month renovation waiver.

And I felt like because the pdc had found me, they had provided me with a coordinator that kind of monitored the progress of the project, and they gave me 12 months to do it in, I felt like the assessments group ought to step back a little bit and allow to it progress as a construction project as opposed to a housing maintenance issue.

**Katz:** You went beyond the violations.

**Carter:** Oh, way beyond. And I eliminated what essentially were the violations immediately. I cleaned up the trash, I got a building permit which indicated I was going to do all new electrical, all new plumbing, and part of the big problem was they couldn't close the case because the housing inspector wrote in there that he wanted a final electrical and final plumbing prior to closing the case, and as you understand in a construction project, final electric and final plumbing are two of the last things that are completed before the project is over, so it was a beautiful house with no essential violations long before they could close the case, but because of the way it was written up with final electrical being required, it just followed a normal progress of a construction project.

**Katz:** Thank you.

**Carter:** Thank you.

**Katz:** Okay, everybody. Oh, there's one more but I don't see him here. 521.

**Item No. 521.**

**Moore:** He called, he cannot make it.

**Katz:** All right, everybody, we stand adjourned until 2 o'clock. [ gavel pounded ]

At 10:38 a.m., Council recessed.

MAY 2, 2001

MAY 2, 2001 2:00 PM

**Katz:** karla please call the roll.

**Saltzman:** here. **Sten:** here.

**Katz:** present. Were going to go backwards today. 524.

**Item No. 524.**

**Katz:** its second reading. Roll call.

**Saltzman:** aye. **Sten:** aye.

**Katz:** mayor votes aye. 523.

**Item No. 523.**

**Katz:** okay. I need a motion to accept the findings.

**Saltzman:** so moved.

**Katz:** second.

**Sten:** second.

**Katz:** roll call.

**Saltzman:** aye. **Sten:** aye.

**Katz:** mayor votes aye. 522. Frank?

**Item No. 522.**

**Frank Hudson, City Attorney's Office:** Good afternoon. I just want to take a minute to describe how this hearing will be conducted. This is an on the record hearing. You have to limit your testimony to material issues in the record. That means that during this hearing you can only talk about the issues, testimony, exhibits and other evidence that were presented at the earlier hearing. For the hearing's officer. You can't bring up anything new. This hearing is designed only to decide if the hearings officer made the correct decision. Based on the evidence that was presented to him.

If you start to talk about new issues or try to present new evidence today, you will be interrupted and reminded that you must limit your testimony to the record. The order of testimony will be as follows. We will begin with a staff report by the planning bureau staff for approximately ten minutes. Following the staff report, the city council will hear from interested persons in the following order -- appellant will go first and will have ten minutes to present his or her case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to the council. This three-minute time limit applies regardless of whether you are speaking for yourself or on behalf of an organization such as a business association or neighborhood association. The principle opponent will have 15 minutes to address the city council or rebut the appellant's presentation. After the principle opponent, the council will hear from persons who oppose the appeal. If there is no principle opponent, the council will move directly to testimony from persons who oppose the appeal. After supporters of the appeal conclude their testimony. Again, each person will have three minutes each whether you're speaking for yourself or on behalf of an organization. Finally, the appellant will have an additional five minutes to rebut the presentation of the opponents of the appeal. Council will then close the hearing and deliberate.

After the council has concluded its deliberations, council will take a vote on your appeal. The vote is a tentative vote. Council will set a future date for the adoption of findings and a final vote on the appeal. Council takes a final vote today, that will conclude the matter before council. If you wish to speak to the city council on this matter and have not signed the list located outside of council chambers, please sign up at this time with the council clerk. Finally, I want to say a few things about the scope of the testimony. This is an on the record hearing, it is not an evidentiary or de novo hearing. This means you must limit your remarks to arguments based on the record compiled

**MAY 2, 2001**

by the hearings officer. In presenting your argument, it is permissible to refer to evidence that was previously submitted to the hearings officer. It is not permissible to submit new evidence today that was not submitted to the hearings officer. The planning staff and I will be listening carefully to your arguments and if it strays from the evidence or issues presented at the initial hearing, I may interrupt and remind you that you must limit your argument to issues and evidence in the record. If your argument includes new evidence or issues that council will not consider, and it will be rejected in the city council's final decision. If you believe a person who addressed city council today improperly presented new evidence or presented a legal argument that relies on evidence that is not in the record, you may object to that argument. Council will provide a time at the end of the hearing for anyone to offer this kind of objection. Finally, under state law only issues which were raised before the hearings officer may be raised in this appeal to city council. If you believe another person has raised issues today that were not raised before the hearings officer, you may object to council's consideration of that issue. Again, the council will provide a time at the end of the hearing for anyone to offer an objection.

**Katz:** Thank you. Declaration of conflicts of interest by council members? Declaration of ex parte contacts by council members. I don't hear anybody. Does anybody in the audience want to challenge the silence on the part of the city council? You don't get a lot of chances to challenge the silence. All right. If not, then we'll take the first ten minutes for a staff report.

**\*\*\*\*\*:** Thank you, mayor Katz. This request is an appeal of a decision the hearings officer made on a subdivision planning development and environmental review property --

**Katz:** Did you identify yourself?

**Rodney Jennings, Office of Planning and Development Review:** Pardon me. My name is rodney jennings, with the office of planning and development review. The property is a 9.4 --9.54 acre site located in out of southeast Portland, the intersection of southeast clatsop and 174th. The site is a square area north of the site is a developed subdivision and to the west of the side is an open space tract which is under the ownership of the residents of that subdivision to the north. The property to the south is outside the city limits in clackamas county. The zoning of the property is -- and the surrounding area is all zoned r-10, a single-family zone with a 10,000-square-foot per-unit maximum density. A major part of the site is in the r-10-c zone, environmental conservation zone. That takes up for the predominant part of the eastern part of the site, where the site is heavily treed and also following along an existing intermittent drainage on the south end of the site. To the east of it is also a heavily treed area with environmental zoning and also zoned r-10. Portions to the east where the drainage enters into the other side of the street is in the environmental preservation zone, and that is -- eventually drains into the johnson creek bay sin -- basin drainage ultimately. The property that is subject to development as I note second degree heavily treed, and the boundary of the trees is very similar to how the environmental zone on the property is laid out. There's also an existing house on the property, and at the south of it is this existing drainageway, which originates at a culvert which has its origin on the adjacent open space tract to the west of this site. So the water drains into that culvert and drains across a portion of this site and opens out into an open drainage. A little bit beyond that. The hearings officer reviewed this development using the approval criteria in the subdivision code, which is all of the applicable sections of title 34, principles of accessibility, design standards, solar access requirements, and also the applicable criteria of title 33, which in this case included the environmental review portion of the code applicable to puds and subdivisions. Also the applicable sections of planned unit development code and the johnson creek basin planning district and the state transportation rule. The hearings officer approved a plan to zone as -- shown on the site plan here for a 33-lot planned unit development subdivision with environmental review. The environmental zoning on this site is --

**MAY 2, 2001**

covers the majority of the site and the main portion of the site that's not environmentally zoned is in the northwest corner. To access that area of the site it's necessary to cross the environmental zone with some kind of street system to avoid the intermittent drainage on the south end of the -- south end of the site, which is one of the more valuable resources on the site in the environmental zone. So that is the basic outline of what the development proposal was. The area in the environmental zone that is not proposed for individual lots is proposed to be left in an open space tract, approximately running on either side of the intermittent drainage stream -- drainage. There are new public streets being proposed both of which are intended to be cul-de-sacs. One 40 feet wide and one on the east side of the property would be 35 feet wide, which serves a shorter distance. One of the issues raised in the public hearing process was the need for on-street parking in a 40-foot wide street would provide that. The proposal also includes improvements to the frontage of Clatsop street and 147th street to the east of the property, and a pedestrian path which would run from the end of a cul-de-sac down to Clatsop street. There is transit service available on transit street close to where this pedestrian path would come out onto Clatsop street, and there would also be sidewalk improvements on Clatsop to accommodate pedestrians. Some of the elements of the proposal that were in the environmental zone include a sewer line. It's intended to serve the lots fronting on Clatsop street with sewer service. For engineering reasons it was designed to cross this intermittent drainage stream, and another sewer line is intended to cross the environmental zone in this alignment going from one cul-de-sac to the other. Also proposed within the environmental area -- within the open space tract of the environmental zone are forced storm water outfalls, one leading from each cul-de-sac, one near the intersection of Clatsop and northeast -- southeast 47th to provide drainage for the streets there, and then a fourth outfall that is to provide storm water service for the lots fronting on Clatsop. The other property -- other lots in the development are intended to have on-site storm water treatment. Also approved were construction management plan and a mitigation plan. Mitigation plan was to provide plantings in this open space tract to mitigate for vegetation and other resource impacts upon the portion of the site that's in the environmental zone that would be proposed for development, which is primarily the northeast corner of the site around where the new street is coming in and also around the eastern cul-de-sac, and also to provide -- and also mitigation for some lots that are in the environmental zone proposed line to Clatsop street. One of the proposals is for a pedestrian path, as I noted running from the cul-de-sac to Clatsop, and the portion of that path is proposed within the -- within the c zone, the environmental conservation zone. It's proposed to be routed around drainageway that is existing on the site, and intended to more closely follow contours as you get further east moor the property, the banks on the other side of the drainageway get steep, so this path alignment is intended to go around those and also to stay outside of the environmental zone as much as possible. The applicant also proposed some details for the storm sewer outfalls that are proposed in this zone. These would be trenches which would break up the flow and flow into the creek. Those were one of several alternatives that were proposed, one of which the original proposal was a riprap alternative, and this was an additional alternative that came into being proposed as the hearing process went on.

**Katz:** Could you repeat that one?

**Jennings:** Previously the -- when the application was originally submitted, these outfalls were proposed as a layer of riprap that would be placed out in the -- storm water would flow to that and that would be intended to break up the flow to the water. This was an alternative that was -- that made laid cher reduced the area in the environmental zone that was actually devoted to storm sewer outfall significantly. About 1600 square feet to about 360 square feet for the actual facility itself. And then also proposal to have significant impact in the environmental zone was a proposal to cross this intermittent drainage with one of the sanitary sewer lines. The applicant did analyze an

**MAY 2, 2001**

alternative for boring the sewer line underneath the stream because the slopes next to the stream were so deep that they wouldn't be able to get the boring machine in there without excavating further. So instead what they proposed was to set up a fence on either side of the stream and the backhoe which would reach over and dig out the trench, and then they would rebuild a stream channel with logs that were anchored in the stream on either side. The appeal issue that was raised in the appeal statement was simply that the pud did not meet the environmental review criteria in the code, and some of the issues that were raised by the appellant earlier in the process related to the environmental review. I summarized here. One was that the applicant did not complete an analysis of the impacts of the disturbance areas that cover most of the lots. The applicant did not do a lot by a lot analysis, however they did do it -- they attempted to mitigate for things they were doing in the open space tract. Another issue is the use of substitution of 687 shrubs for 229 trees that would be required by environmental standards. There is a table in the environmental code for standards that requires the substitution of trees. A certain ratio. And in one of those instances with trees between 6 and 12 inches it does not have an option that would substitute trees and shrubs. The -- with trees larger than that there is an option of substituting. In this case the applicant chose to substitute -- to go -- to use the environmental review process as a way of using -- substituting in this case shrubs for trees, and the argument they made was there was a lot of tree cover on the site and it would be more appropriate mitigation to have a shrub layer below the tree layer than -- layer rather than more trees where there already were some. Also brought up was the issue of the development would result in the loss of flood storage. That was again part of the comprehensive analysis that the applicant did, accounted for the -- tried to mitigate on site for that elsewhere by either planting trees, reestablishing habitat or doing some other factors. Another issue raised was the boring under the creek issue for the sanitary sewer line. And as I discussed earlier, the applicant did provide some information to the hearings officer as to why that was not considered a practical alternative at this site. And then another issue was regarding the proposed pedestrian path that mitigation was being proposed by the applicant adjacent to the pedestrian path within the environmental zone. The opponents were thinking more landscaping should be provided across the entire length of the path and also that it might be more suitable to have a bridge over the creek rather than routing the path around the creek and putting a culvert to route drainage under the creek and into the intermittent drainage. So that's -- there were some other issues raised, and I'm sure those might be brought up, but I wanted to summarize some of the ones that I thought had been brought up in the public hearing. I have a series of slides of the site here. This is the existing house on the site from Clatsop Street in the far southwestern corner of the property. This is an existing driveway which would also go to that house which would also be -- to the side of the house -- which would also be an approximate location of the pedestrian path and one of the sewer lines. The sewer line would go straight up and the pedestrian path would veer around as the -- as you see in the distance, the beginnings of the street channel. The pedestrian path would be around that and head towards the cul-de-sac. This is an area showing the lot, the area where the lots that are proposed along Clatsop Street would front. This is an existing shed on the site. And then this is a view down Clatsop Street. All of this area back into here, the treed area is where the intermittent drainage runs through. This is the view looking up Clatsop Street from the intersection of Clatsop and South 47th, which would be the southeast corner of the site. And then a view looking up West 47th you can see the site tends to slope up away from this corner on both sides in sort of a bowl shape. And then this is a similar view looking down Southeast 147th, pardon me. I took some pictures inside the site too, but unfortunately because it is fairly treed they're not -- you can't really see too far into the distance. This is sort of the upland area where much in the environmental zone where much of the proposed lots are of above where the drainage is. And then this is another view,

**MAY 2, 2001**

interior of the site. This is a part -- a portion of the site north of the existing house near where the drainage culvert from the adjacent property flows into the site. Most of this area is outside of the e zone and it's also the environmental zone and it's also doesn't have a lot of trees or grass. And here you can see the existing house on the site, the start of the drainage way, well, the upper part of it, so over in this area is where the sanitary sewer crossing would be, and then the path would be even further west of that. This is standing down -- well, actually on the slope on the north side of this drainage channel. The slopes can get pretty steep on either side of the drainage. And then this is actually a shot of the drainage channel itself. Flowing through this underbrush here. And then another shot along clatsop street, the drainage is fairly close to the street. So that would conclude my presentation.

**Katz:** Okay. Questions? Okay. Let's hear from the appellants. You have ten minutes. Linda, are you the key appellant?

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

**Linda Bauer, Pleasant Valley Neighborhood Association:** Linda 54, for myself and pleasant valley neighborhood association. Linda bower. As you can see on the environmental zone page, I gave you all a copy of that. And you can notice that there are different chapters. A chapter for development standards and a chapter for environmental review. It's called discretionary and nondiscretionary. The discretionary review is the development of the environmental review. The nondiscretionary review is the development standards. They are two different processes. As you'll notice, they both have purposes. They are two different processes and they have two different purposes. They are different. The applicant in this case took one -- took the charter out of the development standards and tried to use it in the approval criteria part. That is an error. Even in the report of the decisions officer, the approval criteria citation, he lists that the approval criteria is 3343250. It is not. Table 432. They should not have used that table. It is inappropriate for this review. These criteria in 4 -- the relevant one, 3343250, criteria c, which says the mitigation plan demonstrates that all significant detrimental impacts on the resource and functional value will be compensated. The applicant would have us believe that planting one -- 1.24 trees and 3.4 shrubs per tree over six inches, that's a tree from six inches to over 30 inches, is compensated for by planting one-inch tree -- one in less than a quarter trees and 3 money 4 shrubs. -- 3.4 shrubs. And that all the resource -- in their 33 -- in their supplemental application the client chose not to discuss this issue. The client told the hearings officer that they used the table for replacement right out of the code, which is absolutely true. The wrong code. Unfortunately the above referenced table is under the general development standard and does not apply to the environmental review section. Since could it only be used by those applicants that have met all of the general development standards, it is not relevant in this case. Then to make matters worse, they say that they do not want to plant all the trees required in the nonrelevant table. As a reason, they state there's not enough room to plant that many trees on their property. In the case file there is a letter from b.e.s. That says they would be willing to work with the applicant to find homes for all of the trees that they don't have room to plant on their property. 33.430.250 a 1 d says mitigation will occur within the same watershed as the propose -- proposed use or development and within the city limits of Portland except when the purpose of the mitigation could better be provided elsewhere. B.e.s. Offered their help and the applicant refused. With the quality of the air and water being constantly degraded, we can no longer afford this kind of attitude regarding the net loss of critical environmental resources. 33.430.250 a 1 says proposed development locations designs and construction methods have the least significant detrimental impact to identified resource and functional values of other practical and significantly different alternatives, including -- there has been less -- there has to be a less detrimental way than digging through the creek bank. The

**MAY 2, 2001**

applicant has stated that the impacts will be mitigated by not allowing heavy equipment to cross the stream. Heavy equipment will be required to drive around the stream. Within the boundaries of the construction fencing installed for that purpose. Unfortunately this will compact the riparian area at the head of the stream, destroying vegetation and changing the area. In addition the compacted ground will not support survival of the appropriate mitigation plantings. Sedimentation has been a serious problem in other areas in spite of the sediment fencing and other protective measures, even without disturbances of the creekbed. This environmentally sensitive area is fragile and any damage done in the course of development negatively impacts neighbors. No applicant should be allowed to development at the expense of the neighbors when less destructive alternatives exist. On exhibit 486 h 27, the applicant illustrates their intent to place a new culvert over the existing culvert. That is their words, not mine. It's on the approved mitigation -- on the approved -- I don't have it right here in front of me. Anyway, you have a copy of it and I highlighted where it says they're going to put a culvert over another culvert. The use of culverts is an outdated method that does not take into account the detrimental impacts that culverts have on aquatic life. With so many negative species in an imperiled situation it becomes increasingly important that we undo past bad management practices rather than compounding the damage by putting one culvert on top of another. We would like to see that stream daylighted. They're doing it in the southwest. Why do we have to put one culvert on top of another? Why can't we just daylight both of them? The disturbance area the applicant has shown are larger than necessary for building sites of vehicular access and utility service. The maximum front building setback in an R-10 zone is 20 feet maximum. Vehicular access and utilities are typically located in the front so there's no justification for them to have to use like 95% of the site as a disturbance area. And in the environmental zone you have to draw a disturbance area. The ones they drew are way too large. They don't need that much. Now is a good time to talk about traffic impact studies. The applicant did a traffic impact study and it showed that everything was peachy at foster and barbara welch. The city and the neighborhood know that's not the case. It has been on your cip, capital improvements list for four years. It is now on the transportation system plan. The foster road at that intersection carries 16,600 trips per day, capacity is 20,000. Barbara welch is not used because it's just too dangerous. It wouldn't be on your cip list if there weren't real existing problems. The residents avoid using it whenever possible, which is why the volume is abnormally low. Ensuring that access roads are safe for vehicles bicycles and pedestrians should be a part of the approval of every application. Without mounting evidence against the effects of greenhouse gas on global warming, can we afford to approval development without making -- access by alternative modes of transportation a part of the requirements? We would like the environmental review denied because it doesn't meet the approval criteria, the disturbance areas are too large, the mitigation plan doesn't come close to compensating for the resource and functional values lost. Equally important we see that this has not been looked at in the larger content -- context of the negative impacts on air quality and livability because of the scope of evaluating one project at a time without regard to whether the infrastructure can support cumulative effects of the increasing population density and auto traffic. And I would entertain questions if you have any.

**Katz:** Okay. Thank you, linda. Questions? Okay. Any other appellants want to testify? Okay. Principle opponent or the applicant. 15 minutes.

**\*\*\*\*\*:** Good afternoon, mayor vera Katz and commissioners. I am the --

**Katz:** Bring the other mike closer to you.

**Corbin Shays, Urban Visions:** I am corbin shayes, I am the applicant's representative.

**MAY 2, 2001**

**David Wateman, Environmental Water Technology Consultants:** My name is david waterman, i'm with the environmental water technology consultants. We did the environmental review portion for the applicant.

**Shays:** We quickly -- I believe that david being -- dealing with the environmental review is the best one to address the issues, but i'd like to address issues of the discrepancy in the codes. It is my understanding from working with the city on this file that the environmental standards, while we're not meeting the standards because it is a larger site than you can -- that can meet standards because of the number of trees that do need to be removed, we still go back to the standards these charts as a basis to come up with a mitigation plan. And i'll leave david to discuss that a bit further.

Discussing --

**Katz:** Let me interrupt you for a second and we'll watch the time. We need a check-in later on from somebody as to whether the right standards section of the law was used. Okay. Go ahead.

**Shays:** And addressing the daylighting of the existing -- I don't want to use the word culvert, but piped storm line, or creek which exists on a portion of the site outside of the environmental zone. This is a situation like we're saying that we came into having. The applicant is not opposed to daylighting that portion of the stream and putting a footbridge across the section where the walkway crosses over the existing piped stream. In terms of planting trees off site, david can address that in more detail in terms of the trouble we've come up with in the past on finding a site to plant these trees. But we're not necessarily opposed to planting some trees off site if an area can be found to plant the trees and if it is determined that we have not adequately met the standards of the environmental review. David can address it. It sounds to me like we have. And with that, i'd like to let david go over what he has done here.

\*\*\*\*\*: As linda stated, we used table 430.2 --

**Katz:** Identify yourself for the record.

**Waterman:** I'm david waterman, with environmental technology consultants. I'll start back where I started. As linda stated, we used table 430.2 as all guideline in establishing a replacement ratio for trees. We understood from the beginning that we did not meet all the criteria of the general development standards. We knew we were going to trigger environmental review in this process. The table was used as a guideline. It wasn't used as a crutch, it wasn't used as our foundation for saying, this is why our mitigation is appropriate. The crux of our argument, and the entire analysis of the argument was based on an indexing system, where we evaluated what was out there, we gave each polygon on the site an index value and game up with a total index acreage value. After we evaluated the proposed development, we then evaluated what was going to happen to all the functions and values. The flood storage, the wildlife habitat, the aesthetics, and the scenics and we came up with a new score. Obviously the site was without mitigation was going to be degraded this. Is all laid out in the november 16th environmental report narrative that we presented with the original application. The mitigation plan then once again using 430.2, simply as a guideline for replacing trees and shrubs, showed that by increasing the canopy, increasing the percentage of coniferous trees in the canopy, increasing the food value of the plants we were going to plant out there, both on the tree and the shrub and the ground cover level, we then reevaluated the index value of the site and determined that the functions and values were appropriately mitigated for. Once again, 4 -- table 430.2, the trigger replacement ratio is -- from our standpoint simply a guideline. In terms of whether the city of Portland can use our stepping up of table 430.2, that's not my call. That wasn't our primary determination that mitigation was met. What we did was, if you take a look at table 430.2, between six inches and 12 inches can be replaced with two one-inch trees. It doesn't give you the option to plant with trees and shrubs. 12 to 18-inch call per trees can be replaced with three trees or with one tree and three shrubs. That's the measure we took to



**MAY 2, 2001**

replace our six-inch to 12-inch caliper trees. We stepped up the chart, we weren't going down the chart. If you use that table as your guideline, which like I said, we did, three trees according to the city of Portland's guidelines is -- as far as replacement goes is roughly equal to one tree and three shrubs. We did it one better. We had to replace with two trees, since three trees is equal to one tree is two shrubs, two trees is obviously equal to two --

**Katz:** I'm smiling because we had that conversation somewhere in our history.

**Waterman:** I'm sure that you have. And I certainly hope that i'm not beating this to death. But --

**Katz:** You're trying. [ laughter ]

**Waterman:** This is linda's primary argument, and it's been addressed in an addendum that we've submitted dated march 2nd, and I wanted to clarify to the staff and to the council what our position was. In regards to off-site mitigation versus on-site mitigation, on-sites like this we have a relatively young early successional forest. It's not by any means old growth, it's not the best for wildlife habitat, it's not the best for flood storage. In cases like this, it's most appropriate to do everything you can on site that you can to get the site up to an excellent quality forest service. That's what we've attempted to do. We feel that we have not done anything over excessive on the site. We think what we've done has raised -- or is going to raise the value of that forest in the future as our plannings -- as our plantings and whatnot develop to take and mitigate all the functions and values that were lost in the area that was lost at the north end of the site. I did speak with mr. Allison from the city of Portland in regards to off-site planning. In the past year and a half ongoing ago, i'm not sure if you're familiar with lexington view estates, it was a site where we didn't have this luxury of being able to enhance a forest. We already had a forest that was in premier shape for this area. It was old second-growth, douglas fir forests. There was nothing we could do to improve it. We tried to get off-site mitigation. We couldn't. I spoke with mr. Allison and it sounds like the city has developed a program to allow that, and we will certainly consider that in the future. Will it sounds like they've got a program now to where we actually have the opportunity to do things off site that we didn't have a year and a half ago. On this particular case, we don't think it's appropriate. We think there is enough work to be done on the existing forest that's going to be left alone to warrant on-site mitigation as the entire mitigation load. And that's all laid out in our index system analysis. As far as the sewer crossing, we went through alternatives. We submitted february 19th addendum that went through the various alternatives for the storm sewer and it was also addressed in our march 2nd addendum. The -- being that the sewer is necessary, there's no other route but to take that sewer off to the north. This was the preferred alternative. No one from the city has argued that with us. What we've done is the most sensitive we could have come up with, given the fact that sewer line had to go to the north. -- the disturbance it would take for the machinery --

**Waterman:** Right. As mr. Jennings pointed out when he was discussing the opportunity of boring under the stream channel and the disturbance that was going to cause was simply not -- it was too great. It didn't -- it was much greater than simply taking a 30-inch backhoe bucket and removing material from the stream and putting it back in. What would have been required on a slope that was like this, the sewer line is going to be down here, you have to get that machinery all the way down to where it's level, where it can take and do a horror southern tall bore underneath the stream. If you're on a slope like that, the only way to get that machine down there is to start taking out feral. And we figured that the -- out material. We figured the foot print for that evacuation would have been approximately 45 feet wide, about 30 feet in length and about ten feet deep, which is a lot of material. And it was going to have the potential of -- you're talking about vegetation removal, you're talking about potential water quality impacts and trying to get that

**MAY 2, 2001**

existing grade back after the construction was done that was simply -- it wasn't feasible. In regard to the path and the desire for that existing culvert to be daylighted, from an environmental point of view, that's -- that is a sound decision. The -- or it's -- I wouldn't have any problem with that. I can't argue against that. The applicant seems willing to do that. One of the issues with that that -- given the alternative that we've proposed with the existing culvert and having another culvert to pass the overland flows is that what overlapped flows that that new culvert is going to pass are from simply surface run-off from the site itself, because everything else above there is going through that culvert. So we're not dealing with disturbing a wetland. What's there doesn't meet the criteria of a jurisdictional wetland. We're not dealing with disturbing a stream. We're disturbing -- proposing to disturb a piece of nonwet -- nonwetland swale. The impacts aren't going to be dramatic by any stretch of the imagination. But it would be a positive to actually daylight that entire culvert. And I think that's all I've got.

**Katz:** Okay.

**Shays:** I have one more point that I failed to mention. Linda's concerns -- this is Corbin Shays. Linda was concerned about disturbance areas. The concept of up to 95% of a site being disturbed for a building footprint. I don't know that -- we didn't do a calculation to come up with what that -- the percentage of the actual lots, but the way a planned unit development works with a large open space being preserved, the lots are going to end up being quite a bit smaller than the 10,000 square feet. Every lot which is within the environmental zone save one lot is under 5,000 square feet in disturbance area, which is the standard for disturbance areas in an environmental zone and in an R-10 designation. The one lot that is over 5,000 square feet is lot number 30. It is over by 131 feet. This is something that we didn't look too closely at. We know we missed this one, and we're willing to be able to push that down below 5,000 square feet one way or the other.

**Sten:** How much of the site remains undisturbed in your final plat?

**Shays:** You know, I don't have that number in my head. If my calculation is correct, if I'm looking at the correct version of our maps here, it's 155,000 square feet is undisturbed.

**Sten:** It was 480 to start?

**Shays:** Yes. Which is again, I'm sure you understand, all within the criteria of going through a planned unit development in an environmental zone.

**Sten:** And that area pretty much stays like it is now? That's where a lot of the enhancement is going, right?

**Shays:** It's going to be enhanced.

**Katz:** Are you finished? You had about three minutes left. Let me see if there are any questions? Darn?

**Saltzman:** -- dan?

**\*\*\*\*\*:** I'm.

**Saltzman:** I'm still confused about the tree planting and shrub ratio and how that intersects with the off-site planning issue. Is there an option to do off-site planning in lieu of meeting a certain tree-shrub ratio, or what am I missing?

**Waterman:** Once again, that -- we're going through the environmental review process. We recognize that the general development standards aren't being met. What we are proposing to do through the environmental review is to mitigate all the functions and values that were lost by planning -- planting tree and shrubs on the site and doing various other activities in the stream, doing some woody debris placements, girdling of trees to increase wildlife habitat, we are increasing the functions and values of that area. One aspect of that is tree and shrub replacement. What we've tried to do is tried to increase the canopy cover on various vegetative strata to get high food value plantings in there relative to what's already out there. Part of our analysis is you take

**MAY 2, 2001**

ultimately what you think the forest is going to look like and what sort of plant, what sort of cover you have and give that a value. You multiply that index value by the area to determine a total index value, a total weight for the functions and values. Whether you get that on site or off site, our criteria when we do these is that the total index value system, the total index value before and after is the same. If we get part of that on site and part of it off site, if we have to go that way, we'll go that way. On this particular site we've got it all on site. And that was the route we took.

**Saltzman:** You were able to get all the habitat value were you required to do as mitigation on site.

\*\*\*\*\*: Right.

\*\*\*\*\*: Did you mention the work you're doing in the creekbed?

**Saltzman:** That's per all of our rules on this, the city's rules.

**Waterman:** Yes. It was an index system that we've developed. We've consulted with Washington department of fish and wildlife in developing the system. That was for the wildlife standpoint. For the other function and values we used the available research that was out there to develop this system. And it's all laid out in the -- in our narrative data -- narrative dated november 16th, 2000.

**Sten:** This may be a dumb question. I'm going to ask it anyway. Linda seems to prefer trees to shrubs. Could you do more trees as part of your mitigation, or is that physically impossible?

**Waterman:** Not on site, no. We've pretty much maxed -- if we were going to go and plant anymore trees than what we've already planted, you're going to be talking about putting trees, you know, six or eight feet away from each other, next to existing trees to where you're going to wind up with a very degraded type of a forest. A forest that's never going to develop into what most people consider to be a quality old-growth-type forest.

**Sten:** So just hypothetically speaking, because i'm not sure this is a good idea or not, but you can kind of -- I can take an intuitive feel that in some ways this forest is there and we're going to -- it's land that's zoned residential and I think you're following the rules. Would it make sense if we found a site to look at doing some trees off site rather than doing them there based on that argument? My instinct is that the shrubs may be -- maybe aren't as valuable as getting trees somewhere else that needs trees. I could be dead wrong on that.

**Waterman:** I guess i'll kind of take that from a couple different stand points.

**Sten:** Please.

**Waterman:** Whenever you have a site that you've got -- we're -- we've got four acres. Right now it's early successional, moderately degraded, a lot of nonnative blackberry. When you've got a piece of ground like that, you know it's going to be set aside. It's my intuition that you should do everything you can to that piece much ground that you can to get it to a high-quality state. Now, to take on this second standpoint, whether it -- the tree is valued as a shrub, if one tree equal to three shrubs, four shrubs, I can take it from a couple different function and value stand points. First, storage. I don't know how often you've gone out and stood in a forest when it's pouring down rain, but you're standing under a tree, there's not a whole lot of precipitation. It's all being caught by the trees. If you stand there long enough you can still hear the rain dripping down off the trees. Where that's going is it's getting caught by the shrubs. The shrubs pick it up and provide another layer of flood storage, of -- it's catching that water and it goes down like that. And that's why you don't -- that's why you don't have real serious flooding in good solid forested areas. From the wildlife standpoint, if you look at the Portland plant list and the back -- in the back of the Oregon department of fish and wildlife, they developed a -- an index for which plant provides the highest usage for various critters in the pacific northwest. There's few trees that are up in the 30-plus range. At the shrub level you've got all sorts. In our case elder berry, salmon berry, we are able to

**MAY 2, 2001**

provide a great deal of wildlife habitat food value with these shrubs. Birds will use the tops of trees to nest and they'll use the shrub layer to evade predators. Can I say that one tree is equal to three shrubs? Well, I would be -- it's nonsense. It's like comparing apples to oranges, but I can say --

**Sten:** But that's our standard.

**\*\*\*\*\*:** The trees -- the shrubs do provide a available resource.

**Sten:** It's our nonsense.

**Francesconi:** If you get tired of being a developer, urban forestry has a spot for you.

**Saltzman:** And you went beyond the one tree and three shrub to two trees?

**Waterman:** Right. 430.2, one six-inch to 12-inch tree has to be replaced with two trees. It doesn't give you the opportunity to replace with trees and shrubs. Now, if you're talking about a bigger tree, which anybody would say is a higher value tree, you can either replace that tree with three trees or one tree and three shrubs. So what we did is we treated our six-inch trees like they were 12-inch to 18-inch trees. We treated the lower value trees like they were higher value. Like I said, we just used that as a guideline. Our indexing system is the whole backbone of our environmental review. It's not that table. That table is simply a guideline. And I think for the most part it a pretty good guideline.

**Saltzman:** Okay. I was going to ask Steve from B.E.S. About the daylighting issue. It sounds like if there's a willingness to do the daylighting --

**Katz:** Hold on then. Let me give Linda an opportunity to rebut if there are no more questions. Gentlemen? Thank you.

**Waterman:** Thank you.

**Katz:** Mr. Waterman how long have you been doing this?

**Waterman:** About four years, 4 and a half years. I've been out here since '96.

**Francesconi:** She wants to ask you how old you are, but she's afraid to. [ laughter ]

**Katz:** But I can't ask you that so I'm trying -- I can't ask you if you're married, I can't ask you how old are you, but I mention -- you look like you just got out of high school. [ laughter ]

**Waterman:** I'll tell you off the record.

**Katz:** Okay. Thank you. I'm just curious. Linda, come on up.

**Bauer:** Linda Bauer. I agree with Mr. Waterman. One tree and three shrubs to replace any size tree is ludicrous. It just is not reality. And using that chart gives some reality to the notion that they are equal and they're not equal. And the code says you need to replace what you are taking out. And on here -- on his index I also handed you this sheet. In the body of their comments they say, units one and three have the least level of disturbance. Having not been disturbed in approximately 100 years and receiving index of zero. The remainder of the units receive and index -- an index of minus 8. As time will be required for natural processes to restore the habitat of these units. If you'll notice on the table that they've provided, they added .8 instead of subtracting it. So their table is off by 1.6. All the way across. Because this area is so environmentally sensitive, it happens to be the headwaters of Clatsop Creek. So it is very sensitive. Any loss of functional value or resource value negatively impacts the entire community. With the existing flood mitigation measures already strained to the maximum, access roads reaching capacity, and many other infrastructures beyond their design capacity, there's no room for error or speculations. Errors such as adding the value over the disturbance area in the summary of function and value mitigation table instead of subtracting it as indicated under the wildfire -- wildlife habitat, negatively impact the total functional value of the mitigation measures and results in the failure of the development to meet the essential environmental requirements. The small immature replacement trees cannot begin to do the job of the -- of toxic air pollutant removal, soil and water retention capacities of

**MAY 2, 2001**

much larger more mature trees. Plugging into the highly speculative replacement value for the one-inch tree does not prevent the immediate net loss of functional capacity. The loss of mature trees, the reduction of permeable surfaces, the changes in vegetation and the concentration of functional values within certain limited areas all combine to substantially alter which varieties of native species survive while changing the way in which the ecology functions. All to the -- add to this the cumulative effects of all of the new development and the results were frightening, degradation of the environment and livability of the area. All of these reasons make it important that the approval of the environmental review be denied. Questions?

**Sten:** You may not be -- I know these come in steps, but are you -- do you have a set of things you think that could make this right? Or do you just think that this site can't be developed?

**Bauer:** Oh, it absolutely can be developed. We're talking about -- the code requires them to mitigate for the functional and resource values that are lost. And they did not do that.

**Sten:** You're arguing that replacing a bigger tree -- it's one tree with one tree and three shrubs is not enough. Do you have a sense of what would be enough?

**Bauer:** Oh, yes. But it probably in your opinion would be too much. But let me say that they did not --

**Sten:** I'm forming my opinion.

**Bauer:** They did not propose daylighting the creek and doing a bridge to the hearings officer. What else?

**Katz:** I thought I heard them that they might --

**Bauer:** They would do it here. But it's not in the conditions of approval.

**Sten:** Let's say hypothetically that was in the conditions of approval.

**Bauer:** That certainly would make things much better. That's what we're asking for. What else did we want? A smaller disturbance area. There was something else.

**Katz:** Willing --

**Bauer:** I would like to see them plant one one-inch tree for every one inch that is cut.

**Sten:** Oh, I see.

**Bauer:** It may sound like a lot, but then the values -- it's going to take, what, I don't know, 15 years for any of these trees to have any habitat value? From a one-inch --

**Sten:** Do you buy the argument that if they were going to do more trees that they wouldn't do it on this site because --

**Bauer:** Absolutely.

**Sten:** Okay.

**Bauer:** Absolutely. That's why they proposed doing shrubs, is because they didn't have enough room on the site to do all of their trees. That's what they told the hearings officer. Now he says that shrubs would do a better job on this site. And that certainly is possible. But they need to do -- one and a quarter trees for every one tree cut, and 3.4 shrubs for every one tree cut just doesn't do it.

**Sten:** Okay.

**Bauer:** In my opinion. I'm sorry. Thank you.

**Katz:** Thank you.

**Sten:** I have questions for staff.

**Katz:** Okay. Thank you, linda. Staff, come on up. Be -- is b.e.s. Staff here too? Come on up too. Opdr staff, come on up.

**Sten:** I guess if you could just make sure i'm right on this, the original staff recommendation was denial and then they made modifications that got it up to the standard and in staff's opinion. Is that right?

**MAY 2, 2001**

**Jennings:** That's correct.

**Sten:** Could you give me the brief version of why you denied and it what they gave you to convince you it was all right?

**Jennings:** The original proposal had a number of problems. First of all they were proposing streets that met minimum width standards, which a good design feature, but it didn't meet the standards, so it didn't -- wasn't going to work. And another issue was that they had a different alignment for the ped path that instead of following the existing -- the sanitary sewer line -- alignment they were proposing, followed along the drainage way and would have caused a lot of grading and cutting and filling around the drainage way. They wanted to avoid some lots. So they came in with a new alignment for the pedestrian path. They didn't -- hadn't submitted an analysis of alternatives for the different sanitary sewer alignments that they finally settled on, they hadn't shown why those were practicable alternatives, which is what the criteria requires you to demonstrate. And they also hadn't given any details of the proposed sanitary sewer outfall that's yes -- the details that they had were -- they were proposing to do riprap outfalls and that hadn't been taken into account in the environmental assessment narrative that they'd done previously. Those were the bear sick reasons.

**Sten:** On this issue of 3.4 shrubs or whatever, could you -- i'm trying to think how to ask this question. Could you give me a little bit of background on the table versus the matrix? Is there a standard by which you make the decision and how comfortable are you on the mitigation plan? Two separate questions.

**Jennings:** Sure. The environmental review chapter of the zoning code, the environmental zones chapter has a set of standards and a set of environmental review criteria. And if you propose a development that cannot meet the standards or does not meet the standards, then that requires you to go through and condition an environmental review, this discretionary land use process.

**Sten:** I'm with you so far.

**Jennings:** -- to show that you -- to propose something else basically that even though it doesn't meet the standards, meets the same level of resource and functional values or better than what the standards would have met. So in this case the proposal is for a planned unit development and the -- in the land division, and there are standards for land divisions and plan unit developments. They're in section 33.431-60, and the ones that -- the ones that are not met in this case in particular are one that says you're limited to the amount of disturbance area based on a formula that says total amount of disturbance area allows loud within the areas is 50% of the base building coverage or one acre, whichever is less. Minus the amount of area outside of the resource area. And what that works out to is on this site you're not allowed to have -- the did your bans area allowed by the standard is zero. Typically in an r-10 zone the standard would allow to you have a disturbance area on an individual lot of 5,000 square feet. But basically what this requires is once you have a certain amount of environmental zoning on your lot, you have to go through environmental review under any sections. You can't avoid it. Because you can't meet that standard. You just have too much environmental zoning. But those standards are different from the tree removal standards, which are -- this table, 432, the tree ratio table with trees and shrubs, is a table that applies to -- it's in the environmental studies, it applies to a lot. If you develop a lot and you take out so many trees and you replace them according to this table, you meet the environmental zone standards. There's nothing that says that this table is the required mitigation for an environmental review. But it also doesn't exclude you from using that as maybe a kind of a ratio or judgment on this to base how much would be an appropriate level of mitigation.

**Sten:** Is the standard that you have to replace what you took out and then that table is one way to judge that?

MAY 2, 2001

**Jennings:** Yeah. Basically.

**Sten:** So if you take out x amount of trees you have to put the equivalent of x back, you have to mitigate that. And you have to mitigate that 100%? Is that --

**Jennings:** Yeah. You have to plant those trees. And you have to have them on a plan, a lapped escape plan, and when -- a landscape plan. If somebody came in for a building permit and -- they could cut down trees and plant the trees to replace them. As long as they did that they would meet the standards and they wouldn't have to go through an environmental review. There's also an upper limit on the number of inches of trees that you can cut if you go beyond that, then you have to go through environmental review also.

**Sten:** So if you can't meet that standard you go through the review, and through the course of the review it's been your judgment the mitigation is adequate.

**Jennings:** Yeah. The review criterion is that you are replacing the functional values and resource values that you're removing. So it doesn't say expressly if you remove one tree you have to replace it with such and such number of trees. But it's a judgment of whoever is making the decision to decide, well, is this what they're proposing replace the resource value that they're removing. In this case the applicant did have a very comprehensive study and a lot of proposals to reestablish habitat areas, I think -- and they did actually do for the most part what the tree mitigation -- the tree replacement ratios in that table rewriter -- we require, we thought it looks like they've done a pretty good job of enhancing some of the resource values that they've -- that they're taking out.

**Saltzman:** What kind of expertise do we get on that sort of a judgment call within the city? Who -- is opdr make that call itself or do you bring in b.e.s., Urban forestry folks? Fish and wildlife folks? I don't know.

**Jennings:** It really depends on the case. With half of -- i'm not --

**Saltzman:** In opdr we have an environmental review team?

**Jennings:** Yeah.

**Sten:** Made up of all the various bureaus?

**Jennings:** Well, yeah. We would -- we do refer it out. We get comments back from b.e.s. From the johnson creek basin watershed.

**Saltzman:** So they looked at this?

**Jennings:** They looked at it and they did have comments linda mentioned which indicated that they thought the trees might be concentrated too much in one area. But they hadn't specified where else they might go. Also --

**Saltzman:** So they were concerned under the proposed tree and shrubs ratio that there still might be too many trees on this site?

**Jennings:** I wouldn't say that. They thought they might be too concentrated in one area and they should be spread out across the site. And then I just wanted to add one other thing. There's one environmental review criterion for mitigation that requires the applicant owned the mitigation site possessed a legal instrument approved by the city, such as an easement or deed restriction, sufficient to carry out and insure the success of the mitigation program or condemning straight legal authority to require property through eminent domain. That would be something you'd have to consider, you weren't going to look at an alternative where there's going to be additional trees planted somewhere else. Off site of this site. It would require that the applicant be granted some sort of easement or deed reconstruction to allow them to go in in the future and permanently maintain that off-site mitigation.

**Saltzman:** What about the mathematical error, or the supposed mathematical error of plus .8 versus minus .8?

**MAY 2, 2001**

**Jennings:** That i'd have to consider that new information that wasn't made in the hearing. It might be in there, but we haven't --

**Katz:** It's just inconsistent from the second page to the table.

**Jennings:** I hadn't heard of it before today, so I i'd have to probably look at it in more detail --

**Saltzman:** If it is right, if it was an error, and it should be a minus rather than a plus, doesn't that affect --

**Jennings:** Yeah, that would --

**Saltzman:** It should affect the overall mitigation plan.

**Jennings:** Yeah, that would.

**Saltzman:** Steve, I wanted to ask you about the -- I assume you're the right one to ask about the daylighting of the culvert. Is that something I would assume we would be supportive of that? Is there any public safety issues or anything else we should be aware of that?

**Steve Kercher, Bureau of Environmental Services:** I'm steve with the bureau of environmental services. Just looking at it now, this is an issue I don't think came up before today. But I think it's a great idea. I don't see any health safety issues with removing the culvert. Approximately half of the culvert is outside of the environmental zone anyway, so the applicant could do that without having to go through environmental review. The portion that lies within the environmental zone, part of that lies under the proposed walking path. I know the proposal before was not to bridge that, so I guess if the new proposal is to bridge across the drainage way we no longer need the culvert. I do think it's a fine idea. But again, not something that was brought up before today. We really didn't go after this in the -- as a condition of approval in the environmental review because it was an existing condition. We usually don't expect an advocate to fix all of the existing situations all of the time. But I think it's a good idea.

**Saltzman:** Okay.

**Katz:** Okay. Further questions?

**Saltzman:** I guess I don't know how to get -- I certainly want to make as a condition that we do the daylighting, but I guess i'm concerned about the possible mathematical error here. We're talking about total scores that are in the range of four, one, three, and so certainly a plus or a minus on a .8 sounds like it's a significant -- a potentially significant difference.

**Katz:** Why don't we ask the consult apartments to identify, is it minus .8 or is it plus .8? Come on up.

**\*\*\*\*\*:** We just submit add written statement --

**Katz:** Identify yourself for the record.

**Waterman:** David waterman with environmental technology consult apartments. We -- when linda made her statement we submitted a written record which i'm willing to explain further. Will it sounds to me like she's misunderstood our analysis and that the table she references, the first part of our analysis was the actual site evaluation. You look at the site and you evaluate it. Now, certain parts of the site got a positive score and certain parts got a negative score. Now the table that she refers to is not part of our analysis. That was part of our mitigation plan. Our mitigation plan is obviously all going to be positive, but the things we're doing are raising the scores of various features. Wildlife habitat. There's various elements of wildlife habitat that we enhanced by increasing the score. One of those was disturbance by being able to set that area aside, get the nonnative vegetation out of that, we were able to take that negative .8 score that it had originally and add .8 to that to bring it back to zero. That was part of our mitigation, not part of our analysis. That plus 0.8 is correct.

**Katz:** Okay.



**MAY 2, 2001**

**Saltzman:** If you're saying this table should be all positive numbers, there is a negative column, negative row there, corridor through developed areas, so --

**Waterman:** The reason why -- the corridor values went down. This was a post-development scenario with mitigation. The vegetative corridor was the only one that went down because we were necking down the open space area. By doing that, you're given wildlife a smaller area to get in between this area to off-site areas, so the -- their negative impacts from the road from the siting are higher. So, yes, that did get a negative score. But everything else went up. That was part of the development that brought about that negative.

**Saltzman:** You're saying there's no mathematical error.

**Waterman:** That's what i'm maintaining.

**Saltzman:** Okay.

**Katz:** Thank you. All right. Anybody prepared to make a motion?

**Saltzman:** Well, I guess i'll be the first to admit that this tree-shrub ratio is real perplexing, but it sounds to me this is a good habitat mitigation plan and I would move to uphold the hearings officer, but also with the condition that the culvert be daylighted and I guess the corresponding footbridge be placed on the property.

**Francesconi:** Before I second that, should they respond before you put a condition on it?

**Katz:** They were all right with that.

**Saltzman:** They said they were okay with that.

**Francesconi:** I missed that. Second.

**Katz:** Discussion? Do we have the motion correct? Did we include everything that needed to be included? Okay. Roll call.

**Francesconi:** It is hard when you take open space from a city, especially in an environmentally sensitive area. But -- so Lynn -- the neighborhood, Linda are raising valid issues, but to do it you'd have to do it through a legislative process, in my view, because they've met the conditions. The rules that currently apply. Aye.

**Saltzman:** I think Linda, you've raised some good points here and leave us with a lot of food forethought about how we protect our urban environment. And sometimes whether the standards and formulas we come up with, you know, stand the test of really protecting and enhancing our environment when we take away from our environment. But I think this looks like a good habitat mitigation plan for this development, and I think it will be only better by having this daylighting and bridge as well. Aye.

**Sten:** I think Linda you've improved it, and I appreciate the developer's willingness to do the daylighting. I'm not an expert on this site, but I think that's a good improvement from what I can tell. It's very hard to take forested and whatever level of land and put homes on it and make it as good as it was as open space for environmental issues. It's kind of different uses. But I think this is a pretty good attempt at trying to make things right, and it is residentially zoned land. So I think not -- i'm not quite sure, i'm still mulling on this shrub versus tree issue, and we may have more thinking to do on that, and I think there's probably a decent chance we're going to have an expansion of some of the environmental zone issues in the future, and if that happens, I think it gets all the more important to figure out how to do mitigation and make these puds work, because you have to find a way to protect and ideally although it's hard to do, enhance the environmental things at the same time you're letting people do what layer land is zoned for and that's how they bought it, for residential. I think this is a good one. I think this is a good development. I think there's probably more work we could do to get our signals a the clearer. When it's this confusing to try and see what the standard is, in some ways I think it's good because it's good to have room to come up with a mitigation plan that makes sense, but i'm very unsure that what's -- when both sides say

**MAY 2, 2001**

the standard is nonsense you've got a little hole in the code. But I do think the developer has done the right thing and i'm going to vote aye.

**Katz:** This -- aye. This is a -- [ gavel pounded ] this is a tentative finding and can we bring it back next week?

\*\*\*\*\*: Does that work for --

\*\*\*\*\*: Yeah.

**Katz:** Okay. Let's bring it back next week. Thank you, everybody. Is that all right? You'll be able to -- we stand adjourned.

At 3:30 p.m., Council adjourned.